



## **BACKGROUND**

1. In or around November 2015, the Removing Defendant entered into certain agreements with White Plains Healthcare Properties I, LLC (“WPHCP”) for the construction and finance of the Removing Defendant’s care facility. The Removing Defendant executed that certain Development Agreement (as amended or modified from time to time, the “Development Agreement”), dated as of November 19, 2015, between the Removing Defendant, as operator/tenant, and WPHCP, as developer which was subject to the prior approval of the New York State Department of Health

2. In connection therewith, the Removing Defendant additionally entered into that certain Amended and Restated Operating Lease (as amended or modified from time to time, the “Lease” and, together with the Development Agreement, the “Development and Lease Agreements”), dated November 19, 2015, by and between the Removing Defendant, as tenant, and WPHCP, as Landlord. The Lease provides that it commences upon the date WPHCP’s work is sufficiently complete to accept patients as determined by the New York State Department of Health (the “NYSDOH”) and the issuance of a Certificate of Occupancy.

3. Pursuant to the Development and Lease Agreements, WPHCP agreed to provide the necessary financing and construction management, and to obtain the necessary NYSDOH authorizations and approvals of its plans, specifications and construction and mortgage financing, in order to deliver to the Removing Defendant a “turn-key” facility for operation by the Removing Defendant as a skilled nursing and rehabilitation facility. The Removing Defendant, as tenant and operator of the completed facility, agreed to pay, among other things, monthly fixed rent in the amount of \$506,096.50 for an annual amount of fixed rent of \$6,073,158, to WPHCP, as landlord, over the thirty-year term of the Lease.

4. The Lease provides that the Removing Defendant's obligations to WPHCP under the Lease are secured by, among other things, a first priority security interest and lien granted to WPHCP upon all of the Removing Defendant's assets, including personal property, equipment, and accounts receivable, and certificates of need and other authorizations of the Removing Defendant with respect to operation of the facility as a skilled nursing facility. The Lease provides that WPHCP agrees to subordinate its lien on accounts receivable in favor of an accounts receivable lender to the Removing Defendant upon certain conditions set forth therein.

5. As of the Petition Date, there is no enforceable UCC-1 Financing Statement of record filed against the Removing Defendant by or on behalf of WPHCP.

6. In furtherance of its obligation to secure financing for the project, WPHCP entered into that certain Construction Loan Agreement (as amended or modified from time to time, the "Loan Agreement"), dated as of August 18, 2017, by and among WPHCP, as borrower, Security Benefit Life Insurance Company, as lender ("Security Benefit Lender"), and Security Benefit Corporation (together with Security Benefit Lender, "Security Benefit"), as agent, whereby Security Benefit Lender would make loans to WPHCP in an aggregate amount of up to \$38,500,000, to be used to refinance an existing mortgage on the Real Property, pay the costs of construction and development of the facility, pay the costs of the beds, furniture, fixtures, personal property and equipment to be used at the facility, pay utilities fees and charges, and pay interest, taxes and other budgeted operating costs.

7. WPHCP's obligations under the Loan Agreement are secured by, among other things, that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage"), recorded August 31, 2017, granted by WPHCP to Security Benefit, and an Assignment of Leases and Rents (the "Assignment of Rents"), dated as of August 18, 2017, assigning all rents in

and under all leases with respect to the Real Property. The Mortgage provides that WPHCP's obligations are secured by liens on real and personal property and all other rights and interests of WPHCP in the Real Property. However, property of the Removing Defendant is expressly excluded from Security Benefit's Mortgage, which provides that "all property of tenants under any Lease...is excluded from the scope of this Security Instrument."

8. In connection with the financing, WPHCP, Security Benefit and the Removing Defendant, as operator, entered into that certain Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of July 2017 (the "Security Agreement"), which provides for the Removing Defendant's grant of a security interest in favor of Security Benefit in all of its assets constituting Collateral Property (as defined therein) as security for the payment and performance of, among other things, WPHCP's obligations under the Loan Agreement. With respect to the Removing Defendant's accounts receivable, Security Benefit's liens were granted "to the extent, but only to the extent, they are used in connection with or arise from the operation of the Collateral Property that are or will be subject to an Intercreditor Agreement with the [Removing Defendant's] AR Lender."

9. Security Benefit filed a UCC-1 Financing Statement perfecting this security interest against the Removing Defendant on September 19, 2017. The Removing Defendant is not a party to the Loan Agreement and does not owe any amounts thereunder to Security Benefit. To the best of the Removing Defendant's knowledge, the balance owed by WPHCP to Security Benefit under the Loan Agreement was approximately \$41,742,537.06 as of May 1, 2021.

10. After developmental and financing delays necessitating additional capital infusions, WPHCP obtained approval from the New York State Department of Health for the opening of the facility on December 2, 2019, two years later than contemplated under the Development Agreement.

Despite this and other disputes concerning the Development and Lease Agreements, the Removing Defendant made all rent payments of over \$506,000 per month as required under the Lease, commencing on October 30, 2019 (even before the opening of the facility and commencement of the Lease), totaling over \$10,500,000 as of the Petition Date, which WPHCP accepted.

11. Despite the fact that the Removing Defendant did not default under the Lease, WPHCP defaulted under its Loan Agreement with Security Benefit. Security Benefit issued multiple notices of default to WPHCP, commencing on October 16, 2019, for defaults including failures to establish a cash management account, make monthly interest payments, forward payments received from the Removing Defendant, provide financial statements, and other defaults.

12. Security Benefit commenced litigation against WPHCP attempting to foreclose against the Real Property, but these actions were discontinued as a result of a New York State moratoriums on such actions, which has been extended through January 2022. *See Security Benefit Life Insurance Company, Security Benefit Corporation v. White Plains Healthcare Properties I, LLC, et al.*, Index No. 55883/2021 (Sup. Ct. N.Y. 2021); *Security Benefit Life Insurance Company, Security Benefit Corporation v. White Plains Healthcare Properties I, LLC, et al.*, Index No. 621099/2021 (Sup. Ct. N.Y. 2021).

13. On January 7, 2020, attorneys for WPHCP sent the Removing Defendant a letter alleging that the Removing Defendant defaulted under the Development and Lease Agreements, purporting to terminate the Lease effective January 13, 2020, and seeking accelerated obligations allegedly due in the amount of \$84,073,989.91. The Removing Defendant disputes these alleged defaults and the effectiveness of the letter to terminate the Lease. As of the Petition Date, the Removing Defendant was in substantial compliance with the Lease and has made all outstanding rental payments to WPHCP.

14. On September 18, 2020, WPHCP filed a complaint against the Removing Defendant, Lizer Jozefovic, and Mark Neuman in the Supreme Court of the State of New York, County of Westchester (the “Complaint”), captioned as *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC, et al.*, Index No. 60278-20 (N.Y. Sup. Ct. 2020) (the “State Court Action”), containing various frivolous allegations regarding purported defaults by the Removing Defendant under the Lease, seeking termination of the Lease and seeking recovery from the Removing Defendant and co-defendants for over \$84 million in alleged damages. WPHCP subsequently amended its Complaint.

15. The Removing Defendant and co-defendants filed an answer to the amended Complaint and asserted counterclaims and third-party claims against WPHCP, among others, seeking a declaratory judgment as well as an accounting, and money damages based upon fraud, fraud in the inducement, breach of contract, bad faith.

16. On August 19, 2021, WPHCP filed a motion seeking entry of summary judgment against the Removing Defendant, among others. As of the Petition Date, the Removing Defendant had filed its opposition to WPHCP’s summary judgment motion, but WPHCP had not yet filed its reply brief. WPHCP’s motion has not yet been deemed to be fully submitted and remains *sub judice*.

17. Removal of the State Court Action is appropriate because this Court maintains “arising under” and “related to” bankruptcy jurisdiction pursuant to 28 U.S.C. §§ 1334(b) and 1452(a).

### **Bankruptcy Jurisdiction**

18. On November 1, 2021, the Removing Defendant filed a voluntary petition for relief under Subchapter V of Chapter 11 of the United State Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. The case number for the Removing

Defendant's chapter 11 case is Chapter 11 Case No. 21-22623-SHL (the "Chapter 11 Case"). The Chapter 11 Case is pending before the Honorable Sean H. Lane, United States Bankruptcy Judge.

19. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1334(b), which provides that United States district courts shall have jurisdiction over all civil proceedings, "arising under" or "related" to cases under title 11 of the United States Code (the "Bankruptcy Code").

20. The causes of actions asserted by in the State Court Action are "core proceedings" within the meaning of, inter alia, 28 U.S.C §157(b)(2)(B), (C), (E), and (O) in that the State Court Action concerns, inter alia, (i) allowance or disallowance of claims against the Removing Defendant's bankruptcy estates; (ii) counterclaims by the Removing Defendant against Plaintiffs who hold claims against the Removing Defendant's bankruptcy estates; (iii) third party claims by the Removing Defendant; (iv) termination of the Removing Defendant's Lease, and (v) other matters pertaining to the liquidation of the assets of the estate and the adjustment of the debtor-creditor relationship.

21. Alternatively, the causes of action in the State Court Action are "related to" the Chapter 11 Cases because:

- a. Plaintiff seeks a judgment against the Removing Defendant, which "could conceivably have" an effect on the Removing Defendants' bankruptcy estates;
- b. Plaintiff seeks to terminate Removing Defendant's Lease which "could conceivably have" an effect on the Removing Defendants' bankruptcy estates;
- c. Plaintiff seeks judgment against non-debtor defendants and individuals based upon guaranties of certain of Removing Defendant's obligations under the Lease. As a result, non-Removing Defendants may seek contribution or indemnification from

Removing Defendant, which “could conceivably have” an effect on the Removing Defendant’s bankruptcy estate; and

- d. Plaintiff seeks judgment against non-debtor defendants under certain guaranties of the Debtor’s obligations under the Lease. Judgments entered against and amounts collected from non-debtor defendants could have the effect of fixing the amounts owed, if any, by Removing Defendant under the Lease, or otherwise determining the Removing Defendant’s liability for alleged defaults under the Lease. As a result, a judgment against the non-debtor defendants “could conceivably have” an effect on the Removing Defendant’s bankruptcy estate.

*See In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 114 (2d Cir. 1992) (“The test ... is whether [the litigation’s] outcome might have any conceivable effect on the bankrupt estate.”). An action is “related to” a bankruptcy proceeding even when the claims are between third parties. *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995)(resolving a circuit split by holding that a dispute between parties other than the debtor may be “related to” bankruptcy although the debtor has no interest in the property over which the parties are in dispute).

22. Courts have regularly held that third party proceedings are “related to” bankruptcy proceedings when the defendants have a claim for indemnification or contribution against the debtor estate even where the rights are contingent. *See In re Worldcom, Inc. Sees. Litig.*, 293 B.R. 308, 321 (S.D.N.Y. 2003)(“Because the effect of contribution claims on the bankruptcy estate is at the very least conceivable, the ... action is related to the bankruptcy and subject to the jurisdiction of this Court.”), *see also In re Masterwear Corp.*, 241 B.R. 511, 516-17 (Bankr. S.D.N.Y. 1999) (holding that “related to” jurisdiction existed where defendants “may ultimately be entitled to recover some or all of their legal fees and expenses from [the bankrupt corporation] under [its] bylaws).

23. For any claims or parties not subject to jurisdiction under 28 U.S.C. § 1334, supplemental jurisdiction lies under 28 U.S.C. § 1367 because all claims against all parties in this case form part of the same case or controversy.

**Compliance With Procedural Requirements**

24. Pursuant to Fed. R. Bankr. P. Rule 9027: (a) this Notice of Removal is being filed with the clerk for the district and division within which the State Court Action is pending; (b) this Notice of Removal is signed pursuant to Fed. R. Bankr. P. Rule 9011; (c) Removing Defendant states that the State Court Action is a core proceeding, but if it is determined to be non-core, Removing Defendant consents to entry of final orders or judgment by the Bankruptcy Court; (d) this Notice of Removal is being timely filed; (e) this Notice of Removal is accompanied by a copy of all process and pleadings filed to date in the State Court Action, (f) Removing Defendant has contemporaneously filed a copy of this notice with the Clerk of the Supreme Court of the State of New York, County of Westchester and shall promptly serve a copy of this Notice of Removal upon Plaintiff's counsel.

25. Removing Defendant expressly reserves the right to raise all defenses in this action after it is removed.

WHEREFORE, the Removing Defendant removes the State Court Action in its entirety from the Supreme Court of the State of New York, Westchester County to the United States District Court for the Southern District of New York and respectfully submits that the matter should be referred to the United States Bankruptcy Court for the Southern District of New York.

Dated: New York, New York  
November 3, 2021

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Stevens, LLP

By: /s/ Tracy L. Klestadt

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

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1	<a href="#">SUMMONS + COMPLAINT</a>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
2	<a href="#">EXHIBIT(S)</a> - 1 <i>Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
3	<a href="#">EXHIBIT(S)</a> - 2 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
4	<a href="#">EXHIBIT(S)</a> - 3 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
5	<a href="#">EXHIBIT(S)</a> - 4 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
6	<a href="#">EXHIBIT(S)</a> - 5 <i>Notice of Default</i>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
7	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> <i>Affidavit of service upon defendant HBL SNF Inc</i>	<a href="#">Coleman, W.</a> Filed: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>

#	Document	Filed By	Status
8	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> affidavits of service of summons and complaint - all defendants	<a href="#">Coleman, W.</a> Filed: 10/07/2020 Received: 10/07/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
9	<a href="#">NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
10	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #1) Affirmation of Default of Alfred E. Donnellan	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
11	<a href="#">EXHIBIT(S)</a> - 1 (Motion #1) Complaint <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
12	<a href="#">EXHIBIT(S)</a> - 2 (Motion #1) Affidavit of Service	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
13	<a href="#">EXHIBIT(S)</a> - 3 (Motion #1) Confirmation Notices	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
14	<a href="#">EXHIBIT(S)</a> - 4 (Motion #1) Additional Notice	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
15	<a href="#">ORDER ( PROPOSED )</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
16	<a href="#">BILL OF COSTS</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
17	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
18	<a href="#">RJI -RE: NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
19	<a href="#">ADDENDUM - COMMERCIAL DIVISION (840C)</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
20	<a href="#">COURT NOTICE</a>	Court User Filed: 10/29/2020 Received: 10/29/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
21	<a href="#">ANSWER WITH COUNTER-CLAIM(S)</a>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
22	<a href="#">NOTICE OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020	<b>Processed</b>

	Filed: 11/05/2020 Received: 11/05/2020	<a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
23 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
24 <a href="#">EXHIBIT(S)</a> - A (Motion #2) <i>Email Correspondence</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
25 <a href="#">EXHIBIT(S)</a> - B (Motion #2) <i>Proof of November Rent Payment</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
26 <a href="#">EXHIBIT(S)</a> - C (Motion #2) <i>Filed Answer</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
27 <a href="#">MEMORANDUM IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
28 <a href="#">ORDER ( PROPOSED )</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
29 <a href="#">STIPULATION - WITHDRAWING MOTION/ORDER TO SHOW CAUSE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 11/09/2020 Received: 11/09/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
30 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #1) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
31 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #2) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
32 <a href="#">JOINT ONE PAGE STATEMENT OF FACTS &amp; PARTIES CONTENTIONS</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
33 <a href="#">EXHIBIT(S)</a> - 1 <i>Copy of Pleadings</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
34 <a href="#">PRELIMINARY CONFERENCE ORDER (PROPOSED)</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	*** Pending *** <a href="#">Confirmation Notice</a>
35 <a href="#">EXHIBIT(S)</a> - 1 <i>ADR Attorney Certification for Alfred Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
36 <a href="#">ORDER - PRELIMINARY CONFERENCE</a>	Court User Filed: 11/13/2020 Received: 11/13/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
37 <a href="#">COMPLAINT (AMENDED)</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

		Filed: 11/30/2020 Received: 11/30/2020	<a href="#">Confirmation Notice</a>
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38	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended and Restated Operating Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
39	<a href="#">EXHIBIT(S)</a> - 2 <i>Jozefovic Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
40	<a href="#">EXHIBIT(S)</a> - 3 <i>Neuman Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
41	<a href="#">EXHIBIT(S)</a> - 4 <i>Jozefovic Security Agreement Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
42	<a href="#">EXHIBIT(S)</a> - 5 <i>Letter of Intent Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
43	<a href="#">EXHIBIT(S)</a> - 6 <i>Notice of Default Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
44	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> <i>Letter to Judge Walsh requesting pre motion conference</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
45	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
46	<a href="#">EXHIBIT(S)</a> - 2 <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
47	<a href="#">EXHIBIT(S)</a> - 3 <i>Compared version of amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
48	<a href="#">ANSWER TO THIRD PARTY COMPLAINT</a> <i>Verified Answer to Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
49	<a href="#">REPLY TO COUNTERCLAIM(S)</a> <i>Verified Reply to Counterclaims</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
50	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 01/11/2021 Received: 01/11/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
51	<a href="#">NOTICE OF MOTION</a> (Motion #3) <i>to file Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
52	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

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	<a href="#">MOTION</a> (Motion #3) <i>Affirmation of Alfred E. Donnellan in Support of Motion to file Amended Complaint</i>	Filed: 01/26/2021 Received: 01/26/2021	<a href="#">Confirmation Notice</a>
53	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>Complaint with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
54	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
55	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Amended Compliant with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
56	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Redline version of Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
57	<a href="#">EXHIBIT(S)</a> - E (Motion #3) <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
58	<a href="#">EXHIBIT(S)</a> - F (Motion #3) <i>Security Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
59	<a href="#">EXHIBIT(S)</a> - G (Motion #3) <i>Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
60	<a href="#">EXHIBIT(S)</a> - H (Motion #3) <i>NY County Action Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
61	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
62	<a href="#">NOTICE OF MOTION</a> (Motion #4) *Corrected*	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
63	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #4) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
64	<a href="#">EXHIBIT(S)</a> - A (Motion #4) <i>Complaint</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
65	<a href="#">EXHIBIT(S)</a> - B (Motion #4) <i>Answer</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
66	<a href="#">EXHIBIT(S)</a> - C (Motion #4) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

- 67 [EXHIBIT\(S\)](#) - D (Motion #4)  
Lease  
**Redacted** per 22 NYCRR §202.5(e)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 68 [EXHIBIT\(S\)](#) - E (Motion #4)  
Temporary Certificate of Occupancy  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 69 [EXHIBIT\(S\)](#) - F (Motion #4)  
AJA Form 0704  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 70 [EXHIBIT\(S\)](#) - G (Motion #4)  
NYSDOH Communication  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 71 [MEMORANDUM OF LAW IN SUPPORT](#) (Motion #4)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 72 [LETTER / CORRESPONDENCE TO JUDGE](#)  
[Donnellan, A.](#) **Processed**  
Filed: 02/04/2021 [Confirmation Notice](#)  
Received: 02/04/2021
- 73 [MEMORANDUM OF LAW IN OPPOSITION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
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- 74 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021
- 75 [EXHIBIT\(S\)](#) - A (Motion #3)  
Collateral Assignment  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021

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**60278/2020 - Westchester County Supreme Court**

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

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Document Type:  Filed By:

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76	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
77	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Complaint in New York Action</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
78	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Judge Bannon's Interim Order</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
79	<a href="#">AFFIDAVIT OR AFFIRMATION IN REPLY</a> (Motion #3) <i>Reply Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
80	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>NY County Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
81	<a href="#">MEMORANDUM OF LAW IN REPLY</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
82	<a href="#">STIPULATION - DISCOVERY ( REQUEST TO SO</a> <i>ORDER</i> (Motion #4)	<a href="#">Giardino, J.</a> Filed: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

ORDER (Motion #2)

Stipulation regarding document discovery and motion to dismiss

Received: 03/04/2021

Processed

Confirmation Notice

83 STIPULATION - SO ORDERED

Court User  
Filed: 03/11/2021  
Received: 03/11/2021

Processed  
Confirmation Notice

84 DECISION + ORDER ON MOTION (Motion #3)

Court User  
Filed: 03/18/2021  
Received: 03/18/2021

Processed  
Confirmation Notice

85 NOTICE OF ENTRY (Motion #3)

Lara-Garduno, N.  
Filed: 03/19/2021  
Received: 03/19/2021

Processed  
Confirmation Notice

86 COMPLAINT (AMENDED)

First Amended Verified Complaint

Donnellan, A.  
Filed: 03/22/2021  
Received: 03/22/2021

Processed  
Confirmation Notice

87 EXHIBIT(S) - 1

Amended and Restated Lease  
**Redacted** per 22 NYCRR §202.5(e)

Donnellan, A.  
Filed: 03/22/2021  
Received: 03/22/2021

Processed  
Confirmation Notice

88 EXHIBIT(S) - 2

Jozefovic Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

Donnellan, A.  
Filed: 03/22/2021  
Received: 03/22/2021

Processed  
Confirmation Notice

89 EXHIBIT(S) - 3

Neuman Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

Donnellan, A.  
Filed: 03/22/2021  
Received: 03/22/2021

Processed  
Confirmation Notice

90 EXHIBIT(S) - 4

Jozefovic Security Agreement  
**Redacted** per 22 NYCRR §202.5(e)

Donnellan, A.  
Filed: 03/22/2021  
Received: 03/22/2021

Processed  
Confirmation Notice

91 EXHIBIT(S) - 5

Letter of Intent  
**Redacted** per 22 NYCRR §202.5(e)

Donnellan, A.  
Filed: 03/22/2021  
Received: 03/22/2021

Processed  
Confirmation Notice

92 EXHIBIT(S) - 6

Notice of Default  
**Redacted** per 22 NYCRR §202.5(e)

Donnellan, A.  
Filed: 03/22/2021  
Received: 03/22/2021

Processed  
Confirmation Notice

93 LETTER / CORRESPONDENCE TO JUDGE

Lara-Garduno, N.  
Filed: 03/26/2021  
Received: 03/26/2021

Processed  
Confirmation Notice

94 LETTER / CORRESPONDENCE TO JUDGE

Donnellan, A.  
Filed: 04/09/2021  
Received: 04/09/2021

Processed  
Confirmation Notice

95 DECISION + ORDER ON MOTION (Motion #4)

Motion withdrawn without prejudice

Court User  
Filed: 04/20/2021  
Received: 04/20/2021

Processed  
Confirmation Notice

96 ANSWER (AMENDED)

Barnett-Howell, A.  
Filed: 05/21/2021  
Received: 05/21/2021

Processed  
Confirmation Notice

# Document

Filed By

Status

#	Document	Filed By	Status
97	<a href="#">EXHIBIT(S)</a> - A <i>Incorporated Complaint from New York County</i>	<a href="#">Barnett-Howell, A.</a> Filed: 05/21/2021 Received: 05/21/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
98	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 05/25/2021 Received: 05/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
99	<a href="#">NOTICE TO ADMIT</a>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
100	<a href="#">EXHIBIT(S)</a> - 1 <i>to Notice to Admit - Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
101	<a href="#">EXHIBIT(S)</a> - 2 <i>to Notice to Admit - Development Agreement</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
102	<a href="#">EXHIBIT(S)</a> - 3 <i>to Notice to Admit - Temporary C of O</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
103	<a href="#">EXHIBIT(S)</a> - 4 <i>to Notice to Admit - AJA form 0704</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
104	<a href="#">EXHIBIT(S)</a> - 5 <i>to Notice to Admit - NYSDOH letter</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
105	<a href="#">ORDER - MEDIATION</a>	Court User Filed: 06/03/2021 Received: 06/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
106	<a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
107	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
108	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>First Notification of Disposition of Collateral, 10.6.20</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
109	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Second Notification of Disposition of Collateral, 6.9.21</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
110	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Term Sheet, 11.20.15</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
111	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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112	<a href="#">EXHIBIT(S)</a> - E (Motion #5) <i>November 19 Email and Account Statement</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
113	<a href="#">EXHIBIT(S)</a> - F (Motion #5) <i>August 10 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
114	<a href="#">EXHIBIT(S)</a> - G (Motion #5) <i>August 16 Emails</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
115	<a href="#">EXHIBIT(S)</a> - H (Motion #5) <i>August 17 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
116	<a href="#">EXHIBIT(S)</a> - I (Motion #5) <i>Letter of Intent</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
117	<a href="#">EXHIBIT(S)</a> - J (Motion #5) <i>Security Benefit Letters</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
118	<a href="#">EXHIBIT(S)</a> - K (Motion #5) <i>NYSDOH Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
119	<a href="#">EXHIBIT(S)</a> - L (Motion #5) <i>Certificate of Amendment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
120	<a href="#">EXHIBIT(S)</a> - M (Motion #5) <i>2020 Monthly Invoices</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
121	<a href="#">EXHIBIT(S)</a> - N (Motion #5) <i>September Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
122	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>Proposed UCC Form</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
123	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
124	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' / Third-Party Plainti ...</i> <i>show more</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
125	<a href="#">EXHIBIT(S)</a> - 1 (Motion #5) <i>Exhibit 1 - Bandazian Affidavit</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
126	<a href="#">EXHIBIT(S)</a> - 2 (Motion #5) <i>Exhibit 2 - Prior Order to Show Cause</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

		Received: 06/25/2021	
127	<a href="#">EXHIBIT(S)</a> - 3 (Motion #5) <i>Exhibit 3 - Answer with Cross-Claims</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
128	<a href="#">EXHIBIT(S)</a> - 4 (Motion #5) <i>Exhibit 4 - Decision and Order</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
129	<a href="#">EXHIBIT(S)</a> - 5 (Motion #5) <i>Exhibit 5 - Notice of Sale</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
130	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5) <i>Third-Party Defendant/Cross-Claimant Metropolitan Commercial Bank's Memorandum of Law in Partial Joi ... show more</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
131	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)	<a href="#">Donnellan, A.</a> Filed: 06/28/2021 Received: 06/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
132	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)	<a href="#">Giardino, J.</a> Filed: 06/28/2021 Received: 06/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
133	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5) <i>Affidavit of Lizer Jozefovic</i>	<a href="#">Giardino, J.</a> Filed: 06/28/2021 Received: 06/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
134	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' Third-Pa ... show more</i>	<a href="#">Malatak, R.</a> Filed: 06/28/2021 Received: 06/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
135	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)	<a href="#">Giardino, J.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
136	<a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affidavit of William A. Nicholson</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
137	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
138	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Jozefovic Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
139	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Neuman Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
140	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment and Pledge</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

**Redacted** per 22 NYCRR §202.5(e)

Received: 06/29/2021

- 141 [EXHIBIT\(S\)](#) - E (Motion #5)  
*UCC Financing Statement*
- 142 [EXHIBIT\(S\)](#) - F (Motion #5)  
*Notice of Default*  
**Redacted** per 22 NYCRR §202.5(e)
- 143 [EXHIBIT\(S\)](#) - G (Motion #5)  
*Construction Loan Agreement*
- 144 [EXHIBIT\(S\)](#) - H (Motion #5)  
*Note*
- 145 [EXHIBIT\(S\)](#) - I (Motion #5)  
*Mortgage*
- 146 [EXHIBIT\(S\)](#) - J (Motion #5)  
*Security Benefit Notice of Default*
- 147 [EXHIBIT\(S\)](#) - K (Motion #5)  
*Security Benefit Notice of Default*
- 148 [EXHIBIT\(S\)](#) - L (Motion #5)  
*Security Benefit Complaint*
- 149 [EXHIBIT\(S\)](#) - M (Motion #5)  
*Email*
- 150 [EXHIBIT\(S\)](#) - N (Motion #5)  
*Hebrew Hospital Bankruptcy Filing Notice*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

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Filed: 06/29/2021  
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Filed: 06/29/2021  
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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

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151	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
152	<a href="#">EXHIBIT(S)</a> - P (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
153	<a href="#">EXHIBIT(S)</a> - Q (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
154	<a href="#">EXHIBIT(S)</a> - R (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
155	<a href="#">EXHIBIT(S)</a> - S (Motion #5) <i>Bankruptcy Court Order</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
156	<a href="#">EXHIBIT(S)</a> - T (Motion #5) <i>Operating Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
157	<a href="#">EXHIBIT(S)</a> - U (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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158	<a href="#">EXHIBIT(S)</a> - V (Motion #5) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
159	<a href="#">EXHIBIT(S)</a> - W (Motion #5) <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
160	<a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
161	<a href="#">EXHIBIT(S)</a> - X (Motion #5) <i>Notification of Disposition of Collateral</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
162	<a href="#">EXHIBIT(S)</a> - Y (Motion #5) <i>June 10,2021 Letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
163	<a href="#">EXHIBIT(S)</a> - Z (Motion #5) <i>Publication</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
164	<a href="#">EXHIBIT(S)</a> - AA (Motion #5) <i>Terms of Sale</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
165	<a href="#">EXHIBIT(S)</a> - BB (Motion #5) <i>Amended and Restated Operating Agreement of Waterview</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
166	<a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affidavit of Howard Fensterman</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
167	<a href="#">EXHIBIT(S)</a> - CC (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
168	<a href="#">EXHIBIT(S)</a> - DD (Motion #5) <i>Fed Ex Receipt</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
169	<a href="#">MEMORANDUM OF LAW IN OPPOSITION</a> (Motion #5)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
170	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Supplemental Affidavit of Brett Bandazian in Partial Joinder and Support of Defendants'/Third-Party ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>
171	<a href="#">EXHIBIT(S)</a> - 6 (Motion #5) <i>Exhibit 6 Certificate</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021 <b>Processed</b> <a href="#">Confirmation Notice</a>

172	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF CROSS-MOTION</a> (Motion #5) <i>Second Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants'/T ... show more</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
173	<a href="#">EXHIBIT(S)</a> - 7 (Motion #5) <i>Exhibit 7 - Article</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
174	<a href="#">ORDER TO SHOW CAUSE</a> (Motion #5)	Court User Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
175	<a href="#">NOTICE OF ENTRY</a>	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
176	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> *Corrected*	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
177	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> (Motion #5) *Corrected* <i>Notice of Appeal</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
178	<a href="#">COUNTY CLERK CERTIFICATION OF MINUTES</a>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
179	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 1 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
180	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 2 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
181	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/10/2021 Received: 08/10/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
182	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/13/2021 Received: 08/13/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
183	<a href="#">NOTICE OF MOTION</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
184	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affirmation of Alfred E. Donnellan, Esq.</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
185	<a href="#">EXHIBIT(S)</a> - 1 (Motion #6) <i>Summons &amp; Complaint - Westchester County action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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186	<a href="#">EXHIBIT(S)</a> - 2 (Motion #6) <i>Answer with Counterclaims and Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
187	<a href="#">EXHIBIT(S)</a> - 3 (Motion #6) <i>Amended Verified Complaint 2020.11.30</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
188	<a href="#">EXHIBIT(S)</a> - 4 (Motion #6) <i>Reply to Counterclaims and Answer to Third-Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
189	<a href="#">EXHIBIT(S)</a> - 5 (Motion #6) <i>First Amended Verified Complaint 2021.03.22</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
190	<a href="#">EXHIBIT(S)</a> - 6 (Motion #6) <i>Summons &amp; Complaint - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
191	<a href="#">EXHIBIT(S)</a> - 7 (Motion #6) <i>Answer - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
192	<a href="#">EXHIBIT(S)</a> - 8 (Motion #6) <i>Answer of MCB - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
193	<a href="#">EXHIBIT(S)</a> - 9 (Motion #6) <i>Decision and Order 2021.04.08</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
194	<a href="#">EXHIBIT(S)</a> - 10 (Motion #6) <i>First Amended Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
195	<a href="#">EXHIBIT(S)</a> - 11 (Motion #6) <i>Notice to Admit with exhibits</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
196	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of William Nicholson</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
197	<a href="#">EXHIBIT(S)</a> - 12 (Motion #6) <i>Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
198	<a href="#">EXHIBIT(S)</a> - 13 (Motion #6) <i>Development Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
199	<a href="#">EXHIBIT(S)</a> - 14 (Motion #6) <i>Jozefovic Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
200	<a href="#">EXHIBIT(S)</a> - 15 (Motion #6) <i>Neuman Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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201	<a href="#">EXHIBIT(S)</a> - 16 (Motion #6) <i>Pledge Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
202	<a href="#">EXHIBIT(S)</a> - 17 (Motion #6) <i>Letter of Intent</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
203	<a href="#">EXHIBIT(S)</a> - 18 (Motion #6) <i>White Plains TCO</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
204	<a href="#">EXHIBIT(S)</a> - 19 (Motion #6) <i>AIA form G704</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
205	<a href="#">EXHIBIT(S)</a> - 20 (Motion #6) <i>NYSDOH letter 2019.12.02</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
206	<a href="#">EXHIBIT(S)</a> - 21 (Motion #6) <i>NYSDOH email 2019.10.01</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
207	<a href="#">EXHIBIT(S)</a> - 22 (Motion #6) <i>Term Sheet 2015.11.20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
208	<a href="#">EXHIBIT(S)</a> - 23 (Motion #6) <i>Jozefovic Affidavit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
209	<a href="#">EXHIBIT(S)</a> - 35 (Motion #6) <i>Operating Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
210	<a href="#">EXHIBIT(S)</a> - 36 (Motion #6) <i>Zafrin e-mail dated 4-11-17</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
211	<a href="#">EXHIBIT(S)</a> - 37 (Motion #6) <i>Estoppel Certificate to Security Benefit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
212	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Edward Tabor</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
213	<a href="#">EXHIBIT(S)</a> - 24 (Motion #6) <i>Itemization of amounts due under lease and LOI</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
214	<a href="#">EXHIBIT(S)</a> - 25 (Motion #6) <i>List of Rents &amp; Late Charges</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
215	<a href="#">EXHIBIT(S)</a> - 26 (Motion #6) <i>Notice of Default</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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| 216 | <a href="#">EXHIBIT(S)</a> - 27 (Motion #6)<br><i>Accelerated Rent (NPV)</i>   | <a href="#">Donnellan, A.</a><br>Filed: 08/19/2021<br>Received: 08/19/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 217 | <a href="#">EXHIBIT(S)</a> - 28 (Motion #6)<br><i>Professional Fees</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)          | <a href="#">Donnellan, A.</a><br>Filed: 08/19/2021<br>Received: 08/19/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 218 | <a href="#">EXHIBIT(S)</a> - 29 (Motion #6)<br><i>Security Benefit Notice of Default dated 4-16-20</i>                     | <a href="#">Donnellan, A.</a><br>Filed: 08/19/2021<br>Received: 08/19/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 219 | <a href="#">EXHIBIT(S)</a> - 30 (Motion #6)<br><i>Notice of Default 5-22-20</i>  | <a href="#">Donnellan, A.</a><br>Filed: 08/19/2021<br>Received: 08/19/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 220 | <a href="#">EXHIBIT(S)</a> - 31 (Motion #6)<br><i>Complaint in Security Benefit Foreclosure Action</i>                     | <a href="#">Donnellan, A.</a><br>Filed: 08/19/2021<br>Received: 08/19/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 221 | <a href="#">EXHIBIT(S)</a> - 32 (Motion #6)<br><i>Itemization of Amounts Due</i><br><b>Redacted</b> per 22 NYCRR §202.5(e) | <a href="#">Donnellan, A.</a><br>Filed: 08/19/2021<br>Received: 08/19/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 222 | <a href="#">EXHIBIT(S)</a> - 33 (Motion #6)<br><i>Unreimbursed Deposits and Payments</i>                                   | <a href="#">Donnellan, A.</a><br>Filed: 08/19/2021<br>Received: 08/19/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 223 | <a href="#">EXHIBIT(S)</a> - 38 (Motion #6)<br><i>Payment of Real Estate Taxes</i>   | <a href="#">Donnellan, A.</a><br>Filed: 08/19/2021<br>Received: 08/19/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 224 | <a href="#">EXHIBIT(S)</a> - 39 (Motion #6)<br><i>Certificates of Insurance</i>  | <a href="#">Donnellan, A.</a><br>Filed: 08/19/2021<br>Received: 08/19/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 225 | <a href="#">EXHIBIT(S)</a> - 40 (Motion #6)<br><i>Tenant Insurance Analysis</i>  | <a href="#">Donnellan, A.</a><br>Filed: 08/19/2021<br>Received: 08/19/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

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**60278/2020 - Westchester County Supreme Court**

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
 Case Type: **Commercial Division**  
 Case Status: **Active**  
 eFiling Status: **Full Participation Recorded**  
 Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

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226	<a href="#">EXHIBIT(S)</a> - 41 (Motion #6) <i>HBL Medicaid Rates Dated 11-14-2019</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
227	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Howard Fensterman</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
228	<a href="#">EXHIBIT(S)</a> - 34 (Motion #6) <i>Fed Ex Receipt</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
229	<a href="#">STATEMENT OF MATERIAL FACTS</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
230	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
231	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Giardino, J.</a> Filed: 09/07/2021 Received: 09/07/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
232	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 10/08/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

- 233 [LETTER / CORRESPONDENCE TO JUDGE](#) [Giardino, J.](#) **Processed**  
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- 234 [LETTER / CORRESPONDENCE TO JUDGE](#) (Motion #6) [Donnellan, A.](#) **Processed**  
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- 235 [LETTER / CORRESPONDENCE TO JUDGE](#) (Motion #6) [Giardino, J.](#) **Processed**  
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- 236 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION](#) (Motion #6) [Giardino, J.](#) **Processed**  
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- 237 [EXHIBIT\(S\)](#) - A (Motion #6) [Giardino, J.](#) **Processed**  
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- 238 [EXHIBIT\(S\)](#) - B (Motion #6) [Giardino, J.](#) **Processed**  
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- 239 [EXHIBIT\(S\)](#) - C (Motion #6) [Giardino, J.](#) **Processed**  
*Amended Lease* Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 240 [EXHIBIT\(S\)](#) - D (Motion #6) [Giardino, J.](#) **Processed**  
*Collateral Assignment* Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 241 [EXHIBIT\(S\)](#) - E (Motion #6) [Giardino, J.](#) **Processed**  
*August 2017 Emails* Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 242 [EXHIBIT\(S\)](#) - F (Motion #6) [Giardino, J.](#) **Processed**  
*Loan Agreement* Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 243 [EXHIBIT\(S\)](#) - G (Motion #6) [Giardino, J.](#) **Processed**  
*Letter of Intent* Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 244 [EXHIBIT\(S\)](#) - H (Motion #6) [Giardino, J.](#) **Processed**  
*Notice of Default* Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 245 [EXHIBIT\(S\)](#) - I (Motion #6) [Giardino, J.](#) **Processed**  
*Security Benefit Letters* Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 246 [EXHIBIT\(S\)](#) - J (Motion #6) [Giardino, J.](#) **Processed**  
*Foreclosure Action* Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 247 [EXHIBIT\(S\)](#) - K (Motion #6) [Giardino, J.](#) **Processed**

	FILED: 10/25/2021 Received: 10/25/2021	Confirmation Notice
<i>Kent Payments</i>		
248 <a href="#">EXHIBIT(S)</a> - L (Motion #6) <i>Tax Records</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
249 <a href="#">EXHIBIT(S)</a> - M (Motion #6) <i>Utility Records</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
250 <a href="#">EXHIBIT(S)</a> - N (Motion #6) <i>Certificates of Insurance</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
251 <a href="#">EXHIBIT(S)</a> - O (Motion #6) <i>Provider agreements and Rate Sheets</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
252 <a href="#">EXHIBIT(S)</a> - P (Motion #6) <i>First Amended Document Requests to Plaintiff</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
253 <a href="#">EXHIBIT(S)</a> - Q (Motion #6) <i>Amended Answer</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
254 <a href="#">RESPONSE TO STATEMENT OF MATERIAL FACTS</a> (Motion #6)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
255 <a href="#">MEMORANDUM IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #6)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
256 <a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #7)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
257 <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #7)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
258 <a href="#">EXHIBIT(S)</a> - A (Motion #7) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
259 <a href="#">EXHIBIT(S)</a> - B (Motion #7) <i>Letter re auction</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
260 <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #7)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
261 <a href="#">ANSWER (AMENDED)</a>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
262 <a href="#">NOTICE OF MOTION</a> (Motion #8) *Corrected*	<a href="#">Giardino, J.</a>	<b>Processed</b>

	Filed: 10/25/2021 Received: 10/26/2021	<a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
263 <a href="#">EXHIBIT(S)</a> - A (Motion #8) <i>Amended Lease</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
264 <a href="#">EXHIBIT(S)</a> - B (Motion #8) <i>Notice of Exercise of Option Letter</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
265 <a href="#">EXHIBIT(S)</a> - C (Motion #8) <i>Response Letter</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
266 <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #8)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
267 <a href="#">EXHIBIT(S)</a> - A (Motion #8) <i>PROPOSED Second Amended Verified Answer and Third-Party Complaint</i>	<a href="#">Giardino, J.</a> Filed: 10/26/2021 Received: 10/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
268 <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #8) <i>AFFIDAVIT OF LIZER JOZEFOVIC IN SUPPORT OF MOTION FOR LEAVE TO AMEND AND DECLARATORY JUDGMENT</i>	<a href="#">Giardino, J.</a> Filed: 10/26/2021 Received: 10/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
269 <a href="#">EXHIBIT(S)</a> - A (Motion #8) <i>Amended Lease</i>	<a href="#">Giardino, J.</a> Filed: 10/26/2021 Received: 10/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
270 <a href="#">EXHIBIT(S)</a> - B (Motion #8) <i>Notice of Exercise of Option Letter</i>	<a href="#">Giardino, J.</a> Filed: 10/26/2021 Received: 10/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
271 <a href="#">EXHIBIT(S)</a> - C (Motion #8) <i>Response Letter</i>	<a href="#">Giardino, J.</a> Filed: 10/26/2021 Received: 10/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
272 <a href="#">ORDER TO SHOW CAUSE</a> (Motion #7)	Court User Filed: 10/29/2021 Received: 10/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

**PLAINTIFFS**  
 Plaintiff -White Plains Healthcare Properties I, LLC  
 Third Party Plaintiffs- HBL SNF, LLC, Lizer Jozefovic, MARk Neuman

**DEFENDANTS**  
 Defendants - HBL SNF, LLC, Lizer Jozefovic, Mark Neuman  
 Third Party Defendants - CCC Equities, LLC, Project Equity Consulting, Congress Companies, Howard Fensterman, William Nicholson  
**ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**  
 For White Plains Healthcare Properties I, LLC - DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
 For HBN SNF LLC - Klestadt Winters Jureller Southard & Stevens, LLP

**CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)**  
 (DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S. Code §§ 1334 and 1452 - Removal of core bankruptcy proceeding or related proceeding.

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No  Yes  Judge Previously Assigned

If yes, was this case Vol.  Invol.  Dismissed. No  Yes  If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

Is THIS AN INTERNATIONAL ARBITRATION CASE? No  Yes

(PLACE AN [x] IN ONE BOX ONLY)

**NATURE OF SUIT**

TORTS		ACTIONS UNDER STATUTES			
<b>CONTRACT</b>	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
[ ] 110 INSURANCE	[ ] 310 AIRPLANE	[ ] 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL	[ ] 625 DRUG RELATED	[ ] 422 APPEAL	[ ] 375 FALSE CLAIMS
[ ] 120 MARINE	[ ] 315 AIRPLANE PRODUCT LIABILITY	[ ] INJURY/PRODUCT LIABILITY	[ ] SEIZURE OF PROPERTY	28 USC 158	[ ] 376 QUI TAM
[ ] 130 MILLER ACT	[ ] 320 ASSAULT, LIBEL & SLANDER	[ ] 365 PERSONAL INJURY PRODUCT LIABILITY	21 USC 881	[ ] 423 WITHDRAWAL	[ ] 400 STATE REAPPORTIONMENT
[ ] 140 NEGOTIABLE INSTRUMENT	[ ] 330 FEDERAL EMPLOYERS' LIABILITY	[ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	[ ] 690 OTHER	28 USC 157	[ ] 410 ANITRUST
[ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	[ ] 340 MARINE	<b>PERSONAL PROPERTY</b>	<b>PROPERTY RIGHTS</b>	[ ] 820 COPYRIGHTS	[ ] 430 BANKS & BANKING
[ ] 151 MEDICARE ACT	[ ] 345 MARINE PRODUCT LIABILITY	[ ] 370 OTHER FRAUD	[ ] 830 PATENT	[ ] 830 PATENT	[ ] 450 COMMERCE
[ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)	[ ] 350 MOTOR VEHICLE	[ ] 371 TRUTH IN LENDING	[ ] 835 PATENT-ABBREVIATED NEW DRUG APPLICATION	[ ] 840 TRADEMARK	[ ] 460 DEPORTATION
[ ] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS	[ ] 355 MOTOR VEHICLE PRODUCT LIABILITY	[ ] 380 OTHER PERSONAL PROPERTY DAMAGE	[ ] 840 TRADEMARK	[ ] 880 DEFEND TRADE SECRETS ACT	[ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
[ ] 160 STOCKHOLDERS SUITS	[ ] 360 OTHER PERSONAL INJURY	[ ] 385 PROPERTY DAMAGE PRODUCT LIABILITY	<b>LABOR</b>	<b>SOCIAL SECURITY</b>	[ ] 480 CONSUMER CREDIT
[x] 190 OTHER CONTRACT	[ ] 362 PERSONAL INJURY - MED MALPRACTICE	<b>PRISONER PETITIONS</b>	[ ] 710 FAIR LABOR STANDARDS ACT	[ ] 861 HIA (1395ff)	[ ] 485 TELEPHONE CONSUMER PROTECTION ACT
[ ] 195 CONTRACT PRODUCT LIABILITY	<b>ACTIONS UNDER STATUTES</b>	[ ] 463 ALIEN DETAINEE	[ ] 720 LABOR/MGMT RELATIONS	[ ] 862 BLACK LUNG (923)	[ ] 490 CABLE/SATELLITE TV
[ ] 196 FRANCHISE	<b>CIVIL RIGHTS</b>	[ ] 510 MOTIONS TO VACATE SENTENCE	[ ] 740 RAILWAY LABOR ACT	[ ] 863 DIWC/DIWW (405(g))	[ ] 850 SECURITIES/COMMODITIES/EXCHANGE
	[ ] 440 OTHER CIVIL RIGHTS (Non-Prisoner)	[ ] 530 HABEAS CORPUS	[ ] 751 FAMILY MEDICAL LEAVE ACT (FMLA)	[ ] 864 SSID TITLE XVI	[ ] 890 OTHER STATUTORY ACTIONS
	[ ] 441 VOTING	[ ] 535 DEATH PENALTY	[ ] 790 OTHER LABOR LITIGATION	[ ] 865 RSI (405(g))	[ ] 891 AGRICULTURAL ACTS
	[ ] 442 EMPLOYMENT HOUSING/ ACCOMMODATIONS	[ ] 540 MANDAMUS & OTHER	[ ] 791 EMPL RET INC SECURITY ACT (ERISA)	[ ] 870 TAXES (U.S. Plaintiff or Defendant)	[ ] 893 ENVIRONMENTAL MATTERS
	[ ] 443 HOUSING/ ACCOMMODATIONS	<b>PRISONER CIVIL RIGHTS</b>	<b>IMMIGRATION</b>	[ ] 871 IRS-THIRD PARTY	[ ] 895 FREEDOM OF INFORMATION ACT
	[ ] 444 AMERICANS WITH DISABILITIES - EMPLOYMENT	[ ] 550 CIVIL RIGHTS	[ ] 462 NATURALIZATION APPLICATION	26 USC 7609	[ ] 896 ARBITRATION
	[ ] 446 AMERICANS WITH DISABILITIES -OTHER	[ ] 555 PRISON CONDITION	[ ] 465 OTHER IMMIGRATION ACTIONS		[ ] 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
	[ ] 448 EDUCATION	[ ] 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT			[ ] 950 CONSTITUTIONALITY OF STATE STATUTES
<b>REAL PROPERTY</b>					
[ ] 210 LAND CONDEMNATION					
[ ] 220 FORECLOSURE					
[x] 230 RENT LEASE & EJECTMENT					
[ ] 240 TORTS TO LAND					
[ ] 245 TORT PRODUCT LIABILITY					
[ ] 290 ALL OTHER REAL PROPERTY					

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
 JURY DEMAND:  YES  NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

Cover Sheet Pg 2 of 2  
ORIGIN

(PLACE AN x IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation (Transferred)
- 7 Appeal to District Judge from Magistrate Judge
- 8 Multidistrict Litigation (Direct File)
- a. all parties represented
- b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

**BASIS OF JURISDICTION**

**IF DIVERSITY, INDICATE CITIZENSHIP BELOW.**

- 1 U.S. PLAINTIFF
  - 2 U.S. DEFENDANT
  - 3 FEDERAL QUESTION
  - 4 DIVERSITY
- (U.S. NOT A PARTY)

**CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)**

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [ ] 1	DEF [ ] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [ ] 3 [ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] 5 [ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2	[ ] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4 [ ] 4	FOREIGN NATION	[ ] 6 [ ] 6

**PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)**

White Plains Healthcare Properties I, LLC - 2 Bourbon Street, Suite 200, Peabody, Massachusetts,

**DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)**

HBL SNF LLC - 116-120 Church Street, White Plains, New York  
 Jozefovic - 53 Mriner Way, Monsey, New York  
 Neuman - 22 Lyncrest Drive, Monsey, New York  
 CCC Equities, LLC -3 Dakota Drive, Suite 300, Lake Success, New York 11042

**DEFENDANT(S) ADDRESS UNKNOWN**

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

**COURTHOUSE ASSIGNMENT**

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  WHITE PLAINS  MANHATTAN

DATE 11/03/2021 /s/ Brendan M. Scott  
SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT  
[ ] NO  
[ ] YES (DATE ADMITTED Mo. 06 Yr. 06)  
Attorney Bar Code #

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

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Sort By: Doc #

#	Document	Filed By	Status
1	<a href="#">SUMMONS + COMPLAINT</a>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
2	<a href="#">EXHIBIT(S)</a> - 1 <i>Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
3	<a href="#">EXHIBIT(S)</a> - 2 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
4	<a href="#">EXHIBIT(S)</a> - 3 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
5	<a href="#">EXHIBIT(S)</a> - 4 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
6	<a href="#">EXHIBIT(S)</a> - 5 <i>Notice of Default</i>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
7	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> <i>Affidavit of service upon defendant HBL SNF Inc</i>	<a href="#">Coleman, W.</a> Filed: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>

- |    |   |  |  |
|----|---|--|--|
| 8  | <a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a><br><i>affidavits of service of summons and complaint - all defendants</i>        | <a href="#">Coleman, W.</a><br>Filed: 10/07/2020<br>Received: 10/07/2020   | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 9  | <a href="#">NOTICE OF MOTION</a> (Motion #1)  | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a><br><a href="#">Payment Receipt</a> |
| 10 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #1)<br><i>Affirmation of Default of Alfred E. Donnellan</i> | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 11 | <a href="#">EXHIBIT(S)</a> - 1 (Motion #1)<br><i>Complaint</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)                          | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 12 | <a href="#">EXHIBIT(S)</a> - 2 (Motion #1)<br><i>Affidavit of Service</i>   | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 13 | <a href="#">EXHIBIT(S)</a> - 3 (Motion #1)<br><i>Confirmation Notices</i>   | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 14 | <a href="#">EXHIBIT(S)</a> - 4 (Motion #1)<br><i>Additional Notice</i>  | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 15 | <a href="#">ORDER ( PROPOSED )</a> (Motion #1)  | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 16 | <a href="#">BILL OF COSTS</a> (Motion #1)   | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 17 | <a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> (Motion #1)  | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 18 | <a href="#">RJI -RE: NOTICE OF MOTION</a> (Motion #1)   | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a><br><a href="#">Payment Receipt</a> |
| 19 | <a href="#">ADDENDUM - COMMERCIAL DIVISION (840C)</a><br>(Motion #1)  | <a href="#">Donnellan, A.</a><br>Filed: 10/28/2020<br>Received: 10/28/2020 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 20 | <a href="#">COURT NOTICE</a>  | Court User<br>Filed: 10/29/2020<br>Received: 10/29/2020                    | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 21 | <a href="#">ANSWER WITH COUNTER-CLAIM(S)</a>  | <a href="#">Giardino, J.</a><br>Filed: 11/05/2020<br>Received: 11/05/2020  | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 22 | <a href="#">NOTICE OF CROSS-MOTION</a> (Motion #2)  | <a href="#">Giardino, J.</a><br>Filed: 11/05/2020                          | <b>Processed</b>   |

	Filed: 11/05/2020 Received: 11/05/2020	Confirmation Notice <a href="#">Payment Receipt</a>
23 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
24 <a href="#">EXHIBIT(S)</a> - A (Motion #2) <i>Email Correspondence</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
25 <a href="#">EXHIBIT(S)</a> - B (Motion #2) <i>Proof of November Rent Payment</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
26 <a href="#">EXHIBIT(S)</a> - C (Motion #2) <i>Filed Answer</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
27 <a href="#">MEMORANDUM IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
28 <a href="#">ORDER ( PROPOSED )</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
29 <a href="#">STIPULATION - WITHDRAWING MOTION/ORDER TO SHOW CAUSE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 11/09/2020 Received: 11/09/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
30 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #1) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
31 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #2) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
32 <a href="#">JOINT ONE PAGE STATEMENT OF FACTS &amp; PARTIES CONTENTIONS</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
33 <a href="#">EXHIBIT(S)</a> - 1 <i>Copy of Pleadings</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
34 <a href="#">PRELIMINARY CONFERENCE ORDER (PROPOSED)</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	*** Pending *** <a href="#">Confirmation Notice</a>
35 <a href="#">EXHIBIT(S)</a> - 1 <i>ADR Attorney Certification for Alfred Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
36 <a href="#">ORDER - PRELIMINARY CONFERENCE</a>	Court User Filed: 11/13/2020 Received: 11/13/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
37 <a href="#">COMPLAINT (AMENDED)</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

	<i>Amended Verified Complaint</i>	Filed: 11/30/2020 Received: 11/30/2020	<a href="#">Confirmation Notice</a>
38	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended and Restated Operating Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
39	<a href="#">EXHIBIT(S)</a> - 2 <i>Jozefovic Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
40	<a href="#">EXHIBIT(S)</a> - 3 <i>Neuman Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
41	<a href="#">EXHIBIT(S)</a> - 4 <i>Jozefovic Security Agreement Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
42	<a href="#">EXHIBIT(S)</a> - 5 <i>Letter of Intent Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
43	<a href="#">EXHIBIT(S)</a> - 6 <i>Notice of Default Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
44	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> <i>Letter to Judge Walsh requesting pre motion conference</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
45	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
46	<a href="#">EXHIBIT(S)</a> - 2 <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
47	<a href="#">EXHIBIT(S)</a> - 3 <i>Compared version of amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
48	<a href="#">ANSWER TO THIRD PARTY COMPLAINT</a> <i>Verified Answer to Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
49	<a href="#">REPLY TO COUNTERCLAIM(S)</a> <i>Verified Reply to Counterclaims</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
50	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 01/11/2021 Received: 01/11/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
51	<a href="#">NOTICE OF MOTION</a> (Motion #3) <i>to file Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
52	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

#	Document	Filed By	Status
	<a href="#">MOTION</a> (Motion #3) <i>Affirmation of Alfred E. Donnellan in Support of Motion to file Amended Complaint</i>	Filed: 01/26/2021 Received: 01/26/2021	<a href="#">Confirmation Notice</a>
53	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>Complaint with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
54	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
55	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Amended Compliant with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
56	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Redline version of Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
57	<a href="#">EXHIBIT(S)</a> - E (Motion #3) <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
58	<a href="#">EXHIBIT(S)</a> - F (Motion #3) <i>Security Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
59	<a href="#">EXHIBIT(S)</a> - G (Motion #3) <i>Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
60	<a href="#">EXHIBIT(S)</a> - H (Motion #3) <i>NY County Action Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
61	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
62	<a href="#">NOTICE OF MOTION</a> (Motion #4) *Corrected*	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
63	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #4) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
64	<a href="#">EXHIBIT(S)</a> - A (Motion #4) <i>Complaint</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
65	<a href="#">EXHIBIT(S)</a> - B (Motion #4) <i>Answer</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
66	<a href="#">EXHIBIT(S)</a> - C (Motion #4) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

- 67 [EXHIBIT\(S\)](#) - D (Motion #4)  
Lease  
**Redacted** per 22 NYCRR §202.5(e)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 68 [EXHIBIT\(S\)](#) - E (Motion #4)  
Temporary Certificate of Occupancy  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 69 [EXHIBIT\(S\)](#) - F (Motion #4)  
AJA Form 0704  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 70 [EXHIBIT\(S\)](#) - G (Motion #4)  
NYSDOH Communication  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 71 [MEMORANDUM OF LAW IN SUPPORT](#) (Motion #4)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 72 [LETTER / CORRESPONDENCE TO JUDGE](#)  
[Donnellan, A.](#) **Processed**  
Filed: 02/04/2021 [Confirmation Notice](#)  
Received: 02/04/2021
- 73 [MEMORANDUM OF LAW IN OPPOSITION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021
- 74 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021
- 75 [EXHIBIT\(S\)](#) - A (Motion #3)  
Collateral Assignment  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

<p>WHITE PLAINS HEALTHCARE PROPERTIES I, I.I.C., Plaintiff,</p> <p>- against -</p> <p>HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARK NEUMAN, Defendants.</p>
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Index No. \_\_\_\_\_  
Date Purchased: \_\_\_\_\_

**SUMMONS**

**YOU ARE HEREBY SUMMONED** and required to serve upon plaintiff's attorney an answer to the Verified Complaint in this action within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Westchester County is designated as the place of trial. The venue designated is based upon Defendant's residence.

Dated: White Plains, New York  
September 16, 2020

DI BELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare  
Properties I, I.I.C.*

By:   
Alfred E. Donnellan, Esq.  
Peter S. Dawson, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN,  
FORMATO, FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare  
Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

TO:

HBL SNF, LLC  
537 Route 22  
Purdys, New York 10578

Lizer Jozefovic a/k/a Lizer Jozofovic  
53 Mariner Way  
Monsey, New York 10952

Mark Neuman  
22 Lyncrest Drive  
Monsey, New York 10952

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

<p>WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  Plaintiff,</p> <p>- against -</p> <p>HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  JOZOFOVIC and MARK NEUMAN,  Defendants.</p>
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Index No. \_\_\_\_\_

**VERIFIED COMPLAINT**

Plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties"), by its attorneys, DelBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, for its complaint against defendants, HBL SNF, LLC ("HBL"), Lizer Jozefovic a/k/a Lizer Jozofovic ("Jozefovic") and Mark Neuman ("Neuman"), alleges:

**NATURE OF THE CASE**

1. This action concerns HBL's material default of its obligations under an amended and restated operating lease dated as of November 19, 2015 (the "Lease"), by which WPH Properties leased to HBL a brand new, state-of-the-art, 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York.

2. WPH Properties had constructed the nursing facility and entered into the Lease with HBL dated November 19, 2015. The Lease was amended and restated in 2017. It provided that HBL would operate the facility for 30 years, commencing September 30, 2019. HBL took possession of the facility on September 30, 2019. By the end of October 2019, HBL had defaulted.

3. On January 7, 2020, WPH Properties served notice of default and elected to terminate the Lease and accelerate all rents due. This action seeks to recover from HBL the Rent it owes and the other damages its defaults have caused and to enforce the unconditional guaranties of HBL's performance under the Lease given by Neuman and Jozefovic.

PARTIES AND VENUE

4. WPH Properties is a limited liability company duly organized and existing under the laws of the State of Massachusetts, with its principal place of business at 2 Bourbon Street, Suite 200, Peabody, Massachusetts. WPH Properties is duly authorized to do business in the State of New York.

5. HBL was and is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 537 Route 22, Purdys, New York.

6. Jozefovic is an individual residing at 53 Mariner Way, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

7. Neuman is an individual residing at 22 Lyncrest Drive, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

8. Pursuant to CPLR § 503(a), venue is properly designated in Westchester County based on the residences of WPH Properties and HBL, because a substantial part of the events giving rise to the claim occurred in Westchester County and because HBL agreed in the Lease that any action or proceeding arising out of the Lease be brought in Westchester County. Lease § 20.1(b).

**FACTS**

9. WPH Properties is and was at all relevant times the owner of the real property known as 116-120 Church Street, White Plains, New York (the "Real Property").

10. WPH Properties constructed a brand new, state-of-the-art, 160-bed skilled nursing facility on the Real Property.

**The Lease**

11. In 2017, WPH Properties, as landlord, and HBL, as tenant, entered into the amended and restated Lease, dated as of November 19, 2015, under which WPH Properties leased to HBL the Real Property and the improvements to be constructed on the Real Property, together with other assets, all as defined in Section 2.1 of the Lease (the "Facility"). A true and accurate copy of the Lease is annexed to this complaint as Exhibit I and is incorporated into this complaint by reference.

12. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019.

13. HBL entered into possession of the Facility on September 30, 2019.

14. The lease provided for a term of 30 years, with three 10 year options to the tenant, unless sooner terminated. Exhibit I, Lease, § 3.1.

15. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 (the "Fixed Rent"). Exhibit I, Lease, § 3.2.

16. The Lease also obligated HBL to pay WPH Properties other amounts which are defined as "Additional Rent." Fixed Rent and Additional Rent are referred to collectively as "Rent."

17. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Premises during the Term. Exhibit 1, Lease, § 4.1.

18. The Lease obligated HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit 1, Lease, § 4.2.

19. The Lease obligated HBL to keep the Premises in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses relating to the Premises. Exhibit 1, Lease, § 5.2.

20. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit 1, Lease, § 7.1.

21. A true and accurate copy of the Jozefovic Guaranty is annexed to this complaint as Exhibit 2.

22. A true and accurate copy of the Neuman Guaranty is annexed to this complaint as Exhibit 3.

23. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

24. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Jozefovic without the necessity of any notice of

nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Juzefovic expressly waived.

25. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

26. The Neuman Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

27. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an agreement by Capital Funding Group by which Capital Funding Group agreed to allow HBL to draw down on its credit line each month so as to enable Capital Funding Group to pay the Fixed Rent each month directly to WPH Properties on the commencement date and for the following 11 months. Exhibit 1, Lease, § 7.1.

28. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease. Exhibit 1, Lease, § 7.1.

29. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, \$1,600,000 as an additional security deposit. Exhibit 1, Lease, § 7.1.

30. The Lease obligated HBL to provide WPH Properties all reports, statements and

inspections as defined in the Lease, including all Medicare, Medicaid and other provider agreements and reimbursement rates for the Facility, updated reimbursement rates, financial reporting and written reports providing an operational overview of significant events and circumstances on a monthly basis. Exhibit 1, Lease, § 7.4.

31. The Lease obligated HBL to maintain working capital accounts in specified amounts. Exhibit 1, Lease, § 7.7.

32. The Lease provides that HBL will be in default of the Lease if, among other things, (i) HBL fails to pay any installment of Rent within five days of the date when Rent was due; (ii) HBL defaults in the prompt and full performance of any other of its obligations and fails to correct that failure within 30 days of receipt of written notice from WPH Properties of the default; (iii) HBL fails to give WPH Properties timely notice or timely deliver copies of documents as required by section 7.4 of the Lease; (iv) HBL defaults or breaches the provisions of section 7.4(b); (v) a Guarantor defaults beyond expiration of any applicable cure period; or (vi) any governmental authority assesses a fine or penalty against HBL in an amount in excess of \$75,000. Exhibit 1, Lease, § 16.1.

33. WPH Properties performed all of the conditions on its part required by the Lease.

34. The Lease provides in section 16.1 that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent.

35. Section 16.1 of the Lease also provides that upon the occurrence of a default, and in addition to all of the other remedies provided for in the Lease, WPH Properties is immediately

entitled to retain the security deposit required by section 7.1 of the Lease and HBL has no further claim, right, title or interest therein to the extent of WPH Properties' claims.

36. Section 16.1 of the Lease also provides that upon the occurrence of a default and the commencement of an action for Rent or for any other amount due under the Lease, HBL must pay to WPH Properties all of the expenses, including reasonable attorneys' fees, incurred by WPH Properties to enforce the Lease.

37. In addition, under the terms of the Lease, HBL's continuation in occupancy after termination does not constitute a renewal of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent Rent payable by HBL under the Lease. Exhibit I, Lease, § 201.13.

**HBL breached its obligations under the Lease**

38. HBL failed to perform its obligations, materially defaulting under the Lease, almost immediately after taking possession of the Premises.

- 39. HBL failed to pay Rent as required by the Lease.
- 40. HBL failed to pay real estate taxes as required by the Lease.
- 41. HBL failed to pay utility deposits as required by the Lease.
- 42. HBL failed to pay municipal maintenance escrows as required by the Lease.
- 43. HBL failed to pay utility charges as required by the Lease.
- 44. HBL failed or refused to deliver certificates of insurance as required by the Lease.
- 45. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility, as required by the Lease.
- 46. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider

updated rate sheets, as required by the Lease.

47. HBL failed to deliver to WPH Properties the required financial reporting, as required by the Lease.

48. HBL failed to deliver to WPH Properties the required written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease, as required by the Lease.

49. HBL failed or refused to deliver to WPH Properties the security deposits, as required by the Lease.

50. HBL failed to deliver and maintain the required credit line in an amount equal to 12 months rent, as required by the Lease.

51. HBL failed to have and maintain the working capital account required by the Lease.

52. HBL failed to pay late fees and costs, as required by the Lease.

**The Letter of Intent**

53. After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease, despite HBL's default.

54. On November 20, 2019, WPH Properties and HBL entered into a Letter of Intent (the "LOI") in which WPH Properties and HBL agreed that WPH Properties would sell the Facility for \$73,000,000 to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties or its designees would have a 22.5 percent interest.

55. A true and accurate copy of the LOI is annexed to this complaint as exhibit 4.

56. The LOI provides for the Lease to be amended to require that HBL pay the November 2019 rent by November 18, 2019, the December rent by December 5, 2019 and all real

estate taxes and utility payments by December 1, 2019, that by December 5, 2019 HBL reimburse WPH Properties for \$65,856 in municipal and utility deposits, that HBL enter into a Deposit Account Control Agreement with MNB requiring MNB to draw on the account first to pay the rent.

57. The LOI further provides for the Lease to be amended so that the \$3,700,000 security deposit required by section 7.1(a)(ii) is reduced to \$2,000,000, \$1,000,000 of which was required to be paid by HBL on or before December 1, 2019 or the date on which WPH Properties obtained a certificate of occupancy for the Facility, whichever was later, and the balance of which was required to be paid upon the closing of title on April 1, 2020.

58. In addition, the LOI provides for the Lease to be amended so that in lieu of providing the additional \$1,600,000 in security required by section 7.1(a)(iii) of the Lease, HBL would be required to enter into an agreement with JP Morgan Chase Bank prohibiting liquidation of that account until the second \$1,000,000 in security required by the LOI had been paid.

59. The LOI also provides for the Lease to be amended to require HBL to obtain a single working capital line of credit in the amount of \$8,000,000 by December 1, 2019.

60. HBL defaulted and breached its obligations under the LOI by failing to pay rent, failing to pay the municipal and utility payments to WPH Properties, failing to pay the real estate taxes and utility payments, failing to enter into the Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank, by failing to pay the first \$1,000,000 security deposit as required by the LOI and by failing to obtain the \$8,000,000 working capital credit line.

61. WPH Properties performed all conditions on its part required by the LOI.

62. Solely as a result of HBL's breach of the LOI, WPH Properties did not sell the

property to the Delaware Statutory Trust, causing damage to WPH Properties, and WPH Properties incurred interest and late charges on its loans, all of which are the direct result of HBL's breach of the LOI.

**Notice of default, termination of the Lease and acceleration of Rent**

63. On January 7, 2020, while the LOI was in effect, WPH Properties served a "Notice of Default And Landlord's Election To Terminate Lease And Accelerate All Rents Due For The Balance of the Lease Term" upon HBL (the "Notice of Default").

64. A true and accurate copy of the Notice of Default is annexed to this complaint as Exhibit 5 and incorporated into this complaint by reference.

65. The Notice of Default contains a true and accurate accounting of the amounts then due and owing under the Lease and LOI.

66. The Notice of Default gave HBL notice that by reason of HBL's defaults under the Lease, WPH Properties had exercised its right under section 16.1 of the Lease to terminate the Lease, effective January 13, 2020.

67. The Notice of Default further gave HBL notice that pursuant to section 16.1 of the Lease all Rent for the balance of the Term was accelerated and HBL became obligated to pay WPH Properties the present value of the accelerated rent, discounted at a rate of 6% per annum.

68. HBL continued, and still continues, to occupy the Premises, despite WPH Properties' termination of the Lease.

69. Because HBL has held over after its default resulted in termination of the Lease, HBL is a tenant month-to-month at a rent equal to 300% of the most recent Rent payable by HBL under the Lease. Exhibit I, Lease, § 20.13.

70. HBL has failed to perform its obligations as a tenant month-to-month by failing to pay rent in the amount of 300% of the most recent Rent payable by HBL under the Lease, remitting only the base rent which had been payable before WPH Properties terminated the Lease.

71. HBL is in default with respect to its obligations under the Lease and its obligations as a month-to-month tenant following termination of the Lease effective January 13, 2020.

**Amounts Due**

72. As a result of HBL's defaults, HBL is obligated to pay to WPH Properties, as of August 25, 2020, the sum of \$113,832,987.54 (the "Amounts Due"), as follows: (i) holdover rent and rent, \$7,096,182.79; (ii) municipal and utility deposits, \$26,725.35; (iii) security and working capital deposits, \$9,800,000.00; (iv) late fees, default fees, costs and professional fees, \$1,948,753.00; and (v) accelerated rent, \$94,961,326.40.

73. HBL is obligated to pay to WPH Properties the Amounts Due in full, plus any amounts that have accrued since August 25, 2020.

74. HBL has failed or refused to pay the Amounts Due.

75. WPH Properties has fully performed all obligations required to be performed on its part with respect to the Lease, the LOI, HBL's month-to-month tenancy after the termination of the Lease, the Jozefovic Guaranty, the Neuman Guaranty, the HBL Security Agreement, the Jozefovic HBL Security Agreement and the Neuman HBL Security Agreement.

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

76. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "75" with the same force and effect as if fully set forth here.

77. By reason of HBL's material default and breach of its obligations pursuant to the

Lease and its obligations as a month-to month tenant after termination of the lease, WPH Properties is entitled to judgment against HBL for the Amounts Due, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law.

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

78. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "77" with the same force and effect as if fully set forth here.

79. By reason of HBL's material default and breach of its obligations pursuant to the LOI, WPH Properties is entitled to judgment against HBL in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

80. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "79" with the same force and effect as if fully set forth here.

81. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic for the Amounts Due pursuant to the terms of the Jozefovic Guaranty.

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

82. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "81" with the same force and effect as if fully set forth here.

83. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Neuman for the Amounts Due pursuant to the terms of the Neuman Guaranty.

**WHIRLWIND, WPH Properties demands judgment as follows:**

1. On its first cause of action, against HBL, in the amount of \$113,832,987.54, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and
2. On its Second Cause of Action, against HBL, in an amount to be determined at trial; and
3. On its Third Cause of Action, against Jozefovic in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and
4. On its Fourth Cause of Action, against Neuman in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and
5. On all causes of action, awarding costs, disbursements and attorneys' fees against HBL, pursuant to the provisions of the Lease and against Jozefovic and Neuman pursuant to the provisions of the Jozefovic Guaranty and the Neuman Guaranty; and
6. Awarding such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
September 16, 2020

DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

By: 

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(914) 631-0200

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FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

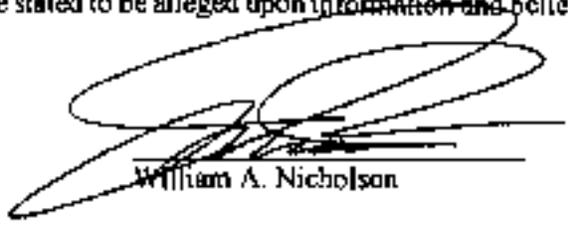
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
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VERIFICATION

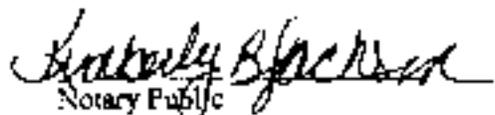
STATE OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the unexed Verified Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

  
William A. Nicholson

Sworn to before me this  
16th day of September 2020

  
Notary Public  
EXP: 11-26-2021



# Exhibit 1 to Verified Complaint

**AMENDED AND RESTATED OPERATING LEASE**

**By and Between**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,**  
a Massachusetts limited liability company  
("Landlord")

**and**

**HDL SMP, LLC,**  
a New York limited liability company ("Tenant")

**Dated as of November 19, 2015**

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<b>EXHIBIT "B"</b>	<b>Guaranty</b>
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**EXHIBIT "A"**

**Legal Description**

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of White Plains, County of Westchester and State of New York. Said parcel being more particularly described as follows:

**BEGINNING** at a point in the easterly line of Church Street where the same is intersected by the southerly line of Barker Avenue;

**THENCE** from said point North 70 degrees 40 minutes 10 seconds East a distance of 173.57 feet along the southerly line of Barker Avenue to a point where the same is intersected by the division line herein described parcel on the West and lands now or formerly of Koepfel & Mohr Equities on the East;

**THENCE** from said point and along said division line South 17 degrees 59 minutes 50 seconds East a distance of 200.51 feet to a point in the division line between the herein described parcel on the north and lands now or formerly of Hamilton Plaza Company, Inc. on the south;

**THENCE** from said point and along said line South 71 degrees 01 minutes 50 seconds West a distance of 173.24 feet to the easterly line of Church Street; and

**THENCE** from said point and along said line North 18 degrees 05 minutes 04 seconds West a distance of 199.41 feet to the point and place of BEGINNING.

EXHIBIT A

1302449-517057-6

**EXHIBIT "B"**

**GUARANTY**

See Attached



**SCHEDULE 3.1**

**Definition of Material Default**

Material Default shall mean the occurrence of any of the following:

(a) Any Lease Default except 16.1 (a) (xv) and (xxx), provided that the following Lease Defaults shall not be deemed a Material Default unless they occur two or more times within such period: 16.1 (a) (ix), (xvi), (xxx), (xxxI), and the following Lease Defaults shall not be deemed a Material Default unless they occur three or more times within such period: 16.1 (a) (i), (ii), (xvii).

(b) Any Lease Default during such period constitutes an "Event of Default" by Lendlord under any Loan Document between Lendlord and its Mortgagee(s) evidencing or documenting a loan secured by the Facility;

**EXHIBIT 7.1(a)**  
See Attached

**EXHIBIT 7.1(b)**  
See Attached

**EXHIBIT 7.1(c)**  
See Attached

SCHEDULE 7.4

<u>PERIOD</u>	<u>EBITDAR TARGET</u>
Quarter 1 (____, 201__, through ____, 201__)	\$ _____
Quarter 2	\$ _____
Quarter 3	\$ _____
Quarter 4	\$ _____
Quarter 5	\$ _____
Quarter 6 and thereafter	\$ _____

"EBITDAR" means with respect to any quarterly period for the Facility an amount determined on a consolidated basis equal to the sum of the following amounts for the Facility for a trailing twelve month period: (a) earnings (net income or net loss) (including, as an expense an actual or theoretical management expense of five percent (5%) of gross receipts) from operations before (b) interest expense, (c) income tax expense, (d) depreciation expense, (e) amortization expense, and (f) Fixed Rent, defined in accordance with GAAP for such quarterly period. EBITDAR is not considered a measure of financial performance under GAAP. In calculating earnings for the trailing twelve months that encompasses any month prior to the Commencement Date, for the months prior to the Commencement Date, revenue shall be calculated using current rates of reimbursement, meaning reimbursement rates in effect as of the start of the applicable quarterly period.

## OPERATING LEASE

THIS AMENDED AND RESTATED OPERATING LEASE ("Lease") is entered into as of November 19, 2015 (the "Effective Date"), by and between WHITE PLAINS HEALTHCARE PROPERTIES I, LLC a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 203, Peabody, MA 01960 ("WHPI") or (the "Landlord") and HBL SNF, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (the "Tenant"), and amends and restates in its entirety the lease between the Parties dated as of November 19, 2015.

### RECITALS

A. WHEREAS, Landlord is the owner of the real property, improvements, and personal property constituting the long-term care facility commonly known as 116-120 Church Street, White Plains, New York and more particularly described on Exhibit A, attached hereto and made a part hereof, (the "Real Property"), and following execution of this Lease, upon which certain buildings and improvements shall be erected (the "Facility"); and

B. WHEREAS, Landlord desires to lease the entire Leased Premises (defined herein) to Tenant and Tenant desires to lease the Leased Premises from Landlord pursuant to the terms, conditions and covenants set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, promises, representations and warranties set forth herein and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

### ARTICLE I

#### INCORPORATION OF RECITALS; PRINCIPLES OF CONSTRUCTION, DEFINITIONS

Section 1.1 Incorporation of Recitals. The aforesaid Recitals A through B are hereby incorporated into this Lease as if fully set forth herein. Landlord and Tenant are hereinafter sometimes individually referred to as a "Party," and collectively referred to as "Parties".

Section 1.2 Principles of Construction. All references to articles, sections, schedules and exhibits are to articles, sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Landlord" shall mean

"Landlord and its successors and assigns"; the words "Leased Premises" shall include any portion of the Leased Premises and any interest therein, and the phrases "attorney's fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal, legal assistant and law clerk fees and disbursements, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise, and, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Landlord in protecting its interest in the Leased Premises and its rights hereunder. Wherever pursuant to this Lease it is provided that Landlord shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees as defined above. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The words "includes", "including" and similar terms shall be construed as if followed by the words "without limitation". Whenever in this Lease any consent, approval, determination or decision of Landlord is to be made by Landlord, or any matter is to be satisfactory to Landlord, then unless expressly provided to the contrary, such provision shall be deemed to mean that such consent, approval, determination or decision of Landlord or determination whether a matter is satisfactory shall be made by Landlord in its sole and absolute discretion for any or no reason and shall be final and conclusive. Any reference in this Lease shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease shall be deemed to be a reference to this Lease (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease or in the Guaranty shall be deemed to be a reference to the Guaranty (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time.

Section 1.3 Definitions.

"Additional Rent" as defined in Section 3.2

"Affiliate" as defined in Section 20.31.

"Change of Ownership" means

"Commencement Date" as defined in Section 3.1.

"Commissioner" means the Federal Housing Commissioner also called the Assistant Secretary for Housing in the United States Department of Housing and Urban Development.

"DOH" means New York State Department of Health.

"Effective Date" as defined in introductory paragraph.

"Eligible Institution" as defined in Section 4.3.

"Extension Term" as defined in Section 3.1(i).

"Facility" as defined in Recital A.

"First Refinance" means the replacement or refinance of the Original Mortgage and/or original Junior Debt, in whole or part, in an amount not less than \$42,200,000.

"First Refinance Date" means the date of the First Refinance.

"Fixed Rent" as defined in Section 3.2.

"Governmental Authority" as defined in Section 5.2.

"Guarantors" mean Lizer Josefovic and Mark Newman.

"Hazardous Materials" as defined in Section 10.3

"Hazardous Waste" as defined in Section 10.3.

"Health Care Authority or Authorities" means any Governmental Authority (including HUD) having responsibility for the approval, licensing, certification, payment, issuance of guarantees and insurance for, and/or otherwise setting standards for the operation and occupancy of skilled nursing facilities

"Health Care Licenses" means all Medicare and Medicaid certifications and provider agreements, all public third party payor certifications and provider agreements, and all certifications, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses and certificates of need required by Health Care Authorities for the legal use, occupancy and operation of the Facility.

"HUD" means the United States Department of Housing and Urban Development.

"Junior Debt" means a mortgage on the Premises junior to the first Mortgage, and/or debt relating to the development and construction of the Premises.

"Landlord" as defined in Introductory paragraph, and Section 1.2.

"Landlord's Indemnitees" as defined in Section 9.1.

"Landlord's Work" as defined in Section 5.1.

"Laws" as defined in Section 5.1.

"Lease Default" as defined in Section 16.1.

"Leased Premises" as defined in Section 2.1.

"Lease Year" as defined in Section 3.1.

"Letter of Credit" as defined in Section 7.1.

"Material Default" as defined in Schedule 3.1.

"Mortgages" shall refer to the first and second priority mortgages secured by fee simple interest in the Real Property as amended, restated, extended or replaced from time to time in Landlord's discretion.

"Original Mortgage" means the original Mortgage placed on the Premises by Landlord.

"Overdue Rate" as defined in Section 9.1(h).

"Primary Market of the Facility" means a fifteen mile radius of the Leased Premises.

"Prime Rate" as defined in Section 9.1.

"Prospective Mortgagor" means any Person chosen by Landlord as a Mortgage prior to a closing of a Mortgage to be held by such Person.

"Real Property" as defined in Recital A.

"Refinance" means the replacement or refinancing of the Mortgage, or Junior Debt, or any debt in replacement thereof, in whole or part, including the First Refinance.

"Refinance Date" means the date of any Refinance including the First Refinance.

"Rent" as defined in Section 3.2.

"Security Deposit" as defined in Section 7.1.

"Special Purpose Entity" as defined in Schedule 19.2.

"Substantial Completion Date" means the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Landlord's architect, that the Facility was substantially completed and in substantial compliance with the plans and specifications for the Facility, and (ii) the date Landlord delivers a Temporary Certificate of Occupancy (the "TCO") for the Facility, provided, however, if the Landlord is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (ii).

"Tenant's Lease Coverage Ratio" means EBITDAR divided by Fixed Rent.

"Terms" as defined in Section 3.1 (including all exercised Extension Terms).

"Total Project Cost or "TPC" is the actual cost of purchasing, developing, constructing, and equipping the Facility, including without limitation, the cost of the Real Property and improvements, development costs, financing costs, and the cost of Landlord's Work and all equipment.

"Utilities" as defined in Section 4.1.

ARTICLE II

LEASED PREMISES

Section 2.1 Leased Premises. Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions set forth in this Lease, the following assets:

(a) all of Landlord's right, title, and interest in and to the Real Property, including, without limitation, all buildings, structures, erections, improvements, appurtenances, easements and fixtures, including fixed machinery and fixed equipment situated thereon or forming a part thereof; and

(b) all of Landlord's right, title and interest in and to all machinery, trade equipment, trade fixtures, furniture, furnishings, beds, and accessories of all kinds used in connection with the Facility located on the Real Property.

All of the items described in Sections 2.1(a) and 2.1(b) herein are collectively referred to as the "Leased Premises." Landlord and Tenant acknowledge and understand that all of the items which comprise the Leased Premises, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, shall be transferred back to Landlord in accordance with the terms and conditions set forth herein upon the expiration or earlier termination of this Lease.

Section 2.2 In connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein, and each successor in interest, shall have the right to transfer all amounts deposited pursuant to Section 4.3 with respect to the Facility, less any amount used pursuant to Section 4.3, to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, Landlord or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto. If Landlord's interest in the Leased Premises is sold or conveyed as provided above or otherwise or by operation of law: (i) at the new owner's option, Tenant shall affirm to and recognize the new owner as Tenant's Landlord under this Lease and Tenant shall take such actions to confirm the foregoing within ten (10) days after request.



ARTICLE III

TERM AND RENT

Section 3.1 Term of Lease.

(a) The term (the "Term") of this Lease shall be for a period of thirty (30) years commencing on the later to occur of (i) the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility and (ii) the date that New York State Department of Health (hereinafter sometimes, "DOH") determines that the Landlord's Work is sufficiently complete as constructed (but not necessarily the Tenant's operations) to accept patients, provided, however, if the Landlord is unable to obtain a permanent or temporary Certificate of Occupancy because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of a permanent or temporary Certificate of Occupancy shall not be a condition under clause (i) (the "Commencement Date"), and ending at 11:59:59 P.M. on the day preceding the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date (the "Expiration Date"). Under any and all circumstances, Landlord shall not be liable to Tenant, in damages or otherwise, for any delay in delivering the Leased Premises to Tenant and Tenant shall have no right to terminate or rescind this Lease on account thereof. Notwithstanding the Commencement Date, certain of the rights and obligations of the parties shall commence on the Effective Date, but not including Tenant's obligations to pay Fixed Rent and Impositions prior to the Commencement Date, or to maintain the Leased Premises, insure the Leased Premises or restore the Leased Premises after a casualty or condemnation prior to the Commencement Date, or any other rights and obligations, which by their terms are intended to commence as of the Commencement Date, which rights and obligations shall commence on the Commencement Date.

As used herein with respect to the Term and the periods for payment of Rent (unless the context otherwise requires) the term "Lease Year" shall mean a 365 day period (or 366 day period in the case of a leap year), first commencing on the Commencement Date and thereafter on successive anniversaries thereof, and ending on the day prior to the next succeeding anniversary of the Commencement Date.

Landlord and Tenant hereby acknowledge that the Commencement Date is presently indeterminate and shall occur only as hereinabove provided in this Section. Except for the rights of Tenant expressly stated herein, Tenant hereby waives any right to rescind this Lease under the provisions of Section 223-a of the Real Property Law of the State of New York, and agrees that the provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of said Section 223-a. Landlord and Tenant shall execute a memo specifying the Commencement Date immediately following its occurrence.

(b) Provided a Lease Default has not occurred and is then continuing either at the time of the exercise of the options provided below or at the end of the Term or Extension Term, or there has not been any Lease Default listed in Schedule 3.1 attached hereto (a "Material Default"), whether or not cured, within two years of the end of the Term or Extension Term, Tenant shall have the option to extend the Term of this Lease for three (3) additional periods of ten (10) years each (each an "Extension Term"), by giving written notice to Landlord

not less than five forty-five (45) days nor more than seven hundred (700) days prior to the expiration of the Term (or Extension Term as the case may be) of this Lease, TIME BEING OF THE ESSENCE to these time periods. These options may be exercised by Tenant serving written notice upon Landlord stating that Tenant is exercising the option to extend. If Tenant fails to give such notice in writing to Landlord within the time period specified herein, all rights and privileges granted to Tenant to extend this Lease shall lapse and become null and void. No later option may be exercised if Tenant has failed to exercise a prior option. If Tenant has validly exercised its option(s) to extend the Term, references herein to the "Term" shall be deemed to include an Extension Term.

Section 3.2 Rent

(a) Beginning in the first (1st) Lease Year of the Term and for each succeeding Lease Year thereafter, including during any and all Extension Terms, until the First Refinance Date, Tenant shall pay Landlord an annual amount of Six Million Seventy Three Thousand One Hundred Fifty Eight (\$6,073,158) Dollars ("Fixed Rent") in monthly installments of \$506,096.50.

(b) Tenant shall pay the Rent to Landlord during the term without deduction or setoff and without demand.

(c) The terms "Additional Rent" or "additional rent" means all sums, amounts, fees, expenses and costs (including, without limitation, legal fees and disbursements) payable or reimbursable to Landlord under this Lease other than Fixed Rent, and all of same shall be and constitute Additional Rent hereunder. The terms "Fixed Rent" and "Additional Rent" shall be collectively referred to as "Rent." Landlord shall have the same rights and remedies hereunder consequent upon a failure of Tenant to pay any item of Additional Rent as upon a failure of Tenant to pay any item of Fixed Rent.

(d) Rent shall be due and payable in advance in equal monthly installments during each year on the first (1st) day of each calendar month thereof (or in the event the first day of the calendar month is not a business day, on the first business day following the first day of each calendar month) throughout the Term. Rent for any period which is less than a full calendar month or full year, as the case may be, during the Term, shall be pro-rated on a daily basis. Rent shall not be paid more than one (1) month in advance. Rent shall be paid to Landlord at Landlord's address set forth in Section 12.1 or at such other place as Landlord designates from time to time by written notice to Tenant. Tenant agrees to pay Rent, at Landlord's direction, by electronic transfer or wire, as directed by Mortgage in writing.

(e) TENANT HEREBY ACKNOWLEDGES THAT LATE PAYMENT BY TENANT TO LANDLORD OF RENT WILL CAUSE LANDLORD TO INCUR COSTS NOT CONTEMPLATED HEREBUNDER, THE EXACT AMOUNT OF WHICH IS PRESENTLY ANTICIPATED TO BE EXTREMELY DIFFICULT TO ASCERTAIN. SUCH COSTS MAY INCLUDE PROCESSING AND ACCOUNTING CHARGES AND LATE CHARGES WHICH MAY BE IMPOSED ON LANDLORD BY THE TERMS OF ANY LOAN AGREEMENT AND OTHER EXPENSES OF A SIMILAR OR DISSIMILAR NATURE. ACCORDINGLY, IF ANY INSTALLMENT OF RENT THAT IS PAYABLE TO LANDLORD

OR ITS DESIGNEE SHALL NOT BE PAID WITHIN FIVE (5) DAYS OF THE DATE WHEN DUE. TENANT WILL PAY LANDLORD ON DEMAND A LATE CHARGE EQUAL TO FIVE PERCENT (5%) OF THE UNPAID PORTION OF THE AMOUNT OF SUCH INSTALLMENT. THE PARTIES AGREE THAT THIS LATE CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE COSTS THAT LANDLORD WILL INCUR BY REASON OF LATE PAYMENT BY TENANT. THE PARTIES FURTHER AGREE THAT SUCH LATE CHARGE IS RENT AND NOT INTEREST AND SUCH ASSESSMENT DOES NOT CONSTITUTE A LENDER OR BORROWER/CREDITOR RELATIONSHIP BETWEEN LANDLORD AND TENANT. IN ADDITION, THE AMOUNT UNPAID, INCLUDING ANY LATE CHARGES, SHALL BEAR INTEREST AT THE OVERDUE RATE FROM THE DUE DATE OF SUCH INSTALLMENT TO THE DATE OF PAYMENT THEREOF, AND TENANT SHALL PAY SUCH INTEREST TO LANDLORD ON DEMAND. THE PAYMENT OF SUCH LATE CHARGE AND/OR SUCH INTEREST SHALL NOT CONSTITUTE A WAIVER OF, NOR EXCUSE OR CURE, ANY DEFAULT UNDER THIS LEASE, NOR PREVENT LANDLORD FROM EXERCISING ANY OTHER RIGHTS AND/OR REMEDIES AVAILABLE TO LANDLORD.

(f) If a default is declared by the Commissioner under the provisions of the Regulatory Agreement, provided a copy of Notice of Default is given to Tenant, Tenant shall thereafter make all future payments under this Lease to the Commissioner.

**Section 3.3 Net Lease Provisions.** Landlord and Tenant intend that the Rent herein specified shall be net to Landlord in each year during the Term, and that all costs, expenses and obligations of every kind and nature, (known or unknown, general or special, ordinary or extraordinary, foreseen or unforeseen, direct or indirect, contingent or otherwise) relating to the operation, repair and maintenance of the Leased Premises (except Landlord's income taxes) which may arise or become due during the Term shall be timely paid by Tenant, and that Landlord shall be indemnified by Tenant against such costs, expenses and obligations. Tenant's obligation to pay Rent is independent of all, and is in no manner conditioned upon any, other covenants, conditions and obligations of Landlord or Tenant under this Lease. There shall be no abatement of Rent payments for any reason nor shall Tenant be entitled to any offsets or deductions from Rent payments due hereunder.

**Section 3.4 Rent Tax.** If any governmental taxing authority levies, assesses, or imposes any tax, sales or use tax, privilege tax, excise or assessment (other than income or franchise taxes) upon or against the Rent payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise or assessment, or, if Landlord pays same, Tenant shall reimburse Landlord for the amount thereof within ten (10) days after written demand by Landlord.

It is the intent of this Section 3.4 and all other provisions of this Lease to insure that the Rent (including Additional Rent) paid to Landlord by Tenant will be received by Landlord without diminution by any tax, assessment, charge or levy of any nature whatsoever, except United States, State of New York and local net income taxes, and the terms and conditions of this Lease shall be liberally construed to effect such purpose. Without limiting the generality of the foregoing, if any tax is assessed or based on gross income actually or



constructively received by Landlord pursuant to this Lease, Tenant shall pay such amount which, when added to said gross income, shall yield to Landlord, after deduction of all such tax payable by Landlord with respect thereto, a net amount equal to that which Landlord would have realized therefrom had no such tax been imposed.

Section 3.5. Assignment of Lease to Mortgagee. Tenant acknowledges that all of the interest of Landlord in and to this Lease has been or will be assigned to Mortgagee pursuant to the Loan Documents.

Tenant agrees to promptly execute and deliver to Landlord from time to time any and all documents required by a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender, or any successor, commercial, agency or private lender, including, without limitation, a lease addendum, regulatory agreement, subordination agreement, non-disturbance and attornment agreement, and/or escrow certificates, in order to finance or refinance the Facility or otherwise.

Tenant will on request at any time or from time to time by Landlord or any Mortgagee or Prospective Mortgagee subordinate this lease and all of Tenant's rights and estate hereunder to such Person's Mortgage and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, or declare such Mortgage to be prior to this lease and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, and agree with such holder that Tenant will assent thereto in the event of foreclosure. Landlord agrees to use reasonable efforts (except that Landlord shall not be obligated to expend money for any such agreement) to obtain a written agreement from any such holder in the form typically used by such holder which consents to this lease and provides that, notwithstanding such mortgage or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting said Mortgage, Tenant shall not be disturbed in peaceful enjoyment of the Leased Premises or this lease terminated or canceled at any time, except in the event Landlord shall have the right to terminate this lease under the terms and provisions set forth herein.

Section 3.6 True Lease. It is the intent of Landlord and Tenant and the parties agree that this Lease is a true lease and that this Lease does not represent a financing agreement. Each party shall reflect the transaction represented hereby in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

Section 3.7 Rights of First Refusal; Buyout. (a) Landlord shall not sell, transfer or convey the Leased Premises to a third person or entity unless Tenant first is given the opportunity to purchase the Leased Premises pursuant to the terms and conditions set forth in this Section 3.7(a). If at any time during the first eleven years of Term Landlord receives from any third person or entity an Offer (as hereinafter defined) to purchase the Leased Premises which Landlord desires to accept, Landlord shall notify Tenant of such Offer by delivering written notice to Tenant, which notification (the "Offer Notice") shall contain a copy of the written Offer or, at Landlord's election, a written summary of the terms of the Offer. For purposes of this Lease, an "Offer" shall mean any bona fide written instrument or verbal communication setting forth the terms pursuant to which Landlord will convey the Leased Premises. Tenant shall have ten (10) Business Days after receipt of the Offer Notice in which to elect by written

notice delivered to Landlord (the "Acceptance Notice") to enter into a formal agreement on the same terms and conditions as those contained in the Offer ("Tenant's Purchase Right"). Such election shall be effective only if within ten (10) Business Days after delivery of the Acceptance Notice the parties enter into a written purchase agreement on terms reasonably acceptable to Landlord in good faith for the sale of the Leased Premises to Tenant containing all terms of the Offer. If Tenant fails to timely deliver the Acceptance Notice, or if Tenant fails to timely enter into said purchase agreement as provided herein, Landlord shall have the right to accept the Offer or any modification thereof on terms substantially similar as those set forth in the Offer. Tenant's right to purchase the Leased Premises identified in the Offer Notice shall not apply to (i) transfers of less than one hundred percent of the ownership interests in Landlord, (ii) a public offering of ownership interests in Landlord, (iii) a recapitalization transaction of any kind involving Landlord, (iv) condemnation, eminent domain or similar proceedings, or (v), rights exercised by Mortgagees in foreclosure or in lieu thereof pursuant to Mortgagee or other documents executed by Landlord in connection therewith, including the subsequent disposition of the Premises by Mortgagee or its affiliate or designee that acquires the Leased Premises in connection therewith.

(b) Notwithstanding anything to the contrary, if Landlord's Offer Notice states that it is purchasing from Tenant Tenant's Purchase Right, then (i) Tenant shall have no further rights under Section 3.7(a), and Section 3.7(a) shall be null and void without further effect, and (ii) upon the closing of the purchase and sale of the Leased Premises pursuant to the Offer, Landlord shall pay Tenant ten percent (10%) of the excess of the sales price agreed to pursuant to the Offer (less costs and fees, including broker's fees) over the TPC, the "Offer Fee", and (iii) the Rent shall be the greater of the amount as determined by Section 3.2(a) or fair market value, as shall be determined by an independent third party appraiser jointly appointed by Landlord or and Tenant, and absent their agreement appointed by the then chairman or similar officer of the Westchester County Society of Real Estate Appraisers. For purposes of clarification, Tenant shall not be entitled to the receipt of the Offer Fee if Tenant exercises Tenant's Purchase Right as set forth in Section 3.7(a) above.

(c) Upon expiration of the eleventh Lease Year, Tenant's Right of First Refusal as set forth in in Section 3.7(a) shall lapse and become null and void.

Section 3.8. Option to Purchase. Commencing on the latter of (i) the first day after the Commencement Date and (ii) 24 months from the date of the closing of the Original Mortgage, and ending on the last day of the fifteenth Lease Year of the Lease, Tenant shall have the option to purchase the Leased Premises from Landlord for a purchase price of \$65,055,000 by giving written notice of its exercise of the Option to Purchase including a proposed closing date, provided if Tenant does not exercise the Option to Purchase prior to receiving an Offer Notice pursuant to Section 3.7, Tenant's Option to Purchase under this Section 3.8 shall lapse unless and until the conveyance of the Leased Premises contemplated under Section 3.7 does not occur. Upon expiration of the fifteenth Lease Year, Tenant's the right to purchase the Leased Premises from Landlord, all as set forth above, shall lapse, become null and void, and Tenant shall have deemed to waived all such rights hereunder.

ARTICLE IV

## UTILITIES AND TAXES

Section 4.1 Utilities. From and after the Commencement Date, Tenant shall pay or cause to be paid all charges next coming due and payable for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Leased Premises (the "Utilities") during the Term. Tenant covenants to place all Utilities in Tenant's name as of the Commencement Date. Adjustment shall be made for Utilities applicable to any period prior to the Commencement Date. In the event Landlord is billed directly by any service provider or utility company for any Utilities or services supplied to Tenant during the Term, Landlord shall send Tenant the bill and Tenant shall promptly pay the same. Landlord shall have no obligation or liability with respect to any interruption or failure in the supply of any such Utilities. If Landlord elects to or shall be required to pay for any Utilities to preserve and/or protect the Leased Premises, Tenant shall reimburse Landlord for the cost and expense thereof plus interest at the Prime Rate.

Section 4.2 Taxes. Tenant shall be solely responsible for the payment, prior to the date when penalties would attach, of all general and special real estate taxes and assessments (together with any excise taxes on such real estate taxes and assessments levied or imposed by any governmental taxing authority), fire district taxes, liens, impositions, including capital stock, franchise, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes; personal property taxes, assessments including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; ground rents; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Premises, and all interest and penalties thereon attributable to any failure in payment by Lessee which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon the Leased Premises (collectively, the "Impositions") that accrue from the Commencement Date through the Term. Adjustment shall be made for Impositions applicable to any period prior to the Commencement Date. Tenant shall pay all of the Impositions directly to the applicable taxing authorities and Tenant shall promptly forward proof of payment to Landlord in such form as shall be reasonably acceptable to Landlord unless Landlord elects to require escrow deposits in accordance with Section 4.3 hereof. Landlord shall promptly forward any tax bills which it may receive to Tenant. Landlord shall only bill Tenant for any of the Impositions if Tenant does not pay any of the Impositions before delinquency and Landlord is obligated or elects (in Landlord's sole and absolute discretion) to pay any of the Impositions directly to remain current with all taxing authorities. Tenant shall pay the full amount of any increases in any of the Impositions resulting from alterations or improvements made by or for the benefit of Tenant. After the expiration or termination of this Lease, Tenant shall pay all bills for any of the Impositions which become due and payable after the expiration or termination of the Lease covering any period through the expiration or earlier termination of the Lease. If any governmental taxing authority acting under any present or future ordinance or regulation, shall levy, assess or impose a tax, excise and/or assessment (other than any net income or franchise tax) upon Landlord or Tenant for rental payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise and/or assessment

or shall reimburse Landlord for the cost and expense thereof, as the case may be. Provided that Tenant shall have deposited a sufficient amount of funds to pay the Impositions pursuant to Section 4.3 and Tenant has done nothing to prevent payment by Landlord or its lender of the Impositions, then Tenant shall not be responsible for any and all late payment fees and/or penalties, including interest, imposed by any applicable taxing authorities with respect to the untimely payment of Impositions.

Section 4.3 Escrow Deposits.

(a) Escrow. At the option of Landlord, which may be exercised at any time by Landlord in its sole and absolute discretion Tenant shall, on the first day of the first calendar month commencing after notice from Landlord, and on the first day of each calendar month thereafter during the Term (each of which dates is referred to as a "Monthly Deposit Date"), pay to and deposit with Landlord a sum equal to one-twelfth (1/12th) of the Impositions to be levied, charged, filed, assessed or imposed upon or against the Leased Premises within one (1) year after said Monthly Deposit Date and a sum equal to one-twelfth (1/12th) of the premiums for the property insurance policies required pursuant to Article VI which are payable within one (1) year after said Monthly Deposit Date. If the amount of the Impositions to be levied, charged, assessed or imposed or insurance premiums to be paid within the ensuing one (1) year period shall not be fixed upon any Monthly Deposit Date, such amount for the purpose of computing the deposit to be made by Tenant hereunder shall be reasonably estimated by Landlord with an appropriate adjustment to be promptly made between Landlord and Tenant as soon as such amount becomes determinable. In addition, Landlord may, at its option, from time to time require that any particular deposit be greater than one-twelfth (1/12th) of the estimated amount payable within one (1) year after said Monthly Deposit Date, if such additional deposit is required in order to provide to Landlord sufficient funds from which to make payment of all Impositions on or before the next due date of any installment thereof, or to make payment of any required insurance premiums not later than the due date thereof. If any Mortgagee or the Commissioner requires Landlord to impound insurance premiums on a periodic basis during the term, Tenant, on notice from Landlord indicating this requirement, shall pay a sum of money towards its liability under this Lease to Landlord on a periodic basis in accordance with Landlord's requirements. Landlord shall impound the premium payments received from Tenant in accordance with the requirements of Mortgagee and shall utilize such funds to timely pay insurance premiums.

(b) Use of Deposits. The sums deposited by Tenant under this Section 4.3 shall be held by Landlord or Mortgagee and shall be applied in payment of the Impositions or insurance premiums, as the case may be, when due. Any such deposits may be commingled with other assets of Landlord or such Mortgagee, and shall be deposited by Landlord or such Mortgagee in an Eligible Institution in such account or accounts as Landlord or the Mortgagee may, from time to time select, and Landlord shall not be liable to Tenant or any other person (i) based on Landlord's or the Mortgagee's (or any bank's) choice of investment vehicles, (ii) for any consequent loss of principal or interest or (iii) for any unavailability of funds based on such choice of investment. Furthermore, subject to the foregoing regarding the use of depositories and accounts, Landlord and its Mortgagee shall bear no responsibility for the financial condition of, nor any act or omission by the depository bank. No income, if any, from such investment or interest on such deposits shall be paid to Tenant. To the extent that Landlord does not have an

invoice or bill specifying the due date for payment, Tenant shall give not less than thirty (30) days prior written notice to Landlord in each instance when an imposition or insurance premium is due, specifying the imposition or premium to be paid and the amount thereof, the place of payment, and the last day on which the same may be paid in order to comply with the requirements of this Lease. If Landlord, in violation of its obligations under this Lease, does not pay any imposition or insurance premium when due, for which a sufficient deposit exists, Tenant shall not be in default hereunder by virtue of the failure to pay such imposition or such insurance premium and Tenant shall not be liable for any late payment fees and/or penalties, including interest imposed as a result of such failure to pay. The term "Eligible Institution" shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least "A-1+" by S&P, "P-1" by Moody's and "P-1+" by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's).

(c) Deficits. If for any reason any deposit made by Tenant or held by Landlord under this Section 4.3 shall not be sufficient to pay any Imposition or insurance premium within the time specified therefor in this Lease, then, within ten (10) days after demand by Landlord, Tenant shall deposit an additional amount with Landlord, increasing the deposit held by Landlord so that Landlord holds sufficient funds to pay such Imposition or premium in full (or in installments as otherwise provided for herein), together with any penalty or interest thereon. Landlord may change its estimate of any Imposition or insurance premium for any period on the basis of a change in an assessment or tax rate or on the basis of a prior miscalculation or for any other good faith reason; in which event, within ten (10) days after demand by Landlord, Tenant shall deposit with Landlord the amount in excess of the sums previously deposited with Landlord for the applicable period which would theretofore have been payable under the revised estimate.

(d) Transfers. Consistent with Section 2.2, in connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein and each successor in interest shall have the right to transfer all amounts deposited pursuant to the provisions of this Section 4.3 and not used pursuant to this Section 4.3 to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, the original Landlord named herein or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto.

(e) Security. All amounts deposited with Landlord pursuant to the provisions of this Section 4.3 shall be held by Landlord as additional security for the payment and performance of Tenant's obligations under this Lease and, upon the occurrence and during the continuance of any Lease Default, Landlord may, in its sole and absolute discretion, apply such amounts towards payment or performance of such obligations.

(f) Return. Upon the expiration or earlier termination of this Lease, as long as all of the Rent and any and all other obligations due under this Lease have been fully paid and performed, any sums then held by Landlord under this Section 4.3 shall be refunded to Tenant.

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and subject to the rights of a Mortgagee, together with all interest, if any, earned thereon and all income, if any, earned therefrom; provided, however, that if a Lease Default has occurred and is continuing, all of such sums may be applied by Landlord towards any amounts owed to Landlord pursuant to this Lease.

(b) Receipts. Tenant shall deliver to Landlord copies of all claims and bills in relation to the Impositions and insurance premiums promptly upon receipt thereof by Tenant.

This Article and the obligations herein shall survive expiration or earlier termination of this Lease.

ARTICLE V

LANDLORD'S WORK, MAINTENANCE AND REPAIR, IMPROVEMENTS

Section 5.1 Landlord's Work. (a) Landlord shall cause the Facility to be constructed ("Landlord's Work").

(b) Landlord will give Tenant thirty (30) days' notice of the date Landlord expects to be the Substantial Completion Date. On or prior to the Substantial Completion Date, Landlord and Tenant shall jointly prepare a List of the items for the Facility that remain to be completed or corrected, set a dollar value for the cost to complete the work, and fix time for their completion or correction (collectively the "Punchlist").

(c) Notwithstanding anything in this lease to the contrary, on and after the Substantial Completion Date Tenant shall be deemed to have agreed Landlord has completed Landlord's Work to Tenant's complete satisfaction, except for (i) the Punchlist, (ii) such items of decoration or mechanical adjustment of which Tenant gives Landlord written notice within thirty (30) days after the Substantial Completion Date (the "Initial Correction Items") or (iii) any defects in the Facility which were not known or reasonably discoverable by Tenant in the time period specified in the immediately prior clause (ii) ("Latent Defects"); provided that, as to Latent Defects, Landlord will have no responsibility or liability transfer, or for the correction thereof, unless (A) Tenant conducts at least one inspection of the Facility with a qualified engineer or other expert, within one year from the Substantial Completion Date, and (B) Tenant gives Landlord notice of such Latent Defects within thirty (30) days after discovery thereof and in any event not later than one year after the Substantial Completion Date, which notice will be accompanied by the certification of such engineer or other experts, specifying, in detail, such Latent Defects in the Facility.

(d) At its sole expense, Landlord shall complete the Punchlist, and remedy the Initial Correction Items, and the Latent Defects provided with respect to Latent Defects that the conditions set out in clause (iii) of section (c) are satisfied.

(e) To the extent assignable at no cost to Landlord, Landlord assigns to Tenant all manufacturer warranties on materials and equipment. Tenant shall have the benefit and right to enforce such warranties at its sole cost and expense.

**Section 5.2 Maintenance and Repair.** Except as provided in Section 5.1, Tenant, at Tenant's sole cost and expense, shall keep the Leased Premises, including all buildings, fixtures, trade equipment, trade fixtures, furniture, beds and other personal property leased to Tenant pursuant to this Lease, including, without limitation, all structural and non-structural components, the roof, foundation, all outer walls, plumbing, sprinklers, electrical, mechanical, heating, ventilation, utility service, air conditioning, vertical transport, telephones, communications, cable, computer, fire-life safety, nursing call, and all other systems of the Leased Premises in good condition and repair and in compliance with all Laws. Landlord shall not be responsible to make any improvements, repairs, maintenance or replacements whether occasioned by the act, omission, active negligence, or passive negligence of Landlord or Tenant and/or its agents, employees, invitees or licensees or otherwise, and Tenant shall pay for all improvements, repairs, replacements, maintenance and expenditures relating to the Leased Premises, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the commencement of the Lease, by Tenant's use or by a change in applicable Laws. The Leased Premises and its appurtenances shall at all times be kept clean, safe and sanitary and in good order, condition, replacement and repair by Tenant, at Tenant's sole cost and expense, except for ordinary wear and tear (provided, however, that, without limiting the generality of this Section 5.2, Tenant shall be obligated to replace any portion of the Leased Premises upon any obsolescence thereof or if proper repair is impractical). Tenant shall provide (if not currently a part of the Leased Premises) and maintain, repair and replace, as necessary, all furniture, fixtures, equipment and/or other personal property required by any Governmental Authority (other than furniture, fixtures, equipment and/or other personal property owned by contractors providing ancillary services at the Facility) necessary for the operation of the Facility and to comply with all Laws. All such property provided by Tenant shall immediately become the property of Landlord and Tenant shall execute such documentation as Landlord may reasonably require vesting title in such property in Landlord. Landlord shall have no liability or obligation with respect to such property or any of Tenant's operations relating thereto. All replacements made by Tenant hereunder shall be made in a good and workmanlike manner in accordance with Laws using the same, similar or better quality of materials as being replaced and shall immediately become the property of Landlord. Tenant acknowledges that title and ownership of all repaired and replaced furniture, fixtures, equipment and/or other personal property made hereunder shall belong to and is for the benefit of Landlord. Tenant shall not enter into any equipment leases or conditional sales contracts for any furniture, fixtures, equipment and/or other personal property relating to the Facility without Landlord's consent which it may grant or withhold in its sole discretion. The term "Laws" means, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Leased Premises or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Tenant, at any time in force affecting the Leased Premises or any part thereof. The term "Governmental Authority" means any court, board, agency, arbitrator, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

**Section 5.3 Improvements, Renovation, Alterations and Additions.** Tenant shall have the right during the Term to make such non-structural interior alterations, changes and improvements to the Leased Premises as may be proper and necessary for the conduct of Tenant's business, to cause the Leased Premises to conform to all Laws, for patient comfort and safety, or for the full beneficial use of the Leased Premises, so long as such improvements do not (i) exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) in any given calendar year, (ii) interfere with any of the purposes for which the Facility was leased or affect the roof or structure, (iii) decrease the value of the Leased Premises, (iv) affect any building system, including, heating, ventilation, air conditioning, mechanical, electrical, plumbing or vertical transport systems, or (v) affect the exterior appearance of the Leased Premises. Tenant shall not make any other alterations, changes, or improvements without the express written approval in each instance by Landlord, which consent shall not be unreasonably withheld; provided, however, that the granting or withholding of consent shall not result in any liability to Landlord. Furthermore, Tenant may make all repairs or replacements required by a Governmental Authority without obtaining Landlord's consent, provided, however, Tenant shall give Landlord no less than ten (10) days prior written notice of such government mandated repairs or replacements prior to making or implementing same, unless emergency factors necessitate the making of such repairs before Tenant can reasonably give notice to Landlord, in which event Tenant shall give notice to Landlord as soon as reasonably possible. Tenant shall pay for all costs, fees and penalties imposed by the applicable state agencies or the Center for Medicare and Medicaid Services ("CMS") or other Governmental Authority in connection with any survey or the Change of Ownership. Tenant shall notify Landlord of any alterations, changes or improvements required and/or permitted by the applicable state agencies or the CMS or other Governmental Authority prior to the commencement thereof. Tenant shall pay all costs and expenses of any required and/or permitted alterations, changes, and improvements, shall make the same in a good and workmanlike manner, and in accordance with all Laws, having obtained all necessary permits and approvals from Governmental Authorities having jurisdiction over the Facility and work performed thereon, or thereon, and shall assure Landlord, in form reasonably satisfactory to Landlord, all necessary permits and authorizations have been received and that payment for the work and materials will be made by Tenant. Tenant hereby completely and fully indemnifies Landlord against any mechanic's liens or other liens or claims in connection with the making of any alterations, changes, and/or improvements. Any liens arising out of any required and/or permitted alterations, changes, and/or improvements shall be discharged or removed by Tenant within the earlier of thirty (30) days after the same have been filed by payment, bonding or otherwise, as permitted by law, or five (5) days after commencement of a foreclosure or enforcement action. Notwithstanding any provision of this Lease to the contrary, Tenant shall not undertake any alterations, renovations, or improvements to the Facility or otherwise commence any project or activity with respect to the Facility, which may result in any bed being taken out of service for more than seven (7) days without Landlord's and/or Mortgagee's prior written consent, which Landlord's consent shall not be unreasonably withheld. Tenant shall give Landlord written notice ten (10) days prior to commencing repairs, construction, or alterations whose costs exceed One Hundred Thousand Dollars (\$100,000.00).

**Section 5.4 Signs.** All signs installed by Tenant at the Facility shall comply with all Laws, and all necessary permits or licenses shall be obtained by Tenant. Tenant shall maintain all signs in good condition and repair, and/or replace as may be required by applicable law, at all times at Tenant's sole cost and expense. Upon vacating the Leased

Premises, Tenant shall remove all signs and supporting material or installations so installed by Tenant, but only if Landlord shall request such removal, and Tenant shall repair all damage caused by such removal. Landlord acknowledges and agrees that neither Landlord nor any subsequent tenant of Landlord shall be authorized to use any company or registered trade name of Tenant or any of Tenant's affiliates or subcontractors.

Section 5.5 Surrender (a) Subject to applicable law and to receipt of any necessary DOH approval, Tenant shall deliver up and surrender to Landlord possession of the Leased Premises and all improvements and replacements thereof, including all of Tenant's alterations, improvements work (and all replacements thereof) and all fixtures permanently attached to the Leased Premises by Tenant during the Term, upon the expiration of this Lease or its termination in any manner whatsoever, in as good condition and repair and in substantially similar form, character and manner as the same shall be on the Commencement Date, reasonable wear and tear excepted (without compensation to Tenant), with permitted changes, improvements and additions made during the Term as authorized herein, subject to no liens, encumbrances, charges, restrictions, conditions, limitations or claims whatsoever to the extent not encumbering the Leased Premises as of the Commencement Date, and deliver the keys and/or operational security cards to the Leased Premises to Landlord or Landlord's designated agent.

(b) Licenses and Transfer of Operations. Upon the expiration of the Term or earlier termination of the Lease, Tenant shall and shall cause its subcontractors to, (i) transfer to Landlord or Landlord's nominee a fully operational, licensed and certified, and staffed facility and shall cooperate with Landlord or Landlord's designee or nominee in connection with the processing by Landlord or Landlord's designee or nominee of any applications for all licenses, operating permits and other governmental authorization, all contracts, including contracts with all Governmental Authorities or quasi governmental entities (provided that except following a Lease Default, the reasonable costs and expenses of the processing of any such application shall be paid by Landlord or Landlord's designee or nominee), (ii) transfer to Landlord or Landlord's nominee all tangible personal property of Tenant, including financial and accounting records, business records, data, employee and/or personnel records, patient and resident records, and all records held in electronic form, (all subject to the Laws requiring confidentiality), all equipment and small ware and all inventory used in connection with the Facility, (iii) transfer to Landlord or Landlord's nominee all intangible property except accounts receivable of Tenant, and (iv) transfer to Landlord or Landlord's nominee all residents in the Facility. With respect to resident funds, Tenant shall transfer to Landlord or its designee, all patient and resident trust accounts, and shall cause its subcontractor to prepare and submit to Landlord or its designee a true, correct, and complete accounting and inventory (properly reconciled) of any patient trust funds and resident property to be transferred to Landlord, or its designee. Tenant shall, and shall cause its subcontractor, not to commit any act or be remiss in the undertaking of any act that would jeopardize the licensure or certification of the Facility, and Tenant shall and shall cause its subcontractor to comply with all requests for an orderly transfer of the same upon the expiration or early termination of the Term, including, but not limited to, upon the request of Landlord or its designee, the transitioning of employees in compliance with applicable laws. Without limiting the generality of the foregoing, if requested by Landlord or a proposed replacement operator for the Facility, Tenant hereby agrees to enter into a reasonable operations transfer agreement with such replacement operator. Tenant shall not unreasonably withhold, condition or delay its

consent to entering into any interim subleases or management agreements as may be necessary to effectuate an early transfer of the operations of the Facility prior to the time that such replacement operator holds all licenses and permits from all applicable Governmental Authorities with jurisdiction necessary to operate the Facility for its intended use. In addition, upon request, Tenant shall and shall cause subtenants, to promptly deliver copies to Landlord or Landlord's designee of all books and records relating to the Leased Premises and operations thereon (including inventories, employee lists and personnel records, and policies and procedures manuals). Tenant shall allow Landlord or a proposed replacement operator for the Facility to utilize Tenant's, subtenants' computer hardware and software for a minimum of ninety (90) days to facilitate the transfer of operations, the collection of accounts receivables, the billing of providers, and the provision of patient care. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any loss, damage, cost or expense incurred by Landlord or Landlord's designee or nominee in connection with the correction of any and all deficiencies of a physical nature identified by any Governmental Authority responsible for licensing the Leased Premises in the course of any change of ownership inspection and audit. Tenant shall be responsible for any alterations or renovations necessitated by, or imposed in connection with, a change of ownership inspection survey for the transfer of operation of the Leased Premises to Landlord or its designee. Tenant shall not commence to wind up and terminate the operations of the Facility or relocate the patients or occupants of the Facility to any other health care facility. In addition, Tenant shall not terminate the employees of the Facility except in connection with and upon the transfer of operations of the Facility to Landlord or its designee.

(c) If Landlord notifies Tenant in writing that it intends to transfer the operations of the Facility to a new operator and desires to have Tenant continue to operate the Facility after the Expiration Date or earlier termination of the Lease, then Tenant shall continue to operate the Facility until the earliest to occur of (i) the date on which such successor operator shall assume operation of the Facility, or (ii) the date that is 180 days after the applicable Expiration Date or termination date (the "Reimbursement Period"). During the Reimbursement Period (x) Landlord shall provide Tenant with an operating budget, (y) Landlord shall include in the aforesaid operating budget, and Tenant shall continue to pay during the Reimbursement Period, all Rent that would have been owing under this Lease as to the Leased Premises if this Lease had not expired or terminated as to, and/or Tenant had not been dispossessed from, such Leased Premises, and (z) provided that this Lease was not terminated with respect to, and Tenant was not dispossessed from, such the Lease Premises due to a Lease Default, Landlord shall reimburse Tenant for any operating deficits with respect to the Facility that Tenant may be required to fund out-of-pocket on account of operating losses and expenses incurred by Tenant by reason of, or arising out of compliance with, such budget with respect to the Reimbursement Period. Any such reimbursement shall be due from Landlord to Tenant within 60 days after request by Tenant, provided that Tenant shall furnish such documentation of any operating deficits, losses and expenses as Landlord may reasonably request. The terms of this Section 5.5(c) shall survive the expiration or earlier termination of this Lease and/or any dispossession of Tenant from the Lease Premises.

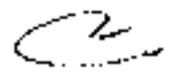
(d). Use of Legacy Tradename. Without limitation of the other provisions of this Section 5.5 and notwithstanding anything to the contrary contained in this Lease, Tenant agrees to allow Landlord or its designee operator, at its option and at no cost to Landlord or any such designee, to continue to use, in its signage, marketing and advertising materials, operations

and otherwise, any or all name(s) (including tradenames) associated with the operation of the Facility as a going concern for up to 180 days following (i) the expiration or termination of this Lease and (ii) the vacation from, and surrender of, the Leased Premises and Facility by Tenant. At the end of such 180 day period, or upon sooner written notice from Landlord to Tenant, Tenant shall, promptly and at its expense, remove its aforesaid name(s) from all signs on the Facility and repair any damage to such signs caused by such removal. Landlord acknowledges and agrees that Tenant, not Landlord, owns the aforesaid names and that neither Landlord nor any designee of Landlord may use the same except as described in this Section 5.3(d) or as otherwise agreed in writing by Tenant.

(c) Management of Terminated/Dispossessed Premises. Commencing on the applicable Termination/Dispossession Date as to any Terminated/Dispossessed Premises, Landlord or its designee, upon notice to Tenant, may elect to assume the responsibilities and obligations for the management and operation of the Business at such Terminated/Dispossessed Premises, and Tenant agrees to cooperate fully to accomplish the transfer of such management and operation without interrupting the operation of such Business to the extent allowable by Law. Tenant shall permit Landlord or its designee to operate the Facility under Tenant's licenses, certifications and other authorizations pending the issuance of new licenses, certifications and other authorizations Landlord or its designee. Tenant shall not commit any act or be remiss in the undertaking of any act that would jeopardize any licenses, certifications and other authorizations related to the Facility, and Tenant shall comply with all requests for an orderly transfer of all licenses, certifications and other authorizations related to the Facility and any payor's certifications.

(f) In addition, upon any expiration or termination of this Lease, Tenant covenants and agrees to do such things and to take such action as may, from time to time, be necessary or appropriate to permanently surrender and withdraw from possession and operation (including but not limited to licensure and certification) of the Leased Premises, and shall thereafter be fully and permanently relieved of all powers, duties, responsibilities and obligations that are conferred or imposed upon Tenant under this Lease (except those continuing obligations, including but not limited to the obligation to pay all Rent due and owing under this Lease, and the obligation to pay all amounts owed by Tenant to the Medicare, Medicaid, third party payor programs and residents for the period of the Term, which survive the termination hereof as provided herein) and to restore and place Landlord or its designee in possession and operation of the Leased Premises, or any portion thereof, and Tenant covenants and agrees to execute and deliver to Landlord or Landlord's designee (each subject to the approval of DOH) all assignments, operation transfer agreements, consents, consents to assignments (including Medicare and Medicaid provider agreements, if requested by Landlord) documents and other instruments, to the reasonable satisfaction of Landlord in order to effectuate the provisions hereof.

Section 5.6 Condition of Leased Premises. (a) Subject to Section 5.1, Tenant shall accept and take possession of the Leased Premises in its "AS IS," "WHERE IS" "WITH ALL FAULTS" condition, and acceptance of possession of the Leased Premises on the Commencement Date shall be deemed an acknowledgment by Tenant of Tenant's acceptance of the condition of the Leased Premises. Tenant acknowledges and agrees that Landlord is not making any representation, warranty or covenant whatsoever with respect to the condition of the



Leased Premises, or any portion thereof, or its suitability for any particular purpose, and Tenant shall be relying solely on its inspection of the Leased Premises and due diligence investigations with respect thereto.

(b) LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND FOR COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. EFFECTIVE AS OF THE DATE OF THIS LEASE, TENANT SHALL RELEASE LANDLORD FROM ALL CLAIMS WHICH TENANT OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MANAGER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTING ON TENANT'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH TENANT ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES, INCLUDING THE INFORMATION AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS, AND TENANT SHALL NOT LOOK TO LANDLORD IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION, EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS LEASE; (A) TENANT WILL ACQUIRE THE LEASED PREMISES SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS, AND (B) WITHOUT LIMITING THE FOREGOING, WAIVES ANY RIGHT IT OTHERWISE MAY HAVE AT LAW OR IN EQUITY AGAINST LANDLORD WITH RESPECT TO ANY ASPECT OF LEASED PREMISES.

ARTICLE VI

INSURANCE

Section 6.1 ~~Insurance~~ (a) Tenant shall obtain and maintain, or cause to be maintained, insurance for Tenant and the Facility providing at least the following coverages or as required from time to time by any Mortgagee:

(i) comprehensive "all risk" insurance on the Facility and the Personal Property, including Building Ordinance Coverage from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation (except with respect to the insurance pursuant to clauses (D), (x), (y) and (z) below); (B) containing an agreed amount

endorsement with respect to the Facility and Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Ten Thousand Dollars (\$10,000.00) for all such insurance coverage (except as stated in the penultimate sentence of this subsection); and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if the Facility or the use of the Facility shall at any time constitute legal non-conforming structures or uses and covering the increased cost of construction, demolition cost, value of the undamaged portion of the structure and any increased expenses to rebuild due to the enforcement of building or zoning laws or requirements following a covered loss of the Leased Premises. In addition, Tenant shall obtain: (x) if any portion of any of the Leased Premises is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of any loan encumbering the Leased Premises or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or successor legislation, or such greater amount as Landlord and/or Mortgagee shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in an area with a high degree of seismic activity and (z) coastal windstorm insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in a coastal region; provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive insurance policy required under this Subsection (i); and further provided that the earthquake insurance pursuant to clause (y) may provide for a deductible of up to the greater of One Hundred Thousand Dollars (\$100,000.00) and two percent (2%) of the amount of such coverage, (III) the flood insurance pursuant to clause (x) may provide for a deductible of up to One Hundred Thousand Dollars (\$100,000.00), and (IV) the ordinance and law coverage pursuant to clause (D) may have a sub-limit of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Facility, such insurance (A) with a combined limit of not less than Five Million Dollars (\$5,000,000.00) in the aggregate and Two Million Dollars (\$2,000,000.00) per claim, (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) to continue at not less than the aforesaid limit until required to be changed by Landlord and Mortgagee in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability; and (5) contractual liability covering the indemnities contained in Section 9.1 of the Lease to the extent the same is available;

(iii) business income with extra expense insurance (A) with loss payable to Landlord and Mortgagee; (B) covering all risks required to be covered by the insurance provided for in Subsection (ii) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Facility and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Facility is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred

percent (100%) of the projected net profit and extra expense with respect to the Facility for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire at the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Tenant's reasonable estimate of the gross income from the Facility for the succeeding twelve (12) month period. Nothing herein contained shall be deemed to relieve Tenant of its obligations to pay the Rent when due except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Facility, and only if the Facility coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above and (3) with an agreed amount endorsement waiving co-insurance provisions.

(v) worker's compensation insurance with respect to any employees of Tenant, as required by any Governmental Authority, Health Care Authority, Legal Requirement or Health Care Requirement;

(vi) boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Landleord and Mortgagee on terms consistent with the commercial property insurance policy required under Subsection (i) above;

(vii) intentionally omitted;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million Dollars (\$1,000,000.00);

(ix) if the Facility is or becomes a legal "non-conforming" use, ordinance or law coverage and insurance coverage to compensate for the cost of (upon a Casualty) demolition or rebuilding of the undamaged portion of the Facility along with any reduced value and the increased cost of construction in amounts as requested by Landleord and Mortgagee;

(x) the commercial property and business income insurance required under Sections 6.1(a)(i) and (iii) above shall cover perils of terrorism and acts of terrorism and Tenant shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i) and (iii) above at all times during the Term;

(xi) professional liability and malpractice insurance with limits of at least Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate. Tenant shall also require each medical director for the Facility and the associated nurse practitioner at the Facility to carry professional liability and malpractice insurance with

limits of not less than Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate; and

(iii) notwithstanding anything to the contrary in the foregoing, all insurance coverage required by any mortgagee of Landlord shall be met by Tenant, from time to time as necessary;

(xiii) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Landlord and/or Mortgagee from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Facility located in or around the region in which the Facility is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or, in the singular, the "Policy"), and shall be subject to the approval of Landlord and Mortgagee as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State of New York and having a claims paying ability rating of "A" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the companies (one of which shall be S&P if they are rating the securities and one of which will be Moody's if they are rating the companies), or if only one Rating Agency is rating the companies, then only by such Rating Agency and shall specifically name Landlord and Mortgagee as loss payees and additional insureds, as applicable. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Landlord and Mortgagee, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Landlord and Mortgagee of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Tenant to Landlord and Mortgagee.

(c) Any blanket insurance Policy shall specifically allocate to the Facility the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Facility in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(g)(v), shall name Tenant as the insured and Landlord and Mortgagee as the additional insured, as their interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called lender's loss payee endorsement in favor of Mortgagee providing that the loss thereunder shall be payable to Mortgagee.

(e) All Policies provided for in Section 6.1 shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Tenant, or anyone acting for Tenant, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Landlord and Mortgagee are concerned;

(i) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' written notice to Landlord and Mortgagee and any other party named therein as an additional insured;

(ii) the issuers thereof shall give notice to Landlord and Mortgagee if the Policies have not been renewed fifteen (15) days prior to its expiration; and

(iv) Neither Landlord nor Mortgagee shall be liable for any insurance premiums thereon or subject to any assessments due thereunder.

(f) If at any time Landlord and Mortgagee is not in receipt of written evidence that all Policies are in full force and effect, either shall have the right, without notice to Tenant, to take such action as either deems necessary to protect its interest in the Leased Premises, including, without limitation, the obtaining of such insurance coverage as either in its sole discretion deems appropriate. All premiums incurred by Landlord and/or Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Tenant to Landlord and/or Mortgagee, as the case may be, upon demand and, until paid, shall be secured by the Mortgagee and shall bear interest at the Overdue Rate.

(g) Tail Insurance. If Tenant has claims made insurance coverage of any type, upon expiration or earlier termination of this Lease, Tenant shall purchase so-called "tail" insurance for a period of three years in an amount not less than its existing coverages in order to assure Tenant is covered by insurance after the expiration or earlier termination of this Lease for all claims arising or relating to the period prior to the expiration or earlier termination of this Lease, and Landlord and Mortgagee shall be named as additional insured thereunder.

Section 6.2 Certificates of Insurance. Upon the Commencement Date of this Lease, Tenant shall furnish Landlord, Mortgagee and other third parties which Landlord shall designate with appropriate certificates of insurance on acceptable Accord forms, together with an additional insurance endorsement showing that each type of insurance required under this Article VI is in full force and effect and not cancelable or modifiable without thirty (30) days prior written notice to Landlord, and upon request of Landlord or one or more of such additional insureds, deliver copies of such insurance policies. Tenant will provide Landlord with acceptable certificates of insurance pursuant to this Section 6.2 evidencing the renewal of such Policies ten (10) Business Days prior to the Policies' expiration date. Tenant acknowledges that all such certificates shall name Landlord, its successors and assigns, and Mortgagee, its successors and assigns, as additional insureds on the general liability and umbrella policies and as a loss payee/mortgagee, as their interests may appear, on the property and boiler and machinery policies.

Section 6.3 Waiver of Subrogation. Landlord and Tenant hereby waive all rights of recovery for causes of action which either has or may have or which may arise hereafter against the other for any damage to the Leased Premises or the property or business of either of them or of anyone claiming through either of them, by way of subrogation or otherwise, caused by any of the perils covered by a special form policy of property insurance or contents insurance or by any other insurance for damage to property carried by the party whose property was damaged; provided, however, that the foregoing waiver shall apply only if and to the extent that

a waiver of subrogation for property damage is not prohibited in the State of New York, has been consented to by the applicable insurance carrier, and only to the extent of such insurance coverage.

ARTICLE VII

SECURITY, ACCESS AND REPORTING OBLIGATIONS, WORKING CAPITAL

Section 7.1 Security Deposit/Guaranty.

(a) Contemporaneously with the execution of this Lease, Tenant shall deliver a guarantee of this Lease (the "Guaranty") from Lizer Josefovic and Mark Nauman (collectively, the "Guarantors") in the form of Exhibit "B" attached hereto, or in form and amount as may be otherwise required by the Landlord and Landlord's first and second Mortgages. The Guaranty shall set forth that the Guarantors will be required to cooperate in turning the license over to the Landlord's designee or be personally liable for all costs, expenses and damages or deficiencies. The Guarantors shall ensure that the Tenant shall deliver all of the documents required to transfer the license in escrow to Posternak, Blankstein & Lund, or such other party as Landlord designates. As further security for the Tenant's performance under the Lease, the Tenant hereby agrees as follows:

(i) Tenant agrees that it shall deliver to Landlord 60 days prior to the Commencement Date, an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached hereto as Exhibit 7.1(a) or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$500,000.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months.

(ii) Tenant agrees that it shall deliver 60 days prior to the anticipated Commencement Date either (i) an unconditional Letter of Credit, in accordance with the Letter of Credit Agreement attached hereto as Exhibit 7.1(b) (which shall be executed simultaneously herewith), in the amount of \$3,700,000, or (ii) \$3,700,000 in cash ("Security Deposit") to secure the full and timely payment and performance of Tenant's obligations under this Lease. Tenant's failure to deliver the Letter of Credit or timely pay to Landlord the Security Deposit shall be deemed a Lease Default by Tenant. Landlord may retain the Security Deposit in such account as Landlord elects in its sole discretion and Landlord may commingle the Security Deposit with other funds of Landlord or its affiliates. Tenant shall have no right to any interest on the funds comprising the Security Deposit that it delivers to Landlord.

(iii) Sixty days prior to the anticipated Commencement Date, the funds in the controlled account number [REDACTED] at JPMorgan Chase Bank, N.A. (the "Bank") in the amount not less than \$1,000,000 shall be delivered by Tenant to Landlord and released by Tenant to Landlord to be held as an additional Security



Deposit by Landlord. The letter to Bank implementing the Tenant's obligations pursuant to the preceding sentence, attached hereto as Exhibit 7.1(c), which shall be held in escrow by Posternak, Blankstein & Land, shall be delivered by it to the Bank sixty days prior to the anticipated Commencement Date upon notice from Landlord.

(b) The term "Letter of Credit" shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit in favor of Landlord in form and content reasonably satisfactory to Landlord and entitling Landlord to draw thereon without the payment of any fees or charges in New York, New York, issued by a domestic banking institution or the U.S. agency or branch of a foreign banking institution; provided, that such banking institution has a long term senior unsecured debt obligation rating of at least "AA" by S&P. The Letter of Credit shall have an expiration date of the date that is the first anniversary of the date hereof. The Letter of Credit shall provide that it shall be deemed automatically renewed (without amendment) for consecutive periods of one year each thereafter during the Term unless the issuing bank sends written notice to Landlord and Tenant by certified mail, return receipt requested, not less than thirty (30) days preceding the then expiration date of the Letter of Credit that it elects not to have such Letter of Credit renewed. If such notice is sent, then at least twenty (20) days prior to the expiration of the Letter of Credit (and each subsequent or replacement Letter of Credit), Tenant shall deliver to Landlord a new Letter of Credit in the same amount and a failure to do so shall entitle Landlord to draw upon the existing Letter of Credit and to receive the proceeds therefrom and hold such proceeds as a cash Security Deposit pursuant to this Section 7.1 pending delivery of a new Letter of Credit.

(c) Upon a Lease Default, Landlord shall have the right, but not the obligation, in Landlord's sole and absolute discretion, to draw upon the Security Deposit and/or Letter of Credit and apply some or all of the funds to remedy such default or occurrence and to compensate Landlord for any loss or damage resulting therefrom, without prejudice to any other rights or remedies of Landlord under this Lease or at law or in equity. Upon any such application by Landlord, Tenant shall promptly deposit with Landlord an amount in cash equal to the amount from the Security Deposit so utilized by Landlord. Landlord shall at all times have, as security hereunder, Letter of Credit and cash Security Deposit in the amounts stated in Section 7.1(a). Upon the termination or expiration of this Lease, as long as Tenant has performed all of its obligations pursuant to this Lease and no Lease Default has occurred which is continuing, the remaining amount of the Security Deposit shall be returned or refunded to Tenant, without interest, subject in all events to Landlord's right to apply the Security Deposit as provided herein.

(d) Upon the occurrence of a Lease Default, Landlord may use, apply or retain the whole or any part of the Security Deposit or draw under a Letter of Credit to the extent required for the payment of any Rent or any other sums as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the reletting of all or any portion of the Leased Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the Security Deposit, Tenant shall upon demand immediately deposit with Landlord a sum equal to the amount so used, applied or retained. In the event of any sale or financing of Landlord's interest in the Leased Premises, Landlord shall have the right to assign its interests in the

Security Deposit to the transferee, assignee or mortgagee, as the case may be, and if Landlord has given notice to Tenant of the assignment of Landlord's interest in the Security Deposit and if assignee or transferee of the Security Deposit has accepted liability for the Security Deposit, Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof; and Tenant shall look solely to the new landlord or mortgagee for the return or payment of the same. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit and neither Landlord, nor its successors or assigns, shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Section 7.2 Access to Leased Premises. Tenant shall permit Landlord, Mortgagee and their agents to enter upon the Leased Premises at all reasonable times during ordinary business hours and upon at least twenty-four (24) hours advance oral notice (except that in the case of emergency, Landlord may enter at any time and without prior notice) to inspect and examine the Leased Premises, to perform repairs as to Landlord's Work pursuant to Section 5.1, and to inspect and copy any operating manuals, procedures manuals, training manuals, and other books and records concerning unemployment, workers' compensation, insurance, tax, and any other business issues pertaining to the Leased Premises (subject to applicable laws and regulations governing patient confidentiality and privacy and the confidentiality of medical records) and any information necessary for audit relating to cost reimbursement, collections, general financial matters, litigation, inquiries and related activities (as may be necessary in connection with the Lease or the Leased Premises or any matters relating to periods prior to the Commencement Date). Any access by Landlord to patient records or medical records shall be strictly governed by Laws governing patient confidentiality and privacy and the confidentiality of medical records and all appropriate consents and/or waivers from residents or their guardians or representatives shall have been obtained before access to such records shall be granted. Landlord shall make reasonable efforts not to materially interfere with or materially disrupt Tenant's business and use and enjoyment of the Leased Premises during any such inspection or examination. Landlord shall also have the right but not the obligation to conduct a physical inspection of the Facility and from time to time and within ninety (90) days prior to the expiration of the Term or earlier termination of the Lease, upon twenty-four (24) hours advance oral notice. If Landlord reasonably determines based on this inspection that the Facility, or any portion of the Facility, requires repairs or maintenance so that the condition of the Facility is in compliance with this Lease and all Laws, then within thirty (30) days of notification by Landlord, Tenant shall commence making said repairs and diligently pursue such repairs to completion. Should Tenant fail to do so, within seven (7) days of notification by Landlord, Tenant shall pay to Landlord a deposit of funds in an amount equal to Landlord's reasonable estimate of the costs of such repairs or maintenance, which funds shall be released to Tenant from time to time during the progress of such repairs and maintenance based on submission by Tenant of evidence reasonably satisfactory to Landlord that such work is complete and all costs and expenses incurred to date have been paid in full. Tenant and Landlord acknowledge that the operations of the Facility and its maintenance are the sole and absolute responsibility of Tenant. Landlord shall have no liabilities or obligations with respect to the Facility, including no liabilities or obligations with respect to inspections of the Facility or the failure by Landlord to inspect the Facility.

Notwithstanding anything to the contrary in this in this Lease, Landlord and Tenant agree that all information, records and data collected or maintained regarding Facility

residents shall be confidential. Landlord, Tenant, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable New York and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-93) and the regulations issued in connection therewith (collectively, "HIPAA"). No employee or agent of Landlord or Tenant shall discuss, transmit or narrate in any manner the Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility's assets, or otherwise fulfilling its obligations under this Lease or under law. The obligations under this Section 7.2 shall survive the termination of this Lease, whether by rescission or otherwise.

**Section 7.3 Changes in Licensure and Certification Status.** As of the Commencement Date, Tenant represents and warrants that the number of beds licensed or certified for the Facility is one hundred sixty (160). Tenant shall not increase or decrease the licensed or certified number of beds, or change the license or certification thereof, without the consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; Tenant may increase the number of licensed or certified beds of the Facility upon thirty (30) days prior written notice to Landlord, but without the prior written consent of Landlord. If required, Tenant shall not increase the number of beds without the consent of the Commissioner and/or the DOH and Tenant agrees to return to Landlord upon the expiration of the Lease, the Leased Premises. Should Tenant increase the number of licensed beds at the Facility, the Fixed Rent payable for the Facility shall be increased proportionately for such additional beds. In no event shall the Fixed Rent be reduced in the event the number of Licensed Beds at the Facility is reduced. Landlord and Tenant acknowledge that the Leased Premises are, and at all times under the Term of this Lease are, the sole and absolute property of Landlord. Upon any termination of this Lease or any Lease Default by Tenant hereunder (which breach or default is not cured within any applicable grace period), and subject to the approval of the DOH, Landlord shall have the right to cause the Facility's licenses to be reissued in Landlord's name or in the name of Landlord's designee upon application therefor to, and the receipt of approval from, the DOH and to further have the right to have any and all Medicare, Medicaid and any other provider and/or third party payor agreements issued in Landlord's name or in the name of Landlord's designee. In the event Landlord exercises its rights pursuant to this Section 7.3, Tenant and Guarantors shall cooperate with Landlord in transferring the aforementioned items to Landlord's name or for the benefit of Landlord or as Landlord may direct pursuant to the terms of this Lease.

**Section 7.4 Reporting and Other Obligations.**

(a) During the Term, Tenant shall and shall cause all Subtenants, sub-subtenants and any operators of the Facility to provide (without duplication) Landlord and Mortgagee with the following reports, statements, and inspections:

(i) **Annual Budget.** Within 60 days prior to the projected Substantial Completion Date, and no later than thirty (30) days prior to the end of each calendar year thereafter, Tenant shall submit to Landlord an annual budget (each an "Annual Budget") covering the operations of and proposed capital expenditures to be made with respect to the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Annual Budget).

(A) Capital Expenditures. The Annual Budget shall include a capital budget (the "Capital Budget") outlining a program of capital expenditures as may be required by Laws, any order to Landlord, or Tenant's reasonable business judgment during the next calendar year (or the remainder of the current calendar year, in the case of the initial Capital Budget), in which each proposed capital expenditure will be designated as either mandatory, highly recommended or desirable. Tenant shall be responsible for designating as a "mandatory capital expenditure" any expenditure which, if not made would, in Tenant's reasonable judgment: (a) cause the Facility to lose or put at risk its License; (b) place at risk the safety of a patient or resident or employee of the Facility; (c) cause the ineligibility of the Facility under any third party payor program applicable to the Facility; (d) cause the issuance of a formal notice that any of the operating licenses for the Facility or any substantial portion of the Facility will be revoked or suspended or qualified in any material adverse respect; or (e) subject Landlord or Tenant to criminal prosecution. Tenant shall make during the calendar year, or calendar quarter for which they are budgeted, all capital expenditures approved by Landlord. On and after the Commencement Date, Tenant shall expend at least Five Hundred Twenty-Three Dollars (\$523.00) per bed per month for capital expenditures at the Facility, including amounts expended to comply with the licensure and other expenditures required by any Governmental Authority or such other amounts as may be required by Mortgagee from time to time. If Mortgagee requires Landlord to deposit sums for capital expenditures, replacements and/or refurbishments relating to furniture, fixtures, equipment and/or improvements to the Facility, then Tenant shall pay to Landlord, as Additional Rent hereunder, all reserve or escrow amounts, sums and/or deposits which Landlord is required to pay to such Mortgagee with respect to such capital expenditures, replacements and/or refurbishments. Tenant shall pay any and all of such amounts and sums to or as directed by Landlord as Additional Rent hereunder together with each payment of Fixed Rent hereunder. Tenant acknowledges that as of the date hereof, Mortgagee requires a monthly deposit of Five Hundred Twenty-Three Dollars (\$523.00) per bed with respect to the Facility. In the event that such deposits are made by Tenant hereunder, Landlord shall use its reasonable efforts, subject to the terms and conditions of the loan agreements with Mortgagee, to obtain disbursements of such funds to be used for the payment of or reimbursement for the costs of such capital expenditures, replacements and/or refurbishments.

(B) Operating Budget. The Annual Budget shall include an operating budget (the "Operating Budget") setting forth an estimate of operating revenues and expenses for the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Operating Budget), together with an explanation of anticipated changes in the Facility. Tenant shall provide to Landlord upon written request such other reports, including a cost comparison report, and all appropriate Medicare and Medicaid reports, as may be required under these programs, as are normally provided by Tenant to the owners of other similar rehabilitation hospitals, psychiatric hospitals, and skilled nursing facilities leased by Tenant.

(ii) Financial Reporting. Tenant will keep and maintain or will cause to be kept and maintained on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Tenant and all items of income and expense in connection with the operation on an individual basis of the Facility. Notwithstanding the foregoing, Tenant's interim unaudited financial statements shall be prepared in accordance GAAP for interim financial information, but may not include all information or notes required by GAAP for a complete set of financial statements; such financial statements

shall include all adjustments and reclassifications of a normal recurring nature considered necessary for a fair and comparable presentation; all such interim financial statements shall be read in conjunction with most recent audited financial statements. Landlord and Mortgagee shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Tenant or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Landlord and/or Mortgagee shall desire. After the occurrence of a Lease Default, Tenant shall pay any costs and expenses incurred by Landlord and/or Mortgagee to examine Tenant's accounting records with respect to the Facility, as Landlord and/or Mortgagee shall reasonably determine to be necessary or appropriate in the protection of Landlord and/or Mortgagee's interest.

(ii) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, as soon as available, and in any event (A) within thirty (30) days after each calendar month's end, unaudited monthly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the month then-ended and year to date, prepared on a basis consistent with the annual statements; monthly census and revenue information of the Facility as of the end of such month and year to date in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average monthly census of the Facility and year to date; an aged accounts receivable report from the Facility in sufficient detail to show amounts due from each class of patient-mix by the account age classifications of 30 days, 60 days, 90 days, 120 days, and over 120 days; (B) within forty-five (45) days after the end of each calendar quarter, unaudited quarterly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the quarter then-ended, prepared on a basis consistent with the annual statements; quarterly census and revenue information of the Facility as of the end of such quarter in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average quarterly census of the Facility; (C) no later than 120 days after the end of each calendar year of Tenant, audited annual financial statements of Tenant, prepared by an independent certified public accounting firm reasonably acceptable to Landlord, prepared in accordance with generally accepted accounting principles, with an unqualified opinion, and including a balance sheet, a statement of income and expenses for the year then ended, a statement of cash flow, and a schedule audited by such independent certified public accountant reconciling Tenant's net operating income to net cash flow, which shall itemize all adjustments made to net operating income in arrive at net cash flow deemed material by such independent certified public accountant.

(iv) Each financial report provided by Tenant shall reconcile and show variances between the actual experience incurred during each such reporting period with respect to each metric to the metric shown on the Operating Budget and Capital Budget for such period.

(v) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, any other reports and certificates reasonably requested by Landlord or Mortgagee from time to time.

(vi) In addition, Tenant shall prepare and deliver to Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, a written report providing an operational overview of significant events and circumstances at the Facility during the prior month, during the first six months of the Term and then quarterly thereafter, including, but not limited to, clinical events, employee relations and staffing matters and provide such other information as Mortgagee may require from time to time. Tenant shall provide Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, with a copy of all federal income tax returns of Tenant and its Subtenants within fifteen (15) days after filing thereof. Whenever practicable, all reports shall be delivered to Landlord electronically in a format usable by Landlord.

(b) All unaudited financial reports from Tenant shall include an Officer's Certificate certifying that such financial statements present fairly the financial condition and the results of the operations of Tenant and the properties being reported upon and that such financial statements have been prepared in accordance with the Tenant's customary accounting procedures. The Officer's Certificate accompanying the annual audited financial statements of Tenant shall also include a statement that they have been prepared in accordance with GAAP and whether there exists an event or circumstance which constitutes a default or an event of default under the Lease, the nature thereof, the period of time it has existed, and the action then being taken to remedy the same.

(c) Tenant shall furnish Landlord and Mortgagee, within five (5) days of the receipt by Tenant, any and all notices (regardless of form) from any Health Care Authority that Tenant's license, Medicare or Medicaid certification, or VA or other governmental program participation is being, or could be revoked or suspended, that action is pending, being considered or being taken to revoke or suspend the Tenant's license or certification or to fine or penalize the Tenant, or that action is pending, being considered, or being taken, to discontinue, suspend, deny, decrease or reduce any payments due, made or coming due to Tenant or related to the operation of the Facility other than in the ordinary course of business related to billing adjustments.

(d) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the receipt by Tenant, any and all notices (regardless of form) from any Governmental Authority or third party payor (i) alleging that the Facility has three or more deficiency(ies) of a scope and severity of "G" or hire, or one or more deficiency(ies) of a scope and severity of "J" or higher, (ii) alleging that the residents of the Facility are in jeopardy, (iii) freezing admissions to the Facility or (iv) denying reimbursement for any class of residents by any third party payor.

(e) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the sending or receipt by Tenant of any communication copies thereof, including a plan of correction, with respect to the matters referenced in Section 7.4(d).

(f) Tenant shall file all required reports, including without limitation, Medicare or Medicaid cost reports, on or prior to the date such reports are due (such due date to include approved regulatory extensions allowed by the applicable Governmental Authority for the filing of such reports) and shall furnish Landlord and Mortgagee, within thirty (30) days of the date of filing, a complete and accurate copy of the annual Medicare or Medicaid cost report

for Tenant, which will be prepared by Tenant and accompanied by an Officer's Certificate of Tenant certifying as of the date thereof that such report is accurate, complete and not misleading, and promptly furnish Landlord and Mortgagee any amendments filed with respect to such reports and all notices, responses, audit reports or inquiries with respect to such reports.

(g) Tenant shall furnish Landlord and Mortgagee, within thirty (30) days of the receipt by Tenant, the annual Medicaid and Medicare provider agreement(s) and the annual Medicaid and Medicare reimbursement rate sheets for the Facility.

(h) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt but at least five (5) days prior to the earliest date on which Tenant is required to take any action with respect thereto or would suffer any adverse consequence, a copy of any Medicare, Medicaid or other licensing or accreditation or rating agency or entity survey, report, warning letter, or notice, and any statement of deficiencies, and within the time period required by the particular agency for furnishing a plan of correction also furnish or cause to be furnished to Landlord and Mortgagee a copy of the plan of correction generated from such survey, report, warning letter, or notice to Tenant and any subsequent correspondence related thereto, and correct or cause to be corrected any deficiency, the curing of which is a condition of continued licensure or of full participation in Medicare or Medicaid or a care program offered by an insurance company, managed care company, or other third-party payor by the date required for cure by such agency or entity (plus extensions granted by such agency or entity).

(i) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any other notices or charges issued relating to the non-compliance by Tenant with any Governmental Authority, insurance company, managed care company, or other third-party payor laws, regulations, requirements, licenses, permits, certificates, authorizations or approvals, but only such matters which could reasonably be expected to have a material adverse effect on the financial condition of such Person or the operation of the Facility.

(j) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any new, revised or amended Medicare or Medicaid reimbursement rate sheets which may be issued subsequent to the annual reimbursement rate sheets.

(k) Tenant shall notify Landlord within five (5) days of any condition or event that constitutes a breach of any term, condition, warranty, representation or provision of this Lease or any other agreement between Landlord or its Affiliates and any Tenant, any Guarantor or any of their Affiliates, and of any adverse change in the financial condition of any Tenant, any Guarantor or any Affiliate of any Tenant or any Guarantor and of any Event of Default. Additionally, Tenant shall notify Landlord within seven (7) days after receipt of any formal or informal written notice or advice from its insurance carrier, reinsurance provider, accountants, actuary, any Governmental Authority, or any third party payor program provider of any actual, pending, threatened or contemplated increase in Tenant's reserves for expenses relating to malpractice or professional liability claims or any material increase in the premium costs for malpractice or professional liability insurance.

(l) To the extent performed, Tenant shall furnish Landlord and Mortgagee, a copy of written external consultant reports (including environmental, operations,

quality assurance, physical plant, property inspection, etc.) (which shall be delivered promptly upon receipt from the consultant).

(m) Tenant shall furnish Landlord and Mortgagee, a copy of cost reports as filed by Tenant.

(n) Any supporting documents or data requested by Landlord in connection with the items in this Section 7.4.

(o) Within 10 days of event of any of the following, Tenant shall deliver to Landlord, notice of:

(i) any rate appeal brought before any Governmental Authority or any administrator of any third party payor program or referral source;

(ii) any reimbursement appeals or recoupment claims made or contests pending or threatened as a result of any audits by any third party payor, and

(iii) any claim, requirement or demand (excluding all claims, requirements, and demands, if any, that have been waived) of any Governmental Authority, third party payor or insurance body or carrier having or claiming any licensing, certifying, supervising, evaluating or accrediting authority over the Leased Premises to rework or redesign the Leased Premises, its professional staff or its professional services, procedures or practices in any material respect or to make any of the Leased Premises conform to or comply with a legal requirement.

(p) The receipt by Landlord of any reports, statements, financial information, surveys or otherwise from Tenant or its Affiliates shall not in any way impose any obligation or liability upon Landlord to act or take any action upon any information, facts or circumstances which may be disclosed or shown therein and Landlord shall have no liability for its failure to act thereon or as a result thereof.

(q) **Financial Covenants.** Tenant covenants and agrees to the following, as may be amended time to time as required by Landlord's 1st or 2nd Mortgagee:

(i) Commencing the third full quarter of the Term Tenant's Current Ratio shall not be less than 1.1 to 1.0. The term "Current Ratio" means the current assets of Tenant divided by the current liabilities of Tenant determined in accordance with GAAP.

(ii) For each quarter of the Lease Term commencing the third full quarter following the Commencement Date, Tenant's Lease Coverage Ratio shall be not less than 1.25 to 1.0.

(iii) For each quarter of the Lease Term commencing the second full quarter following the Commencement Date, the Facility shall have achieved the EBITDAR benchmarks as described on Schedule 7.4, attached hereto. The term "EBITDAR" is defined in Schedule 7.4.

**Section 7.5 Payment in the Ordinary Course.** Tenant shall pay in full: (a) prior in each case to the date when penalties would attach, all Impositions (except only those so long as and to the extent that the same shall be contested in good faith by appropriate and timely proceedings and for which adequate reserves have been established in accordance with GAAP), provided that (i) Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) for which Tenant may be or become liable; (ii) no Lease Default has occurred and remains uncured, (iii) such proceeding shall suspend the collection of such Impositions or the Impositions shall have been paid, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Tenant is subject and shall not constitute a default thereunder, (v) no part of or interest in the Leased Premises will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Tenant shall have furnished such security as may be required in the proceeding, or as may be requested by Landlord or Mortgagee, to insure the payment of any such Impositions, together with all interest and penalties thereon, which shall not be less than 125% of the unpaid Impositions being contested and (vii) Tenant shall promptly upon final determination thereof pay the amount of such Impositions, together with all costs, interest and penalties; (b) all of Tenant's wage obligations to Tenant's employees in compliance with the Fair Labor Standards Act (29 U.S.C. §§ 206-207) or any comparable provisions under federal, state or local law; (c) all obligations owed in connection with any claims, demand or notice of any overpayment received from Medicare, Medicaid or other third party payor; and (d) all of Tenant's obligations calling for the payment of money (except only those so long as and to the extent that the same shall be contested in good faith and for which adequate reserves have been established in accordance with GAAP, provided that Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) before such payment becomes overdue.

**Section 7.6 Security Agreement.** In order to secure the payment and performance of all of Tenant's obligations under this Lease and all of Tenant's obligations to Landlord, and all and all other documents contemplated hereby, Tenant hereby grants to Landlord a first priority security interest in and lien upon, all of the assets of Tenant including, without limitation, (i) all trade fixtures, equipment, furniture, merchandise, inventory and other personal property located from time to time in or upon the Leased Premises (including the proceeds thereof), and (ii) to the fullest extent permitted by applicable law, all accounts, accounts receivable, licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, certificates of need, and other authorizations issued to or held by Tenant with respect to the operation of the Facility skilled nursing facility and Tenant's interest in and rights under all third party payor provider agreements with respect to the Facility (the items listed in clauses (i) and (ii), together with the proceeds of same, are collectively, "Collateral"). The security interest granted to Landlord with respect to Tenant's tangible personal property is intended to be subordinate to any purchase money security interest or capital lease on any of Tenant's tangible personal property provided that Tenant has notified Landlord of the creation of such security interest or capital lease prior to the creation thereof and Landlord has approved same. Landlord agrees to subordinate its lien on Tenant's accounts receivable in favor of Tenant's accounts receivable lender, which shall be a nationally recognized nursing home accounts receivable lender with experience acceptable to HUD or Mortgagee on at least 20 nursing homes, securing up to a \$2,000,000.00 accounts receivable loan, provided such lender enters into an Intercreditor agreement reasonably acceptable to Mortgagee and Landlord. Should

Mortgagee require a subordination of the priority of Landlord's security interest in the Collateral, Landlord and Tenant shall execute such documents as Mortgagee may request to subordinate Landlord's lien to the Mortgagee's security interest in the collateral. In addition, Tenant's members shall grant to Landlord a first lien pledge (subject to the following sentence) of the membership interests of Tenant. To the extent required by Tenant's accounts receivable lender, Landlord agrees to subordinate its lien on Tenant's membership interests to a lien in favor of such lender securing up to a \$2,000,000.00 accounts receivable loan; provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. On or before the Commencement Date, Tenant shall provide Landlord with a detailed list and description of all the Collateral. Upon a Lease Default by Tenant, Landlord shall have all the rights and remedies of a secured party under the laws of the State of New York. Tenant, as debtor, shall cause to be executed (if appropriate or necessary) and delivered to Landlord, as the secured party, upon execution of this Lease by Tenant, UCC-1 Financing Statements in proper form, and thereafter, from time to time, deliver to Landlord such extensions and/or updates of such financing statements as are required for the purpose of perfecting and maintaining the priority of the security interest granted to Landlord herein, and to perform any other acts reasonably necessary to the perfection of such security interest. Tenant and Tenant's members consent to Landlord's preparation of and the filing of such financing statements by Landlord and agree that the provisions of this Section 7.6 shall constitute a security agreement for the purposes contemplated hereby. The security interest granted by this Section 7.6 shall be in addition to any lien of Landlord that may now or at any time hereafter be provided by law. In the event Landlord exercises its remedies to foreclose the security interest created under this Section 7.6, or elsewhere in this Lease, Tenant shall cooperate with Landlord in transferring all of the aforementioned items promptly as requested by Landlord in Landlord's or its designee's name or for the benefit of Landlord. Tenant covenants and agrees that it shall not sell, move, surrender, cancel, modify, transfer, assign, relocate, pledge, grant a security interest in, convey or in any other manner encumber any assets of Tenant including, without limitation, the personal property, the certificate of need approval or any of the licensed or Medicare- and/or Medicaid-certified beds at the Facility, or any licenses for the Facility, or attempt at any time to do so, except as expressly provided hereunder and with the written consent of Landlord. This Section 7.6 and Landlord's rights and remedies hereunder shall survive the termination of the Lease.

Section 7.7 Working Capital. As of the Effective Date, Tenant shall have and maintain until the Commencement Date in accounts, acceptable to Landlord in its sole and complete discretion, an amount of funds equal to the greater of ("Working Capital") (i) any debt service reserve required by Mortgagee, (ii) the aggregate negative net operating income of Tenant for the period of months from the Commencement Date to the first day of the first two month period in which aggregate net income from operations exceeds zero, all as reflected in the projections attached hereto as Schedule 7.2 ("Cash Requirement"); for the purpose of this calculation net operating income shall be determined on a cash basis, and (iii) 4.5 million dollars. Working Capital shall not include any accounts or reserves established to satisfy the requirements of Section 7.1(a) (i) and (k). From and after the Commencement Date, the Working Capital, subject to any requirement of the Mortgagee, may be used by Tenant only to fund the Cash Requirement.

7.8 Refinance. Tenant shall fully cooperate with Landlord in its efforts to Refinance from time to time, including without limitation, providing all information and executing all

documents required by Landlord or its Lender(s). On and after each Refinance Date the Fixed Rent for each twelve month period shall equal the sum of the amounts provided for in clauses (a) through (e): (a) the annual debt service payments (principal, interest, and mortgage insurance premiums, if any) that Landlord is required to pay to Lender pursuant to the first Mortgage (the "Mortgage Debt"), plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations; (b) the annual aggregate debt service payments or preferred equity payments that the Landlord is required to pay pursuant to the Junior Debt (or replacement thereof) (with the Mortgage Debt, the "New Debt Service"); plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations under the Junior Debt (or replacement thereof); (c) an annual amount equal to \$1,390,115; (d) an additional amount of \$250,000 per year prior to the fourth year of the Term; \$350,000 per year during Lease Years 4 and 5; and \$400,000.00 per Lease Year thereafter until the end of the Term, including all Extension Terms; and (e) an additional amount equal to one-half of the amount that (i) a sum equal to the last 12 months interest payment on the original Mortgage and Junior Debt exceeds (ii) New Debt Service.

#### ARTICLE VIII

#### PERSONAL PROPERTY

**Section 8.1 Landlord's Personal Property.** Upon the expiration or termination of this Lease, Tenant shall leave all personal property leased to Tenant hereunder, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, in or on the Leased Premises, except for ordinary wear and tear. Any and all restorations, alterations or replacements of, or repairs, reconstructions or additions to, the personal property at the Facility made by Tenant shall become part of Landlord's personal property, and any and all security interests (except in favor of Landlord) in Tenant's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Tenant shall pay off in full the remaining payments due on all personal property leased by Tenant and such personal property shall become part of Landlord's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Any of Tenant's software, software licenses, proprietary information, and policies, and procedures of Tenant ("Retained Assets") shall not become part of Landlord's personal property except in the event of the termination of this Lease as a result of a Lease Default, in which case the Retained Assets shall become the personal property of Landlord; provided, however, upon request of Landlord, in consideration of a payment by Landlord or its designee of Ten Dollars (\$10.00) and any applicable lease, rent, or license fees owed to any third parties during the Transition Period (hereinafter defined), Tenant shall license Landlord or its designee(s) (at Tenant's cost with no mark-up) to utilize the Retained Assets for a period of one hundred twenty (120) days (the "Transition Period") in connection with the transition of operations from Tenant and Landlord's new operator(s). To the extent Tenant or any Subtenants are obligated under license agreements with third party vendors supplying software (and/or computer hardware which Tenant does not own or lease) to such Tenant, Tenant shall use its best

efforts to arrange for Landlord or Landlord to enter into licensing agreements with such third party vendors to allow Landlord or its designee to utilize such software and computer hardware supplied by such third party vendors for the duration of the Transition Period.

Section 8.2 Tenant's Retained Assets. At the termination of the Lease, Landlord shall have the right to purchase all or a portion of Tenant's Retained Assets located at the Facility at the lower of its fair market value or book value. To the extent any of Tenant's Retained Assets is subject to a license, Landlord shall have the right but not the obligation to assume some or all of such license Landlord's sole cost and expense and at no additional liability to Tenant.

ARTICLE IX

INDEMNIFICATION

Section 9.1 Tenant's Indemnification (a) During the Term of this Lease and after the surrender of the Leased Premises in accordance with Section 5.5 of this Lease, Tenant shall protect, defend (at Landlord's request), indemnify and hold harmless Landlord, Landlord's members, managers, officers, owners, directors, employees, agents, representatives, and Mortgagee and their respective agents, executors, heirs, representatives and assigns, and any entity providing financing which is secured by the Leased Premises (collectively the "Landlord's Indemnitees"), from and against any claims, losses, costs, penalties, damages, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) imposed or resulting from, arising out of or attributable in whole or in part to any of the following: (i) any violation of any Law, order of Governmental Authority, whether occasioned by the intentional act, omission, or negligence of Tenant or those holding under Tenant, (ii) any accident or other occurrence on or about the Leased Premises on or after the Commencement Date causing injury to any person or property whatsoever or whatsoever, including but not limited to patient care claims or elder abuse, (iii) any failure of Tenant in any respect to comply with or perform any term, condition, covenant, requirement and/or provision of this Lease, or a breach of this Lease by Tenant, including, but not limited to, a breach of any of Tenant's representations and warranties under Section 19.1 of this Lease, (iv) in any way relating to Tenant's use, operation and/or maintenance of the Facility (including, without limitation, third-party claims, whether by the State of New York, the United States, private insurer, private parties, for recoupment, false claims, or any other claims, assumption of and use by Tenant of Landlord's permits, variances, waivers, and certificate of need approval or its possession of the Leased Premises and/or (v) any liability under Section 20.14. The indemnity provided for herein shall survive the expiration of this Lease or the surrender of the Leased Premises for the period of the relevant statute of limitations.

(b) Any amounts which become payable by Tenant under this Article IX shall be paid within ten (10) days after liability therefor is determined by litigation or otherwise, and if not timely paid shall bear interest at the Prime Rate plus 5% (the "Overdue Rate") from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or may compromise or otherwise dispose of the same as Tenant sees fit provided that Landlord receives a full and complete release with respect to such claim, action or proceeding. Any legal

counsel selected by Tenant to defend Landlord shall be reasonably satisfactory to Landlord. All indemnification covenants are intended to apply to losses, damages, injuries, claims, costs, penalties, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) incurred directly or indirectly by the indemnified parties and their property, as well as by the indemnifying party or third party, and their property. For purposes of this Article IX, any acts or omissions of Tenant, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant. It is understood and agreed that payment shall not be a condition precedent to enforcement of the foregoing indemnification obligations. The "Prime Rate" shall mean on any date, a rate equal to the annual rate on such date publicly announced by Citibank, N.A. as its prime, base or reference rate. Such rate need not be the lowest rate charged by Citibank, N.A. If Citibank, N.A. discontinues its use of such prime, base or reference rate or ceases to exist, Landlord shall designate the prime, base or reference rate of another state or federally chartered bank with offices in New York, N.Y. to be used for the purpose of calculating the Prime Rate hereunder.

## ARTICLE X

### USE OF LEASED PREMISES

Section 10.1 Compliance with Laws and Regulations. Tenant shall use the Leased Premises solely as a licensed Medicare- and Medicaid-certified skilled nursing facility with at least the number of licensed and certified beds existing at the Facility on the Commencement Date, and for no other purpose (the "Intended Use"). On or before the Commencement Date, Tenant shall have acquired, and thereafter Tenant shall maintain all licenses, certificates, accreditations, approvals, permits, variances, waivers, provider agreements and other authorizations needed to operate the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility. Tenant hereby covenants, warrants and represents to Landlord that as of the Commencement Date and throughout the Term: (a) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be validly licensed and Medicare and Medicaid certified to operate a skilled nursing facility in accordance with the applicable rules and regulations of the DOJ, federal governmental authorities and accrediting bodies, including, but not limited to, the United States Department of Health and Human Services ("DHHS"), CMS, and the DOH; (b) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be, certified by and the holder of valid provider agreements with Medicare and Medicaid issued by DHHS, DOH and/or CMS and shall remain so certified and shall remain such a holder in connection with its operation of the Leased Premises as a licensed and Medicare and Medicaid certified skilled nursing facility; (c) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be in compliance with and shall remain in compliance with all applicable Laws with regard to the operation of the Facility, including, without limitation, compliance under Laws governing patient confidentiality and privacy and the confidentiality of medical records; (d) Tenant (and any subtenant, operator or manager of Tenant) shall operate the Facility in a manner consistent with high quality skilled nursing services and sound reimbursement principles under the Medicare and Medicaid programs and as required under Laws; and (e) Tenant (and any subtenant, operator or manager of Tenant) shall not abandon, terminate, vacate or fail to renew any licenses,

certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or any other authorization which relates to the operation of the skilled nursing facility business or other permitted operations on the Leased Premises or in any way commit any act which will or may cause any such licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or other authorization to be revoked by any Governmental Authority or accrediting body having jurisdiction thereof.

Section 10.2 No Waste. Tenant shall not commit or suffer to be committed any waste on the Leased Premises nor shall Tenant cause or permit any nuisance thereon.

Section 10.3 Hazardous Materials and Hazardous Waste. (a) Tenant shall not place or hold any Hazardous Materials on or at the Leased Premises, except as is necessary for the ordinary course of its business as a skilled nursing facility in compliance with Section 10.1. If Tenant's business requires the use of any Hazardous Materials, other than such cleaning materials as are typically found in skilled nursing facilities in compliance with Section 10.1, Tenant shall notify Landlord in writing and shall comply with hazard communication and notification requirements of the Occupational Safety and Health Act ("OSHA") and all Laws which require notification of employees, the community or any governmental agency of the hazardous properties of such Hazardous Materials. For purposes of this Lease, "Hazardous Materials" means and includes any hazardous substance defined as such in OSHA, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous substance or material, as now or at any time hereafter in effect.

(c) Tenant shall not cause or allow any asbestos or any asbestos containing materials to be incorporated into any improvements or alterations which it makes or causes to be made on or to the Leased Premises. Tenant shall obtain and maintain O&M Programs for the Facility if the Facility is determined to contain asbestos or asbestos containing materials and upon Landlord's request, shall furnish copies of same to Landlord, Mortgagee or their designee(s).

(d) Tenant shall not place, hold or dispose of any Hazardous Waste on, under or at the Leased Premises except as specifically allowed in this Section 10.3. Tenant further agrees that it shall not use the Leased Premises as a treatment, storage, or disposal (whether permanent or temporary) facility for Hazardous Waste. If Tenant, in the ordinary course of its business as a skilled nursing facility generates Hazardous Waste, then Tenant shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to the appropriate use, storage, transportation and disposal of Hazardous Waste. For the purposes of this Lease, "Hazardous Waste" means and includes any hazardous material that has entered the waste stream or any contaminant or pollutant as defined as such in the Resource Conservation and Recovery Act, CERCLA, as amended, any so-called "Superfund" or "Superfund" law, the TSCA, or any other Law, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste. Tenant further agrees that it shall properly dispose in accordance with Laws of all "infectious waste" such as laboratory waste, pathological waste, blood specimens or products, patient or resident waste including, without

limitation, bandages and disposable gowns, sharp waste and any material generated by the production or testing of biological agents. Immediately upon receipt of any Environmental Notice (as hereinafter defined) from any Person, Tenant shall deliver to Landlord a true, correct and complete copy of same. "Environmental Notice" shall mean any note, notice, or report of any suit, proceeding, investigation, order, consent order, injunction, writ, award, or action related to or affecting or indicating the treatment, storage, handling, disposal, generation, spill, release or discharge of any Hazardous Waste or Hazardous Materials in, upon, under, from or affecting the Leased Premises. All of the terms, covenants, warranties and indemnifications contained in this Section 10.3 shall survive the expiration or termination of this Lease.

(e) Without in any way limiting Tenant's obligation to indemnify Landlord and Landlord's Indemnitees under Section 9.1 of this Lease, Tenant shall indemnify, defend (at Landlord's request) and hold harmless Landlord and Landlord's Indemnitees from and against any claims, losses, costs, damages or expenses of any and every kind whatsoever (including reasonable attorney's fees and expenses and consultant's and expert's fees and expenses) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord and/or Landlord's Indemnitees for, with respect to, or as a direct or indirect result of: (a) a breach by Tenant of the covenants set forth in Section 10.3 or, (b) caused, permitted or allowed by Tenant or any agent, employee, invitee, or licensee of Tenant, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, onto, or into the Leased Premises, the atmosphere, or any watercourse, body of water, or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, as amended, any so-called "Superfund" or "Superfund" law, or any other law, relating to or imposing liability or standards of conduct concerning, any Hazardous Material) occurring from and after the Commencement Date; and the provisions of and undertakings and indemnification set out in this Section 10.3(d) shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever. If required by Mortgagee, Tenant shall enter into an agreement to indemnify, defend and hold harmless Mortgagee with respect to matters contained in this Section 10.3 and other similar matters pursuant to a form of agreement reasonably acceptable to Mortgagee. In no event however shall Tenant have any liability to Landlord or Landlord's Indemnitees for Hazardous Materials located at or under the Leased Premises prior to the Commencement Date or for the remediation of same.

(f) If Tenant or its employees, agents, or contractors violate the provisions of this Section 10.3, then, in addition to any other duty or obligation of Tenant hereunder, at law or in equity, Tenant shall be obligated to clean up, remove, and dispose of the material causing the violation, in compliance with all applicable environmental laws and repair any damage to and remediate the Leased Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord; provided that such work shall commence no later than thirty (30) days from the date of such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time and procedure for any clean-up, remediation or removal of material causing the violation under this provision, and Landlord shall have the right to require reasonable changes in such method, time or procedure.

(g) Landlord reserves the right from time to time, but not more than once a year, except in the event of an emergency or during the occurrence and continuation of an uncured Lease Default during the Term hereof, at Landlord's cost and expense (except that, in the event of a continuing and uncured Lease Default, at Tenant's sole cost and expense), to have the Leased Premises inspected by environmental engineers and/or specialists for the purpose of determining compliance by Tenant with any environmental laws, rules and regulations applicable to Tenant's operations in or about the Leased Premises and with the terms and conditions of this Lease dealing with environmental matters, including without limitation, the provisions of this Section 10.3. If the environmental assessment or report resulting from such inspection discloses any non-compliance with laws, Tenant shall immediately, following receipt of the environmental assessment, take all such steps as are necessary to put the Leased Premises into compliance, including without limitation, cleaning up any spills or other emissions of Hazardous Wastes or Hazardous Materials, and reimburse Landlord for the costs of its inspection.

(h) Upon the expiration of the Term or the earlier termination thereof, subject to the last sentence of Section 10.3(d) above, Tenant shall forthwith remove all Hazardous Materials and Hazardous Waste from the Leased Premises or any portion thereof in accordance with applicable Law. Landlord shall have the right to inspect the Leased Premises with regard to the management and disposal of Hazardous Materials and Hazardous Waste at all reasonable times during the Term.

ARTICLE XI

DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction. Tenant shall immediately notify Landlord of any casualty, fire, damage, destruction or injury ("Casualty") affecting the Facility, including a description of the Casualty, and whether the Casualty is such as to cause the Leased Premises to be unsuitable, in whole or in part, for the intended Use. Tenant shall proceed with reasonable diligence to repair or reconstruct the Leased Premises and Tenant shall be liable for any costs of repair or replacement to the Leased Premises, whether or not such Casualty, or the costs of repairing such Casualty, are fully covered by the proceeds of Tenant's insurance required to be carried hereunder. If such Casualty renders the Facility unsuitable for the purpose of this Lease and if Landlord's Mortgagee so requires, Landlord, upon notice to Tenant, Landlord may terminate this Lease and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance to the extent such difference results from Tenant's breach of Article VI. Notwithstanding the foregoing, if Landlord's obligations to its Mortgagee have been satisfied in full and the DOH approves and agrees to reimburse the costs of rebuilding the Facility, Landlord shall not so terminate this Lease with respect to the Facility, and Tenant shall repair or reconstruct the Leased Premises in substantially the same condition as just prior to the incident with the proceeds of the property casualty insurance carried by Tenant, as required hereunder (if not otherwise paid to the Mortgagee), and/or with funds of Tenant. Regardless of any Casualty, except as provided above, this Lease shall continue in full force and effect without any abatement of Rent, and Tenant shall

not be entitled to surrender possession of the Leased Premises as a result of such casualty. Landlord's receipt of Rent from Tenant's rental interruption insurance shall be credited against Rent payments due from Tenant hereunder. If Tenant fails to commence such repair or reconstruction within thirty (30) days of the Casualty, Landlord shall have the option, subject to the approval of the DOH if required by Law, to either terminate this Lease upon written notice to Tenant or repair and reconstruct the Leased Premises in substantially the same condition just prior to the incident and costs and expenses incurred as a result thereof shall be deemed Additional Rent hereunder and shall be payable to Landlord by Tenant, upon demand. Upon payment of all such sums demanded by Landlord, Tenant may re-enter and resume possession of the Leased Premises pursuant to the terms of this Lease. All insurance proceeds collected under the Policies shall be paid to Landlord, and made available to Tenant to pay for or reimburse Tenant for the costs and expenses for such repairs and reconstruction subject to the terms, conditions and provisions of any mortgage or other loan documents encumbering the Leased Premises. If Mortgagee does not make the insurance proceeds available to Landlord, then Landlord may terminate this Lease upon thirty (30) days' notice to Tenant, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance.

**Section 11.2 Precedence of Rights of Mortgagee.** All provisions contained in the loan documents between Landlord and Mortgagee, or any other document in connection therewith which concern or pertain to the restoration of the Leased Premises, the application of insurance proceeds and any and all matters concerning a casualty, shall take precedence over and be in lieu of any contrary provision provided for in this Lease, and in all respects are binding upon Tenant who agrees to and acknowledges the same.

**Section 11.3** Tenant hereby waives the provisions of Section 227 of the Real Property Law of the State of New York and acknowledges that the terms of this Article XI shall govern in lieu thereof.

## ARTICLE XII

### EMINENT DOMAIN

**Section 12.1 Eminent Domain.** (a) In the event that all or substantially all of the Leased Premises, or such portion of the Real Property which renders the balance of the Facility unsuitable for the purpose of this Lease, shall be taken by condemnation or right of eminent domain, this Lease shall terminate as of the day the taking authority takes possession of the Leased Premises, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except as otherwise expressly provided in this Lease. In the event only a portion (and less than substantially all) of the Leased Premises is taken by condemnation or right of eminent domain and the portion so taken does not render the balance of the Leased Premises unsuitable for the purposes of this Lease, as determined by Landlord, this Lease shall not terminate. In such an event, Tenant shall restore the Leased Premises with reasonable diligence with its own funds and with the proceeds of any award from the applicable public or quasi-public authority, or private corporation or individual having the

power of condemnation ("Award") to an architectural unit as nearly like its condition prior to such taking as shall be practicable. Notwithstanding anything to the contrary herein, this Section 12.1(a) is subject to the terms, conditions and provisions of any mortgage and other loan documents encumbering the Leased Premises.

(i) Notwithstanding anything to the contrary contained in Section 12.1(a), Landlord may cancel this Lease with no further liability to Tenant, in the event that following a taking by condemnation or right of eminent domain, Mortgagee elects to require Landlord to repay the mortgage on the Leased Premises.

(j) Tenant shall not be entitled to any part of any award or settlement of damages representing the value of land and buildings appropriated, the value of this Lease or any estate therein, or damage to the residue of the Leased Premises or other property of Landlord; it being agreed as between Landlord and Tenant any such award shall be the sole property of Landlord. No appropriation of part or all of the Leased Premises or cancellation of this Lease pursuant to this Article XII shall be deemed an eviction of Tenant or a breach of any covenants of Landlord hereunder.

ARTICLE XIII

NOTICES

Section 13.1 Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if (a) hand delivered or sent by (b) certified or registered United States mail, postage prepaid, return receipt requested or (c) Federal Express or other nationally recognized overnight next business day courier service at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 13.1):

If to Tenant:

HBL SNP, LLC  
1280 Albany Post Road  
Crown-on-Hudson, New York 10520

with a copy to:

Michelman & Robinson  
800 Third Avenue, 24th Floor  
New York, NY 10022  
Attn: Mark Zafrit, Esq.  
Telephone: 212.730.7700

If to Landlord:

White Plains Healthcare Properties I, LLC,



2 Bourbon Street, Suite 200  
Peabody, Ma 01960

with a copy to:  
Gerald J. Billow, Esq.  
Posternak Blankstein & Lund LLP  
600 Boylston Street, Suite 3200  
Boston, Massachusetts 02199

-and-

Howard Fensterman, Esq.  
Abrams Fensterman  
111 Marcus Avenue  
Lake Success, New York 11042

The effective date of such notices shall be as follows: (a) upon delivery or refusal of delivery if sent by personal delivery, (b) two (2) Business Days after mailing (or upon actual receipt, if earlier), if sent by certified or registered mail, (c) one (1) Business Day after deposit with the courier for next business day delivery, if sent by overnight courier. The term "Business Day" means any day other than (i) a Saturday or a Sunday, and (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

Section 13.2 Notices to Mortgagee. (a) Tenant hereby agrees, upon request of Mortgagee, to give to Mortgagee copies of all notices given by Tenant of default by Landlord under this Lease at the same time and in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord. Such Mortgagee shall have the right to remedy any default under this Lease, or to cause any default of Landlord under this Lease to be remedied, and for such purpose Tenant hereby grants such Mortgagee such period of time as may be reasonable to enable such Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default which is a default. Tenant shall accept performance by such Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No default by Landlord under the Lease shall exist or shall be deemed to exist (i) as long as such Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (ii) if possession of the Leased Premises is required in order to cure such default, or if such default is not susceptible of being cured by such Mortgagee, as long as such Mortgagee, in good faith, shall have notified Tenant that such Mortgagee intends to institute proceedings under the mortgage and, thereafter, as long as such proceedings shall have been instituted and shall prosecute the same with reasonable diligence and, after having obtained possession, prosecutes the cure to completion with reasonable diligence. This Lease shall not be assigned by Tenant or modified, amended or terminated without Mortgagee's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed. In the event of the termination of this Lease by reason of any default thereunder or for any other reason whatsoever except the expiration thereof, upon such Mortgagee's written request, given

within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Mortgagee or its designee or nominee a new lease of the Leased Premises for the remainder of the Term of the Lease upon, at a minimum, all of the terms, covenants and conditions of this Lease. Neither such Mortgagee or its designee or nominee shall become liable under this Lease unless and until such Mortgagee or its designee or nominee becomes, and then only for so long as such Mortgagee or its designee or nominee remains, the fee owner of the Leased Premises or the owner of the leasehold interest of Landlord under this Lease. Such Mortgagee shall have the right, without Tenant's consent, to, as the case may be, foreclose its mortgage or to accept a deed in lieu of foreclosure of such mortgage.

(b) In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Mortgagee, and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such Mortgagee within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Mortgagee shall have become entitled under its loan documents with Landlord in connection therewith, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy).

ARTICLE XIV

QUIET ENJOYMENT

Section 14.1 Quiet Enjoyment. Landlord covenants, warrants and represents to Tenant that, provided no Lease Default exists under this Lease, Tenant shall at all times during the Term peacefully and quietly have, hold, occupy and enjoy the Leased Premises, subject to the terms and conditions of this Lease, without any hindrance, interference or molestation by Landlord or by, under or through Landlord.

ARTICLE XV

SUBLETTING AND ASSIGNMENT

Section 15.1 Subletting and Assignment (a) Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in the Landlord's sole and absolute discretion (and, if required by law, without the prior written consent of the Commissioner, which consent may be withheld in the Commissioner's sole and absolute discretion), transfer or assign this Lease or Tenant's interest in the Leased Premises or any part thereof or sublease all or any part of the Leased Premises. In all events of assignment, transfers or subletting, the prior approval of the DOH shall be required. Tenant shall not at any time, without the prior written consent of Landlord, which consent may be withheld or given in the sole and absolute discretion



of Landlord, pledge, mortgage, or hypothecate the leasehold estate hereby created or any interest of Tenant therein. The issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant aggregating to forty-nine percent (49%) or more of the stock, membership or ownership interest in Tenant or any subtenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; notwithstanding anything to the contrary, any change in the management or control of Tenant such that Lizer Josefovic does not control all of the decisions of Tenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof. Notwithstanding anything to the contrary, the issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant resulting in the aggregate interest of Lizer Josefovic, Marc Neuman, and their spouse or issue, or a trust for their benefit, equaling less than seventy-five percent (75%) of the stock, membership or ownership interest in Tenant or any subtenant to any person or entity shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; provided that any assignment by Lizer Josefovic to Joseph Josefovic made after five years after the Commencement date shall not be unreasonably denied by Landlord taking into account, among other things, the experience, performance record, and financial strength of Joseph Josefovic. The consent by Landlord to any transfer shall not constitute consent to any subsequent transfer or to any successive transfer. Further, subject to the provisions of Section 2.2, and without in any way limiting or otherwise affecting the provisions of this Lease, Landlord shall be permitted to assign this Lease and all agreements, duties, obligations and rights incidental thereto to any entity related to, or affiliated with Landlord, without any consent from Tenant. The term "transfer" shall mean any direct or indirect sale, conveyance, transfer, lease (including any amendment, extension, modification, waiver or renewal thereof), sublease, sub-sublease, assignment, mortgage, pledge, grant of a security interest or hypothecation, whether by operation of law or otherwise, whether voluntary or not, of or in (i) all or part of the Leased Premises (including any legal or beneficial direct or indirect interest therein) or (ii) any direct or indirect interest in Tenant. Notwithstanding anything to the contrary contained herein, Tenant may assign this Lease to, or enter into a sublease with, or transfer interests in an entity comprising Tenant to, an affiliate under common control with Tenant, or owned by Lizer Josefovic, Marc Neuman, or their spouse or issue, or a Trust for their benefit, without Landlord's consent, provided (x) Landlord is given thirty (30) days prior written notice of such intended transfer, assignment or sublease with copies of the organizational documents of the assignee, transferee or sublessee, (y) after such transfer, assignment or sublease, Lizer Josefovic controls all of the decisions of the assignee, transferee or sublessee, and (z) all required consents from, the Mortgagee, the DOH and/or the Commissioner (if required), have been obtained by Tenant. Notwithstanding the foregoing and any other provision contained herein to the contrary, no transfer or series of transfers of legal, economic, beneficial or equitable (direct or indirect) interest in the Lease or in Tenant's membership interest that requires DOH's consent shall occur without the prior written consent of Landlord and DOH. Tenant shall enter into such subordination agreements or subordination, non-disturbance agreements ("SNDAs") as Mortgagees may request from time to time.

Section 15.2 ~~Assignment and Related Matters~~. Any sublease shall be expressly subject and subordinate to all applicable terms and conditions of this Lease and provide that upon the expiration or earlier termination of this Lease, Landlord, at its option and without any

obligation to do so, may require any subtenant to ~~attorn~~ to Landlord, its successors and assigns, in which event Landlord shall undertake the obligations of Tenant, under such sublease from the time of the exercise of such option to the termination of such sublease; provided, however, that in such case Landlord shall not be liable for any prepaid rents, fees or other charges or for any prepaid security deposits paid by such subtenant to Tenant or for any other prior defaults of Tenant under such sublease. In the event that Landlord shall not require such attornment with respect to any sublease, then such sublease shall automatically terminate upon the expiration or earlier termination of this Lease, including any early termination by mutual agreement of Landlord and Tenant. In addition, any such sublease shall provide that in the event that the subtenant or other transferee receives a written notice from Landlord stating that a Lease Default has occurred or that an event or circumstance has occurred which with notice and/or passage of time would constitute a Lease Default, such subtenant or other transferee thereafter shall without further consent or instruction of Tenant pay all rentals accruing under such sublease directly to Landlord or as Landlord may direct; provided, however, that (a) as and to the extent that the amounts so paid to Landlord, together with other amounts paid to or received by Landlord on account of this Lease, exceed the amounts then due Landlord from Tenant under this Lease, the excess shall be promptly remitted to Tenant, and (b) at such time as the Lease Default has been cured and this Lease reinstated (if ever), Landlord shall notify and direct the subtenant(s) in writing to resume making payments of rentals under their sublease(s) directly to Tenant, or as Tenant may direct. Any such rentals collected from such subtenant or other transferee by Landlord shall be credited against the amounts owing by Tenant under this Lease in such order of priority as Landlord shall reasonably determine. Furthermore, any sublease or other agreement regarding a transfer shall expressly provide that the subtenant, assignee, manager or other transferee shall furnish Landlord, its lender, the Mortgagee, if applicable, the HUD Mortgagee, and/or the Commissioner, and for DOH, if applicable, with such financial, operational and other information about the Facility and subtenant, etc., as Landlord may request from time to time.

Section 15.3 Assignment of Subleases. To secure the prompt and full payment by Tenant of the Rent and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to the conditions hereinafter set forth and any required consent(s) from DOH, all of Tenant's right, title and interest in and to all permitted subleases, assignments, licenses and occupancy agreements, to the extent permitted by law, involving the Facility, as set forth on Schedule 15.3 attached hereto (the "Sublease", and the subtenant under a Sublease herein referred to as a "Subtenant") and hereby confers upon Landlord, its agents and representatives, a right of entry (subject to prior notice) in, and sufficient possession of, the Leased Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Sublease, and further agrees that the exercise of said right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Leased Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever; provided, however, that such assignment shall become operative and effective only if (a) a Lease Default shall occur and be continuing or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof or (c) there occurs a repossession under a disposatory warrant

or other re-entry or repossession by Landlord under the provisions hereof or (d) a receiver for all or a portion of the Leased Premises is appointed, and then only as to such of the subleases that Landlord may elect to take over and assume. At any time and from time to time within ten (10) days after Landlord's written demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants, with a photostatic copy of each of the Subleases. Upon request of Landlord, Tenant shall permit Landlord and its agents and representatives, and Mortgagee, its agents and representatives, to inspect all Subleases affecting the Leased Premises. Tenant covenants that each Sublease shall provide that the Subtenant thereunder shall be required from time to time, upon request of Landlord or Tenant, to execute, acknowledge and deliver, to and for the benefit of Landlord, an estoppel certificate confirming with respect to such Sublease the information set forth in Section 20.11 hereof.

Section 15.4 Additional Sublease Requirements. Tenant covenants and agrees that all Subleases hereafter entered into affecting the Leased Premises shall provide that (a) they are subject to this Lease and that the principals of the Subtenant acknowledge that they have read this Lease and accept the terms hereof, (b) the term thereof shall not end less than one (1) day prior to the Expiration Date hereof, unless Landlord shall consent otherwise, which consent may be withheld in Landlord's sole and absolute discretion, (c) the Subtenants will not do, authorize or execute any act, deed or thing whatsoever or fail to take any such action which will or may cause Tenant to be in violation of any of its obligations under this Lease, (d) the Subtenants will not pay rent or other sums under the Subleases with Tenant for more than one (1) month in advance, (e) the Subtenants shall give to Landlord at the address and otherwise in the manner specified in Section 13.1 hereof, a copy of any notice of default by Tenant as the landlord under the Subleases at the same time as, and whenever, any such notice of default shall be given by the Subtenants to Tenant; and (f) all of the representations, warranties and covenants given by Tenant to Landlord in this Lease, including but not limited to all reporting requirements and covenants set forth in Section 7.4 above, shall be made and given by each Subtenant for the benefit of Landlord, Mortgagee, and their respective successors and assigns.

Section 15.5 Transfers in Bankruptcy. (a) In the event of a transfer pursuant to the provisions of Title 11 of the United States Code or any statute of similar purpose or nature (the "Bankruptcy Code"), all consideration payable or otherwise to be delivered in connection with such transfer shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any consideration constituting Landlord's property pursuant to the immediately preceding sentence and not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. For purposes of this Section 15.5, the term "consideration" shall mean and include money, services, property and any other thing of value such as payment of costs, cancellation or forgiveness of indebtedness, discounts, rebates, barter and the like. If any such consideration is in a form other than cash (such as in kind, equity interests, indebtedness earn-outs, or other deferred payments, consulting or management fees, etc.), Landlord shall be entitled to receive in cash the then present fair market value of such consideration. If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment shall be given to Landlord by Tenant no later than fifteen (15) days after receipt of such offer by Tenant, but in any event no

later than ten (10) days prior to the date that Tenant shall file any application or motion with a court of competent jurisdiction for authority and approval to enter into such assumption and assignment. Such notice shall set forth (a) the name and address of the assignee, (b) all of the terms and conditions of such offer, and (c) the proposal for providing adequate assurance of future performance by such person under the Lease, including, without limitation, the assurance referred to in Section 365 of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease from and after the date of such assignment. Any such assignee shall execute and deliver to Landlord upon demand an instrument confirming such assumption.

(b) The term "adequate assurance of future performance" as used in this Lease shall mean (in addition to the assurances called for in Bankruptcy Code Section 365(1)) that any proposed assignee shall, among other things, (i) deposit with Landlord on the assumption of this Lease an amount equal to the greater of (x) two (2) times the then monthly Fixed Rent and Additional Rent or (y) such other amount deemed by the Bankruptcy Court to be reasonably necessary for the adequate protection of Landlord under the circumstances, as security for the faithful performance and observance by such assignee of the terms and obligations of this Lease, (ii) furnish Landlord with financial statements of such assignee for the prior three (3) calendar years, as finally determined after an audit and certified as correct by a certified public accountant, which financial statements shall show a net worth at least equal to the amount of the deposit referenced in (i) above, (iii) if determined by the Bankruptcy Court to be appropriate under the circumstances, grant to Landlord a security interest in such property of the proposed assignee as Landlord shall deem necessary to secure such assignee's future performance under this Lease, and (iv) provide such other information or take such action as Landlord, in its reasonable judgment, shall determine is necessary to provide adequate assurance of the performance by such assignee of its obligations under the Lease.

(c) If, at any time after Tenant may have assigned Tenant's interest in this Lease in a proceeding of the type described in Section 16.1 (iv) through (vii), this Lease shall be disaffirmed or rejected in any proceeding of the types described in Section 16.1 (iv) through (vii) hereof, or in any similar proceeding, or in the event of termination of this Lease by reason of any such proceeding or by reason of lapse of time following notice of termination given pursuant to Article XVI based upon any of the Lease Defaults set forth in said Section 16.1 (iv) through (vii) Tenant, upon request of Landlord given within thirty (30) days next following any such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord); shall (a) pay to Landlord all Rent due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant", enter into a new lease with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the expiration date of the term, unless sooner terminated as in such lease provided, at the same Fixed Rent and Additional Rent upon the then executory terms, covenants and conditions as are contained in this Lease, except that (i) Tenant's rights under the new lease shall be subject to the possessory rights, if any, of the assignee under this Lease and the possessory rights of any person claiming through or under such assignee or by virtue of any applicable Law, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant with due diligence, and (iii) such new lease shall require Tenant to

pay all Rent reserved in this Lease which, had this Lease not been so disaffirmed, rejected or terminated, would have accrued under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant shall default in its obligation to enter into said new lease for a period of ten (10) days next following Landlord's request therefor, then in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant as if Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 15.6 Management Agreement. Tenant agrees and acknowledges that it will not enter into any management agreements during the Term with regard to the Facility except with an entity (i) owned wholly by a an individual principal of Tenant which entity has been received establishment approval from the New York State Department of Health Public Health and Health Planning Council in compliance with 10 NYCRR 600.9(d)(1) and (ii) approved by HUD if the Facility is, or is about to be financed by a HUD program, and/or Mortgagee. Any such management agreement shall be subordinate to Landlord's rights hereunder, to the rights of Mortgagee and to the rights of the Commissioner. Tenant shall cause such manager to execute such documents as are required by Landlord or Mortgagee or by the Commissioner to effect such subordination.

Section 15.7 Memorandum of Lease. This Lease shall not be recorded, but either party may record a memorandum of lease in which shall describe the parties to this Lease, a description of the Leased Premises and a recitation of the Term. The party requesting that the memorandum of lease be recorded shall prepare and pay all costs of recording the memorandum of lease, and the other party agrees to execute at any and all times such instruments as may be reasonably required for such recording. Upon the expiration or earlier termination of this Lease, Landlord may release the memorandum of lease. For this purpose Tenant constitutes and appoints Landlord its true and lawful attorney in fact with full power of substitution to execute a release of such memoranda in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. To the extent any transfer tax, conveyance tax, excise tax, or similar tax is imposed by any Governmental Authority as a result of the recording of such Memorandum of Lease, or is otherwise due and payable as to Tenant's leasehold interest granted pursuant to this Lease, Tenant shall pay same to the applicable Governmental Authority.

ARTICLE XVI

DEFAULT

Section 16.1 Default by Tenant and Remedies of Landlord. (a) Tenant shall be in default under this Lease upon the occurrence of any of the following events referred to herein individually or collectively as a "Lease Default" (any reference to such event occurring or involving Tenant shall be deemed to include any such event occurring or involving any of Tenant's Subtenants):

(i) if Tenant fails to pay any installment of Rent within five (5) days after the date when due;

(ii) If Tenant defaults in the prompt and full performance of any other of Tenant's covenants, obligations or agreements hereunder which are not specifically enumerated herein as a Lease Default and fails to correct such failure within thirty (30) days of receipt of written notice from Lessor of such default (unless such default cannot reasonably be cured within thirty (30) days, in which event such period shall be extended, provided Tenant shall have commenced in good faith to cure such default within the first such thirty (30) day period and shall proceed with all due diligence to correct such default thereafter but in no event more than ninety (90) days of receipt of such written notice);

(iii) if the leasehold interest of Tenant shall be levied upon under execution or be licensed or attached and such levy, lien or attachment is not removed within sixty (60) days of the date Tenant receives notice of it;

(iv) in the event of a filing by or against Tenant of a petition under federal or state law pertaining to bankruptcy or insolvency or for a reorganization or other relief;

(v) if Tenant shall admit in writing its inability to pay its debts generally as they become due;

(vi) if Tenant is adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, with or without the consent of Tenant, a receiver or trustee of Tenant or of the whole or substantially all of its property;

(vii) if Tenant makes any general assignment for the benefit of creditors;

(A) if Tenant abandons the Leased Premises or if, except as a result of damage, destruction or a partial or complete condemnation, Tenant ceases operations of the Facility, or Tenant closes any portion of the Facility;

(viii) if Tenant receives a state or federal notice of termination of license or de-certification and such notice has not been suspended, extended, withdrawn or terminated prior to 30 days before the effective date of such termination or de-certification by any Governmental Authority;

(ix) if Tenant fails to maintain its qualifications for licensure as required by this Lease if failure to do so would result in an inability to operate the Facility or would result in the appointment of a receiver with respect to the Facility;

(x) if any transfer or assignment of this Lease or Tenant's direct or indirect interest therein or a transfer of Tenant's direct or indirect equity ownership interests occurs in violation of this Lease;

(xi) if any malpractice award or judgment exceeding any applicable malpractice insurance coverage and any applicable umbrella coverage by more than One Million

Dollars (\$1,000,000.00) shall be rendered against Tenant or any subtenant, and either (A) enforcement proceedings shall have been commenced by any creditor upon such award or judgment or (B) such award or judgment shall continue unsatisfied and in effect for a period of sixty (60) consecutive days without an insurance company reasonably satisfactory to Landlord having agreed to fund such award or judgment in a manner reasonably satisfactory to Landlord, or (C) such award or judgment has been appealed and without a bond having been posted to cover such amount that exceeds any insurance coverage, and in any case such award or judgment shall, in the reasonable opinion of Landlord, have a material adverse affect on the ability of Tenant or any subtenant to operate the Facility;

(xii) upon the denial, refusal to issue, or loss of any licenses, certifications, certificates, approvals, permits, variances, waivers, provider agreements and other authorizations necessary or required for Tenant to operate the Facility in accordance with the requirements of this Lease;

(xiii) if any of the representations or warranties made by Tenant under this Lease or any subtenant under its Sublease is otherwise proven to be untrue when made in any material respect;

(xiv) if any Governmental Authority having jurisdiction over the operation of the Facility removes ten percent (10%) or more of the patients or residents who reside in the Facility for violations of standards of care;

(xv) Tenant fails to give Landlord and Mortgagee timely notice or timely deliver copies of documents within the times required under Section 7.4 (c) through (o);

(xvi) Tenant's receipt of notice of an allegation or determination of "immediate jeopardy" (as such term is customarily used) or equivalent notice from any Governmental Authority or officer, acting on behalf thereof relating to the Facility;

(xvii) Tenant's receipt of notice of the freeze on admissions or the imposition of a denial of payment for new admissions or equivalent notice from any Governmental Authority or officer acting on behalf thereof relating to the Facility;

(xviii) Tenant's breach of its obligations under Section 3.5 including Tenant's failure to execute and deliver to Landlord within seven days of its request therefore any and all documents, certificates or agreement required or reasonably requested by Landlord, a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender or the Commissioner, including confirming the subordination required hereunder;

(xix) Tenant's breach of its obligations under Section 5.6 Management Agreement;

(xx) Tenant's breach of its obligations under Section 7.6 Security Agreement;



(xxi) Tenant fails to notify Landlord within twenty-four (24) hours after receipt of any notice from any Governmental Authority, terminating or suspending or threatening termination or suspension of any material license or certification relating to the Facility;

(xxii) a default beyond any applicable notice and cure periods under any Sublease, operating agreement, management agreement or any other material agreement relating to the Leased Premises or to which Landlord and Tenant are a party;

(xxiii) the creation of any indebtedness relating to the Leased Premises (other than trade payables which are not more than 30 days past due, not evidenced by a note and not in excess of One Million Dollars \$1,000,000.00);

(xxiv) the amendment, modification, restatement, termination or cancellation of any material contract relating to the Leased Premises, including but not limited to any Sublease, without Landlord's prior written consent, which consent shall not be unreasonably withheld;

(xxv) default or breach by Guarantor under the Guaranty beyond the expiration of any applicable cure period contained therein;

(xxvi) failure by Tenant to deposit all or any portion of the Security Deposit or Letter of Credit or to replace any portion of the Security Deposit or Letter of Credit utilized by Landlord;

(xxvii) a default or breach of any of the provisions set forth in Article XX;

(xxviii) Tenant violates any term, covenant or condition of Tenant's Regulatory Agreement (with respect to a HUD financing) which violation is not cured within thirty (30) days of written notice to Tenant;

(xxix) a default or breach of the provisions set forth in Section 7.4(b) or a report required by Section 7.4 proves to be untrue in any material respect;

(xxx) any act or omission by Tenant or any Subtenant referenced in Section 7.4 that constitutes a default by Landlord under its loan documents with Mortgagee;

(xxxi) Tenant's failure to meet the covenants provided in Section 7.4 (g)

(xxxii) the sale or transfer or attempted sale or transfer of all or any portion of any certificate of need, bid or vote right or other similar authorization relating to any portion of the Facility or the Leased Premises, assignment or subleasing in violation of the provisions of Section 15.1;

(xxxiii) the use of any portion of the Premises other than for the intended Use;

(xxxiv) the Facility appears on the Special Focus Facility List, or similar list established by CMS;

(xxxv) Tenant fails to procure the insurance coverage, or loss of the insurance coverage, required by this Lease;

(xxxvi) Tenant enters into any corporate integrity agreement, settlement or consent decree, or deferred prosecution agreement with any Governmental Authority;

(xxxvii) Any Governmental Authority assesses a fine or penalty against, or with, Tenant that imposes a payment or fine upon Tenant in excess of \$75,000;

(xxxviii) The conviction of, or plea of no contest or nolo contendere by, Tenant or any member or beneficial owner of Tenant with respect to (1) any felony or (2) any misdemeanor that involves any act of fraud, embezzlement, theft or misappropriation;

(xxxix) Tenant fails to comply with its obligations in Section 18.1(n) within 10 days after written notice from Landlord; or

(xxxx) Tenant or any Subtenant fails or refuses to execute escrow certificate required pursuant to Section 20.11, or otherwise complying with the requirements of Section 2.1 within ten (10) days after Tenant's receipt thereof.

Upon the occurrence of a Lease Default, Landlord, may, if Landlord so elects, upon five (5) days written notice of such election, forthwith terminate this Lease and Tenant's right to possession of the Leased Premises and, at Landlord's sole and absolute discretion, accelerate the payment of all Rent for the balance of the Term and declare the same presently due and payable in full provided, however, that with respect to a Lease Default under Section 16.1(a)(iv), this Lease shall automatically terminate. In the event of such Lease termination, Tenant shall immediately pay Landlord the then present value of all such accelerated Rent. Landlord, in addition to all other remedies given to Landlord at law or in equity, may by written notice to Tenant, without terminating this Lease, cause Tenant to apply to the DOH to install a manager and/or management consultant and/or a receiver having the necessary approvals from Governmental Authorities, of Landlord's choice, at Tenant's sole cost and expense or to the extent permitted by applicable law, reenter the Leased Premises by summary proceedings or otherwise. In any event, upon a Lease Default, Landlord may require Tenant to consent to a so-called "Change of Ownership" and Landlord may dispossess Tenant upon approval of the Change of Ownership or Certificate of Need by DOH, it being the understanding that under no circumstances is this Lease to be an asset for Tenant's creditors by operation of law or otherwise. In the event of such reentry, Landlord may relet the Leased Premises without being obligated so to do, and in the event of a reletting may apply the Rent therefrom first to the payment of Landlord's cost and expenses, including consultant and/or expert and attorneys' fees and expenses incurred by reason of such Lease Default, and the cost and expense of reletting including, but not limited to, repairs, renovation, or alteration of the Leased Premises and then to the amount of Rent and all other sums due from or payable by Tenant hereunder, Tenant remaining liable for all other sums due from or payable by Tenant hereunder and for any deficiency. Tenant shall also be liable for and indemnify Landlord against all amounts owed to



Medicare, Medicaid, all applicable third-party payor programs, third party payors, or residents, including, but not limited to, any overpayments received by Tenant, relating to the Term. Any and all such deficiencies shall constitute Additional Rent hereunder and shall be payable by Tenant monthly on the date herein provided for the payment of Rent. In addition to the foregoing remedies, Landlord shall immediately be entitled to retain the Security Deposit and draw on and retain proceeds of the Letter of Credit, and thereafter Tenant shall have no further claim, right, title or interest therein to the extent of Landlord's claims only.

Landlord acknowledges that its rights of reentry onto the Leased Premises set forth in this Lease do not confer on Landlord the authority to operate a nursing facility as defined in Article 28 of the Public Health Law on the Leased Premises and agrees that except in the event of a Lease Default Landlord will give the DOH, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of its intent to reenter the Leased Premises or to initiate dispossession proceedings or that the Lease is due to expire at least thirty (30) days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least sixty (60) days before expiration of the Lease.

Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossession proceedings and sixty (60) days prior to the expiration of the Lease, Tenant shall immediately notify by certified mail the DOH, Tower Building, Empire State Plaza, Albany, NY 12237 (or its then current address), of the receipt of such notice or service of such process or that the Lease is about to expire.

(b) Except as provided in this Lease to the contrary, Rent and other sums not paid when due (unless paid within any applicable grace period) shall bear interest from the date when the same are first payable under the terms of this Lease until the same shall be paid at an annual rate of interest equal to the Overdue Rate.

(c) Upon the filing of a petition by or against Tenant pursuant to the Bankruptcy Code, Tenant, as debtor and as debtor-in-possession, and any trustee who may be appointed shall: (i) timely perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (ii) pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Leased Premises an amount equal to the Rent and other charges otherwise due pursuant to this Lease; and (iii) reject or assume this Lease within one hundred twenty (120) days after the filing of such petition under the Bankruptcy Code or within such time period as the Bankruptcy Code may allow. Tenant, as debtor and as debtor-in-possession, and any trustee shall be deemed to have rejected this Lease in the event of the failure to comply with any of the above. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor, in the event of assumption and/or assignment is the prior written consent of any mortgagee in which this Lease has been assigned as collateral security.

(d) In the event of termination of this Lease by reason of any Lease Default by Tenant, or upon the expiration of the Term, then, and in any of such events, Tenant, upon Landlord's written request, shall to the greatest extent permitted by law, transfer to Landlord or its designees or assigns, or cause its Subsidiaries and/or Affiliates, to transfer to Landlord or its designees or assigns, the following: (i) all federal, state or municipal licenses,

certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements (including non-governmental) and other authorizations which relate to the operation of the Facility; and (ii) the name of the Facility as then commonly known to the general public. Tenant shall also prepare and file all notices required by applicable law in connection with such termination and shall also prepare and timely file all final Medicare and Medicaid cost reports. In the event Tenant fails or refuses to transfer any such licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, other authorization or trade name, then this provision shall constitute an act of assignment by Tenant to Landlord or its assigns without the necessity of any further written instrument. For this purpose, Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to complete or undertake such replacements in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

(e) Landlord shall have the option of taking over the operation of the Facility, or having the operation of the Facility taken over by a designee, in the event of a termination of this Lease for any reason, without Landlord or designee assuming any of Tenant's liabilities or obligations, including Tenant's liabilities and obligations with respect to employees, such as vacation, sick leave, health insurance and pension liabilities and Tenant's obligations under applicable law to offer and provide group health continuation coverage. Landlord shall give Tenant written notice of Landlord's intent to exercise the right set forth above, in which event, upon the approval of the DOH of the Change of Ownership, Tenant shall and shall cause the Subtenant to immediately turn over possession and control of the Facility without any further action having to be taken on the part of Landlord. At the request of Landlord, Tenant shall and shall cause the Subtenant to turn over any or all of inventories, personal property (including computer and telecommunications equipment but excluding any leased equipment) vehicles, and material contracts (including hospital, transfer, vendor, and managed care contracts).

(f) No failure of Landlord to enforce any rights or remedies upon default of Tenant shall prejudice or affect the rights of Landlord upon any subsequent or similar default.

(g) In the event of a Lease Default by Tenant of any of the terms, covenants, conditions or provisions of this Lease, which Lease Default is not cured within any applicable grace or cure period, Landlord shall have the right to invoke any remedy permitted to Landlord at law, in equity or otherwise. All remedies available to Landlord are declared to be cumulative and concurrent and the exercise of one shall not preclude or waive the right to exercise any other. No termination of this Lease and no taking or recovering of possession of the Leased Premises shall deprive Landlord of any of its remedies or actions against Tenant and Tenant shall remain liable for all past or future Rent, including all taxes, insurance premiums and all other charges and Rent payable by Tenant under this Lease, during and for the balance of the Term hereof. The bringing of any action for Rent or other default shall not be construed as a waiver of the right to obtain possession of the Premises.

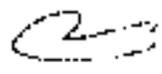
(h) If suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent, or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and breach shall be established, Tenant shall pay to Landlord all expenses,

including reasonable attorney fees, incurred therefor. This subsection shall survive termination of this Lease.

Section 16.2 Facility Operating Deficiencies. On written notice of a request therefor by Landlord to Tenant, upon a Lease Default and for a period of time necessary to fully remedy the Lease Default, Tenant shall engage the services of a consultant, unaffiliated with Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to review the management of the facility for the purpose of making recommendations to remedy the Lease Default. Subject to applicable legal requirements governing confidentiality of patient records, the consultant shall have complete access to the Facility, its records, offices and facilities, in order that it may carry out its duties. Tenant shall cause such consultant to prepare and deliver to Landlord and Tenant a written report of its recommendations within ten (10) days after its engagement. If Tenant shall fail to designate a consultant approved by Landlord as provided above within five (5) days after Tenant's receipt of Landlord's notice, Landlord may designate such consultant by further notice to Tenant. Tenant shall be responsible for payment of all fees and expenses reasonably charged and incurred by the consultant in carrying out its duties. Tenant shall promptly implement any and all reasonable recommendations made by such consultant in order to promptly correct or cure the Lease Default; provided, however, that in no event shall Tenant implement any such recommendations if the same would constitute a violation of applicable legal requirements, violate any rule or regulation of the DOH, or would otherwise cause a Lease Default hereunder (e.g., a transfer or change in use of the Leased Premises), unless Landlord consents in writing to such Lease Default, which consent may be given or withheld in Landlord's sole and absolute discretion. Nothing herein shall impose any liability or obligation on Landlord to (a) request the appointment of a consultant or (b) otherwise remedy the Facility Operating Deficiency(ies) nor shall it deem Landlord an operator of the Facility.

Section 16.3 Receivership

Tenant acknowledges that one of the rights and remedies available under applicable law for nursing facilities which fail to comply with the conditions of participation for Medicare or Medicaid is to apply to a court of competent jurisdiction for the appointment of a receiver to take possession of the Facility, to collect the rents, issues, profits and income of the Facility and to manage the operation of the Facility. Tenant further acknowledges that the revocation, suspension or material limitation of the certification of the Facility for provider status under Medicare or Medicaid (or successor programs) and/or the revocation, suspension or material limitation of a license relating to the operation of the Facility for its intended use under the laws of the State of New York will materially and irreparably impair the value of Landlord's investment in the Facility. Therefore, in the event of a Lease Default, and in addition to any other right or remedy of Landlord under this Lease, at the request of Landlord, Tenant shall request DOH to, or to the extent permissible under law, Tenant shall, petition any appropriate court, for the appointment of a receiver to take possession of the Facility, to manage the operation of the Facility under Tenant's licenses and certifications, to collect and disburse all rents, issues, profits and income generated thereby and to preserve or replace to the extent possible any such license and provider certification for the Facility or to otherwise substitute the licensee or provider thereof. The receiver shall be entitled to a reasonable fee for its services as a receiver. All such fees and other expenses of the receivership estate shall be added to the



monthly Rent due to Landlord under this Lease as Additional Rent. Tenant hereby irrevocably stipulates to the voluntary appointment of a receiver under such circumstances and for such purposes and agrees not to contest such appointment.

Section 16.4 Tenant's Waiver: Mitigation. In connection with the exercise by Landlord of any of its remedies under this Section 16, including the termination of this Lease, in whole or in part, Tenant waives, to the maximum extent permitted by applicable Laws, (1) any right of redemption, re-entry or repossession, (2) the benefit of any moratorium laws or any laws now or hereafter in force exempting property from liability for rent or for debt, (3) any duty on the part of Landlord to mitigate the damages recoverable from Tenant on account of any Lease Default by Tenant, except that notwithstanding the foregoing or anything in this Lease to the contrary, Landlord agrees to comply with any duty to mitigate damages where applicable Laws do not allow Tenant to waive such right, (4) the right to interpose any counterclaim (other than compulsory counterclaim) in any summary proceeding instituted by Landlord against Tenant in any court or in any action instituted by Landlord in any court for unpaid Rent under this Lease, and (5) any other right provided to Tenant under applicable Laws relating to a breach of or Lease Default under this Lease, including any rights to cure such breach or Lease Default.

ARTICLE XVII

ENTRY AND REIMBURSEMENT RIGHTS OF LANDLORD

Section 17.1 Entry and Reimbursement Rights of Landlord. In addition to those rights set forth in Section 7.2 of this Lease, Landlord reserves the right at all reasonable times during business hours and upon at least twenty-four (24) hours' advance oral notice to go upon and inspect the Facility and every part thereof (subject to applicable Laws pertaining to patient confidentiality and privacy and the confidentiality of medical records). If Landlord shall make any payments or perform any repairs on behalf of Tenant which are Tenant's obligation and which Tenant has failed to make after applicable notice from Landlord, then any reasonable amounts so paid by Landlord are agreed and declared to be Additional Rent, and shall be due and payable to Landlord by Tenant upon submission to Tenant of an invoice, bill, or statement therefor, together with interest charged at the Overdue Rate commencing on the date of such invoice, bill, or statement. Nothing in this Section 17.1 shall impose any liability or obligation upon Landlord.

ARTICLE XVIII

REPRESENTATIONS AND WARRANTIES

Section 18.1 Tenant's Representations, Warranties and Additional Covenants. Tenant represents, warrants and covenants to Landlord and agrees (all of which shall survive the delivery and execution of this Lease) as follows (all of Tenant's representations, warranties, and covenants shall be deemed to include, in addition to that specified herein, the identical warranties, representations, and covenants of all Subtenants, which Tenant agrees to set forth in any Sublease and which are hereby incorporated herein by reference as if set forth in full herein):

(a) Corporate. Tenant is a limited liability company duly formed and validly existing and in good standing under the laws of the State of New York, and has the limited liability company power and authority to own its property and assets and to carry on its business as now being conducted or as will be conducted on and after the Commencement Date.

(b) No Breach of Statute or Contract. The execution, delivery and performance of this Lease by Tenant and any Sublease by a subtenant will not breach any statute or regulation of any Governmental Authority, and will not as of the Commencement Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of Tenant's articles of organization, operating agreement, other material agreements, or any order, writ, injunction, decree, agreement or instrument to which Tenant is a party, or by which it or its property, may be bound.

(c) Authorization of Lease. The execution, delivery and performance of this Lease, and all Subleases, has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Tenant and this Lease constitutes the valid and binding obligation of Tenant, fully enforceable in accordance with its terms.

(d) No Litigation or Adverse Events. Except as set forth on Schedule 18.1(d) attached hereto and incorporated herein, there is no suit, claim, action or legal, administrative, arbitration, or other proceeding or governmental investigation pending or threatened, by or against Tenant, and there exists no event or condition of any character, which could prevent the consummation of the transactions contemplated by this Lease or materially adversely affect Tenant's performance of the terms and conditions hereunder.

(e) Conduct of Business. Subject to the express provisions herein, at all times after the Effective Date, Tenant shall, and cause its subtenants to (i) operate the Leased Premises (after the Commencement Date) and otherwise conduct its/their business in the ordinary course, and in compliance with all statutory and regulatory requirements of any federal, state or local authority, (ii) continue to operate the Leased Premises after the Commencement Date and maintain it in substantially its condition as of the Commencement Date, reasonable wear and tear excepted, including but not limited to repairs and replacements permitted or required under this Lease, and in a lawful manner, (iii) not encumber all or any portion of its assets or properties or the Leased Premises, including without limitation, certificates of need, bed rights, or provider agreements, (iv) preserve the goodwill of the Facility, (v) not take any action from an accounting perspective which would materially adversely affect the reimbursement formula or tax benefits with respect to the Leased Premises or any portion thereof, (vi) utilize the Leased Facility only for the Intended Purpose, (vii) not relinquish or attempt to transfer the location of or sell the skilled nursing facility license, certificate of need approval, Medicare or Medicaid certification or any other licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements or other authorizations, (viii) not refuse to admit patients without 30 days' written notice of intent to, and prior written consent of, Landlord, (ix) not dissolve, merge or consolidate with or into any other person or entity, or otherwise change its identity or company or capital structure, or (x) not change its name or its business address.

(f) Continued Existence. At all times on and after the Effective Date, Tenant shall cause to be done all things needed to preserve its rights and franchises and comply with all Laws applicable to it, and to continue to conduct its business in the ordinary course.

(g) Payment of Obligations. At all times on and after the Effective Date, Tenant shall timely pay, and cause its subtenants to timely pay, all of its/their obligations, indebtedness, taxes, charges and impositions, whether or not relating to the Leased Premises or this Lease, as they become due unless contested in good faith and diligently pursued only if permitted under and subject to the terms and conditions of this Lease.

(h) Notice of Default. At all times on and after the Effective Date, Tenant shall promptly notify Landlord of (i) any material defaults by Tenant relating to any indebtedness or obligation of Tenant, whether or not relating to the Leased Premises or this Lease, and (ii) any material violations by the Facility of any applicable Law.

(i) Compliance with Law. At all times on and after the Effective Date, Tenant shall comply in all respects, and cause its subtenants to comply in all respects, with all applicable Laws, including Medicare and Medicaid conditions of participation, to which it is subject or which are applicable to the Leased Premises and to Tenant's operation of the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility.

(j) Beds and CON. Tenant has been awarded a CON for construction and operation of 160 skilled nursing facility beds for use at the Lease Premises by DOH and such CON may be used in connection with this Lease.

(k) Tenant, on behalf of itself and its Subtenants, makes the Health Care warranties and representations set forth in Schedule 18(k) attached hereto and incorporated herein, to Landlord, its successors and assigns, which warranties and representations shall be true and correct as of Commencement Date and at all times during the Term.

(l) Except for the Subleases of the Leased Premises to the Operators, there are no subleases or sub-subleases or occupancy agreements (other than residence agreements with patients or residents) for any portion of the Leased Premises.

(m) Tenant shall maintain and comply at all times with all Order Plans (Operation and Maintenance Plans covering the handling, treatment or maintenance of asbestos or Hazardous Materials) relating to the Leased Premises, or that shall be required in the future by Mortgagee or any HUD mortgagee or, where applicable, the Commissioner.

(n) Obligations prior to Commencement Date. In addition to all of Tenant's obligations provided in this Lease, Tenant shall:

(i) as soon as practical after the Effective Date, apply for all and rigorously pursue until obtained all Health Care Licenses;

(ii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain from DOH the maximize total project cost for the Facility approvable by DOH;

(iii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain the highest possible reimbursement rate with respect to the Medicare and Medicaid programs;

(iv) as soon as practical after the Effective Date, apply for and rigorously pursue all obtained provider agreements with third party payors providing reimbursement for skilled nursing facility services in the geographic area of the Facility;

(v) after the Effective Date take all actions requested by Landlord in order for Landlord to finance and complete Landlord's Work.

(vi) as soon as practical prior to the Commencement Date, hire, employ and train a staff adequate to provide services to the residents of the Facility immediately after the Commencement Date;

(vii) as soon as practical prior to the Commencement Date, purchase a sufficient inventory of food, medicines and other perishable items necessary to provide services to the residents of the Facility immediately after the Commencement Date;

(ix) as soon as practical prior to the Commencement Date, purchase and deliver to the Facility all small wares necessary provide services to the residents of the Facility immediately after the Commencement Date;

(x) six months after the Effective Date and thereafter every six months until the Commencement Date, deliver to Landlord a detailed projected statement of income and expenses and cash flow for a three year period.

Section 18.2 Representation and Warranties. Landlord hereby represents and warrants to Tenant, all of which shall survive the delivery and execution of this Lease, and agrees, as follows:

(a) No Breach of Statute or Contract. The execution, delivery, and performance of this Lease will not violate any provision of law, any order of any court or other agency of federal or state government or any provision of any indenture, agreement, or other instrument to which Landlord is a party or by which it or any of its properties or assets are bound; conflict with, result in a breach of, or constitute (with passage of time or delivery of notice, or both), a default under any such indenture, agreements or other instrument; or result in the creation or imposition of any lien or other encumbrance of any nature whatsoever upon any of the properties or assets of Landlord.

(b) Authorization of Lease. This Lease has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Landlord and this Lease constitutes the valid and binding obligation of Landlord, fully enforceable in accordance with its terms.

(c) No Litigation or Adverse Events. There is no action, suit, examination, review, or proceeding by or before any governmental instrumentality or agency now pending or, to the knowledge of Landlord, threatened against Landlord, which, if adversely determined,

would materially impair the right of Landlord to carry on the business as contemplated under this Lease.

(d) No Default. Landlord is not in default in the performance, observation, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which it is a party relating to the Leased Premises and which default would have a material adverse effect on the Leased Premises; and

(e) Corporate. Landlord is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of New York and is qualified to do business in the State of New York, and has the limited liability company power and authority to own its properties and assets and to carry on its business as now being conducted.

ARTICLE XIV

OPERATION, MERGER AND CONSOLIDATION RESTRICTIONS

Section 19.1 Intentionally Omitted

Section 19.2 SPE Provisions. At all times during the term of this Lease, Tenant represents, warrants and covenants that Tenant and each Subtenant, and all successors and assigns of Tenant and Subtenants, is, shall be and shall continue to be a "Special Purpose Entity" as defined in Schedule 19.2. The Operating Agreement of Tenant and each subtenant shall include the Special Purpose Entity provisions set forth in Schedule 19.2.

Section 19.3 Injunctive Relief. Notwithstanding anything to the contrary set forth in this Lease, the Parties hereto understand and agree that: (a) each term of Article XIX of this Lease is fully required to protect Landlord's interests, and that no such term confers a benefit on Landlord that is disproportionate to the detriment imposed on Tenant, if any; (b) the remedy at law for any breach by Tenant of Article XIX would be inadequate; (c) the damages flowing from such breach are not readily susceptible to measurement in monetary terms; and (d) Landlord shall be entitled to immediate injunctive relief restraining any breach thereof. Nothing in this Agreement shall be deemed to limit Landlord's remedies at law or in equity for any such breach by Tenant of any term or provision of Article XIX of this Lease.

Section 19.4 Equity Interests. In the event that Tenant or any constituent entity under this Lease is ever a form of entity other than a limited liability company, the term "membership interest" as used in Articles XIX and XX hereof shall be deemed to mean the analogous form of equity ownership interest in such other type of entity, such as capital stock, partnership interest, beneficial interest or the like.

Section 19.5 No Merger or Consolidation. Except as expressly provided elsewhere in this Lease, Tenant shall not sell, or offer for sale, its assets or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity other than selling non-material assets in the ordinary course of business, to any other entity, business or activity involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and

representatives. Except as expressly provided elsewhere in this Lease, Tenant, Subtenants, Guarantor(s) and their Affiliates, shall not sell or offer to sell, assign, transfer, convey, pledge, or encumber its/their membership interests to, or otherwise attempt to merge with or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity, business or activity, whether involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and representatives, or otherwise.

ARTICLE XX

MISCELLANEOUS

Section 20.1 GOVERNING LAW. (a) ALL MATTERS PERTAINING TO THIS LEASE OR THE LEASED PREMISES SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS LEASE, AND THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LANDLORD OR TENANT ARISING OUT OF OR RELATING TO THIS LEASE MAY AT LANDLORD'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF WHITE PLAINS, COUNTY OF WESTCHESTER, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND TENANT WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TENANT HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. TENANT DOES HEREBY DESIGNATE AND APPOINT:

Eizer Josefovic  
HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, New York 10520

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO TENANT IN THE MANNER PROVIDED IN ARTICLE XIII OF THIS LEASE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON TENANT IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE

STATE OF NEW YORK, TENANT (A) SHALL GIVE PROMPT WRITTEN NOTICE TO LANDLORD OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HERELINDER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE, IN THE FORM OF A WRITTEN NOTICE TO LANDLORD, A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN WHITE PLAINS, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR AND NOTIFY LANDLORD IN WRITING OF SUCH SUBSTITUTION.

Section 20.2 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Lease shall not operate as, or be construed to be a waiver of, any subsequent breach of the same or other provision hereof. No waiver shall be effective unless set forth in writing and signed by the party against whom such waiver is asserted.

Section 20.3 Delay Not a Waiver. Neither any failure nor any delay on the part of any party hereto in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or any other document or instrument entered into or delivered in connection herewith or pursuant hereto, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. A waiver of one default with respect to any Person shall not be construed to be a waiver of any subsequent default with respect to such Person or any other Person or to impair any remedy, right or power consequent thereon.

Section 20.4 Force Majeure. Neither party shall be liable nor deemed to be in default (other than monetary defaults) for any delay or failure in performance under this Lease or other interruption of service or employment deemed resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Parties' employees, or any similar or dissimilar cause beyond the reasonable control of either party ("Force Majeure").

Section 20.5 Severability. In the event any provision of this Lease is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Lease so long as the intent of the parties under this Lease can still be effected, which shall remain in full force and effect and enforceable in accordance with its terms.

Section 20.6 Entire Agreement; Amendments. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such Parties are merged into and expressed in this instrument, and any and all prior agreements between such Parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Landlord and Tenant.

Section 20.7 Counterpart Execution; Electronic Execution. This Lease may be executed in any number of counterparts with the same effect as if the Parties hereto had signed the same document. All counterparts will be construed together and shall constitute one lease. Signatures transmitted by email as PDFs shall have the same effect as original signatures.

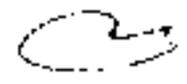
Section 20.8 Survival of Representations and Warranties. Except as specifically provided otherwise in this Lease, all representations and warranties of Landlord and Tenant shall survive the Term of this Lease.

Section 20.9 Use of Brokers. Landlord and Tenant each represent and warrant to the other that no broker, finder or other person has been involved in regard to this Lease. Landlord and Tenant hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind (including the injured party's reasonable attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of a party to this Lease in connection with the transactions contemplated herein. The provisions of this Section 20.9 shall survive the expiration and termination of this Lease.

Section 20.10 Owner for Federal Tax Purposes. It is hereby agreed between Landlord and Tenant that for federal, state and local income tax purposes Landlord will be the owner of the Leased Premises and Tenant will be the lessee thereof, and each party hereto agrees to characterize this Lease as a lease for federal, state and local income tax purposes and to file all tax returns consistent therewith.

Section 20.11 Annual Certificates. Tenant shall, without charge, at any time and from time to time, within ten (10) days after written request by Landlord or Mortgagee, deliver a written instrument to Landlord or any other person specified by Landlord, duly executed and acknowledged, certifying the following and such other matters as may be reasonably required by Landlord, including without limitation, current financial information relating to Tenant:

- (a) That Tenant has accepted and is in possession of the Leased Premises;
- (b) That this Lease is unmodified and in full force and effect or, if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (c) Whether or not there are then existing any setoffs or defenses in favor of Tenant against the enforcement of any of the terms, covenants, and conditions of this Lease by Landlord and, if so, specifying the same, and also whether or not Landlord has observed and performed all of the terms, covenants, and conditions on the part of Landlord to be observed and performed and, if not, specifying same;
- (d) That no Lease Defaults exist or are continuing; and
- (e) The dates to which Rent and all other charges hereunder have been paid.



**Section 20.12 Confidentiality.** (a) Landlord and Tenant agree to keep all aspects of (but not the existence of) this Lease confidential, and shall not disclose to any person other than the members, managers, owners, directors, officers, employees, agents, advisors, affiliates, brokers, lenders, attorneys or accountants (collectively the "Representatives") of the Parties hereto on a need-to-know basis, or to any Governmental Authority pursuant to regulatory authority, any confidential or proprietary information, knowledge or data concerning the business, affairs, operations, secrets, dealings or finances of the other party furnished directly or indirectly by such other party (collectively referred to as the "Confidential Information"). As used in this Lease, the term "Confidential Information" does not include any information which: (i) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by either party or their Representatives); (ii) was available to either party on a non-confidential basis from a source other than a party to this Lease or its Representatives, provided that such source is not and was not bound by a confidentiality agreement with the party hereto; (iii) has been independently acquired or developed by either party or their Representatives without violating any of the obligations hereunder; (iv) is required by law to be disclosed; or (v) relates to the tax structure, tax strategy or tax planning of this transaction.

(d) In the event that either party or any of the Representatives receives notice of a legal request for disclosure of any of the Confidential Information (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), the party receiving such notice ("Receiving Party") shall promptly notify the other party ("Notified Party") so that the Notified Party may seek a protective order or other appropriate remedy if it chooses to do so. Failure by the Notified Party to take action to seek a protective order or other remedy and to notify the Receiving Party of such action prior to the required disclosure date, shall be deemed a waiver of the provisions of this section. In the event that a protective order or other remedy is not obtained or that the Notified Party waives compliance with the provisions hereof, the Receiving Party shall exercise its best efforts to obtain a confidentiality agreement or protective order concerning the Confidential Information, and in the absence thereof, shall disclose only that portion of the Confidential Information which it is advised by written opinion of counsel is legally required to be disclosed, or which is compelled by court order.

(g) In the event of any breach or threatened breach hereof, Landlord or Tenant shall be entitled to equitable relief, including a temporary preliminary and permanent injunction and specific performance, in addition to all other remedies available to them at law or in equity.

(h) Notwithstanding anything herein to the contrary, Landlord (and each employee, agent, or other Representative of Landlord) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of this Lease, related documents and all materials of any kind (including opinions or other tax analyses) that are provided to Landlord relating to such tax treatment and tax structure. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income tax treatment of the transaction and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of the transaction.

**Section 20.13 Holdover.** If, at the expiration of the Term, or earlier termination of the Lease, Tenant continues to occupy the Leased Premises except during a Reimbursement Period, with Landlord's consent, such holding over shall not constitute a renewal of this Lease, but Tenant shall be a Tenant from month-to-month at 300% of the most recent Rent payable by Tenant hereunder, at Landlord's sufferance, and under the same terms and conditions as were in force and effect at the expiration of the Term (except only as to the Term), and except that in the event Tenant shall continue to occupy the Leased Premises after the expiration of the Term, without a duly executed extension agreement in writing having been entered into by and between Landlord and Tenant, then if Landlord shall suffer any damage, loss, cost or expense as a result of such holdover, then Tenant, in addition to such increased Rent, shall pay the amount thereof to Landlord (immediately on demand). The provisions of this Section shall be deemed to be "an agreement expressly provided" otherwise as provided in Section 232-C of the Real Property Law of the State of New York, Holding Over. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the Expiration Date or earlier termination of this Lease, nor shall anything contained herein be deemed to limit Landlord's remedies.

**Section 20.14 Tenant's Waiver of Claim for Physical Injury.** Landlord and Landlord's Indemnitees shall not be liable for, and Tenant waives and indemnifies Landlord and Landlord's Indemnitees against all claims for, damage or injury to person or property sustained by Tenant or any person claiming through Tenant, or otherwise, resulting from any accident or occurrence in, about, or upon the Leased Premises, whether occurring as a result of Landlord's active or passive negligence, or otherwise.

(a) Such waiver shall include, but not be limited to, claims for damage resulting from: (i) any equipment or apparatuses becoming out of repair or any other capital improvement, replacement, repair or maintenance; (ii) injury done or occasioned by wind; (iii) any defect in or failure of plumbing, heating, or air conditioning equipment, electric wiring, gas, water and steam pipes, stairs, rail or walks; (iv) broken glass; (v) the backing up of any sewer pipe or washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Leased Premises; (vi) the escape of steam or hot water, (vii) water, snow or ice being upon, falling from or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Leased Premises; (viii) the falling of any fixture, plaster, drywall or stucco; and (ix) any act, omission or negligence of trespassers.

**Section 20.15 Binding Effect.** This Lease does not constitute an offer to lease and shall not bind Landlord or Tenant unless and until each such party elects to be bound hereby by executing and delivering to the other party an executed original counterpart hereof.

**Section 20.16 Default by Landlord.** Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within sixty (60) days of when they are due to be performed, except in cases when documents are required or consents needed in less than sixty (60) days in which case failure to render timely shall be deemed to be approval or consent of Landlord (or such additional time as is reasonably required to correct any such default) except for Landlord's default in making timely payment of taxes and interest, in which case Landlord shall be in default when such payments are delinquent or past due. Tenant agrees to give to the

holder of record of any mortgage covering the Leased Premises notice simultaneously with any notice given to Landlord to correct any default of Landlord as hereinabove provided and agrees that the holder of record of any mortgage shall have the right, after receipt of notice of such default, within sixty (60) days after the expiration of Tenant's applicable cure period with respect thereto, to correct or remedy such default before Tenant may take any action under this Lease by reason of such default. Landlord shall also give to the holder of any mortgage copies of any notices of default which it may give or send to Tenant.

**Section 20.17 Liens.** Tenant shall not do or suffer anything to be done whereby the Leased Premises, or any portion thereof, or any interest therein, may be encumbered by any liens of mechanics, laborers, or materialmen, chattel mortgages or any other liens. Tenant shall, whenever and as often as any such liens are filed against the Leased Premises, or any portion thereof, purporting to be for labor or material furnished or to be furnished to Tenant, discharge the same of record within thirty (30) days after the date of filing by payment, bonding or otherwise, as provided by law. In the event of the default of Tenant in procuring this discharge, as aforesaid, of any such lien, Landlord may, with five (5) days prior notice, procure such discharge and the expenses incurred by Landlord in obtaining such discharge shall be paid by Tenant as Additional Rent within ten (10) days after notice from Landlord of the amount thereof.

**Section 20.18 Publicity.** All news releases, publicity or advertising by Tenant or their Affiliates through any media intended to reach the general public which refers to Landlord, or its Affiliates, this Lease or the purchase of the Real Property shall be subject to the prior written approval of Landlord.

**Section 20.19 Trial by Jury.** TENANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS LEASE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TENANT.

**Section 20.20 Construction and Interpretation.** The Parties have each negotiated the terms and conditions hereof and reviewed this Lease carefully. It is the intent of the Parties that each word, phrase, sentence and other part hereof shall be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part hereof against the draftsman, by virtue of being the draftsman, shall not apply.

**Section 20.21 Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than shall be due hereunder, shall be deemed to be other than a payment on account nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be given any effect or be deemed an accord and

satisfaction, and Landlord may accept such checks without prejudice to any other rights or remedies which Landlord may have.

Section 20.22 Captions and Headings. The captions and headings set forth in this Lease are included for convenience and reference only, and the words obtained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of, or the scope or intent of, this Lease, or any parts hereof or thereof.

Section 20.23 Time is of the Essence. Time is of the essence of each and every term, condition, covenant and warranty set forth herein or in any of the other Lease Documents.

Section 20.24 Successors and Assigns. This Lease and the other Lease Documents shall (a) be binding upon Tenant and Tenant's legal representatives and permitted successors and permitted assigns, and (b) inure to the benefit of Landlord and any other person or entity who may now or hereafter hold the interest of Landlord under this Lease and their respective successors and assigns.

Section 20.25 No Third Party Beneficiaries. This Lease is solely for the benefit of Landlord, its successors and assigns, and Tenant, and nothing contained herein shall confer upon any person other than Tenant or Landlord or their respective successors and assigns, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein, except only as may be otherwise specifically provided for in this Lease. All conditions to the obligations of Landlord to advance or make available proceeds of insurance or condemnation are imposed solely and exclusively for the benefit of Landlord, its successors and assigns. No other person or entity shall have standing to require satisfaction of such conditions in accordance with their terms, and no other person or entity shall, under any circumstances, be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Landlord at any time, if in Landlord's sole and absolute discretion, Landlord deems it advisable or desirable to do so.

Section 20.26 Non Competition and Non Solicitation.

Tenant agrees to the following restrictive covenants and agreements which covenants are not severable from this Lease and which are included to protect the value of the Leased Premises. Accordingly, Tenant agrees that it and their Affiliates will not, during the Term of this Lease at any time for a period of two (2) years after the expiration or early termination of this Lease, directly or indirectly, together or alone or in conjunction with any others, engage in the following:

- (i) compete with the business conducted at the Facility, and for those purposes will not own, manage, operate, join, control or participate in, or be connected as an officer, employee, partner, director, trustee or otherwise in any manner with a company which owns or operates (or provides consulting and/or management services to any skilled nursing facility located within the Primary Market of the Facility or (ii) any company providing hospice services in the Commonwealth of Massachusetts, or, otherwise lend credit to a person, firm or entity of a type which they prohibited from owning.

(ii) solicit or hire any then current or former (having provided services during the period commencing one year prior to each date of solicitation or hire) employees of the Facility (except for employment at the Facility).

(iii) solicit or cause any then current resident of the Facility to move to another nursing facility unless, except during the Term of this Lease the Facility can no longer provide adequate care for such resident.

Tenant acknowledges and agrees that the remedy at law for any breach or threat of breach of the foregoing agreements will be inadequate and that Landlord shall be entitled to injunctive relief in addition to any rights or remedies available to it for any breach or threat of breach hereof. The foregoing covenants shall be deemed to be severable and if the same be held invalid by reason of length of time or area covered, or both, the Tenant agrees that such length of time or area covered, or either of them, shall be reduced to the extent necessary to cure such invalidity and the provisions hereof shall be enforceable to the fullest extent permitted by law.

**Section 20.27 Subdivision.** If the Leased Premises are in excess of that which is required to operate the Facility in accordance with the Intended Use, Landlord may subdivide the Leased Premises and amend this Lease to include only so much of the Leased Premises as is necessary to operate the Facility in accordance with the Primary Intended Use. If Landlord subdivides the Leased Premises there shall be no change in the Rent payable hereunder. After any such subdivision, Tenant shall have no rights to any land which is no longer part of the Leased Premises and Landlord may sell, lease or develop any land which is no longer part of the Leased Premises. If Landlord elects to subdivide the Leased Premises Tenant shall cooperate with Landlord and take all actions reasonably requested by Landlord to effect such subdivision.

**Section 20.28 Landlord Not in Control; No Partnership.** None of the covenants or other provisions contained in this Lease shall, or shall be deemed to, give Landlord the right or power to exercise control over the affairs or management of Tenant, the power of Landlord being limited to the rights to exercise the remedies referred to in this Lease. The relationship between Tenant, on the one hand, and Landlord, on the other hand, is, and at all times shall remain, solely that of landlord and tenant. No covenant or provision of this Lease is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand. Landlord undertakes or assumes no responsibility or duty to Tenant or to any other person with respect to the Facility or this Lease, except as expressly provided in this Lease; and notwithstanding any other provision of this Lease (a) Landlord shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Tenant or its stockholders, members, or partners and Landlord never intends to ever assume such status; (b) Landlord shall not in any event be liable for any debts, expenses or losses incurred or sustained by Tenant; and (c) Landlord shall not be deemed responsible for or a participant in any acts, omissions or decisions of Tenant or their stockholders, members, or partners. Landlord, on the one hand, and Tenant, on the other hand, disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand, or any sharing of liabilities, losses, costs or expenses.

**Section 20.29 Tenant Cooperation.** Tenant agrees to cooperate with Landlord in providing, and upon request by Landlord or its lender, Tenant shall provide or cause its subtenants to provide, such documents, information, financial reports, and such other items as may be required by Mortgagee in connection with Landlord's loan or loans to acquire the Leased Premises. Tenant agrees to cause its outside counsel to provide updated healthcare opinions required by Mortgagee in connection with the healthcare operations by Tenant or its subtenants at the Facility, and if required by Mortgagee, an opinion of counsel as to the due formation of Tenant and its subtenants and due execution by said parties, and Tenant Affiliates, of the Lease, all subleases, all guaranties of the Lease, and any other documents executed by such parties in connection with the loan(s) from Mortgagee to Landlord. Tenant agrees to execute, and cause the subtenants to execute, SNDAs in form and substance required by Mortgagee and by its prospective lender who will be making HUD-insured loans to Landlords. Tenant further agrees to cooperate with Landlord and with its lenders who are processing and will be making HUD Loans to Landlords.

**Section 20.30 Capitalized Terms.** To the extent capitalized terms used herein are not defined, they shall have the same meaning as capitalized terms in the Loan Documents.

**Section 20.31 Affiliates.** The term "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

## ARTICLE XXI

### REMEDIES CUMULATIVE

**Section 21.1** The rights and remedies set forth under this Lease are in addition to all other rights and remedies afforded to Landlord under any of the other documents contemplated under this Lease ("Lease Documents") or at law or in equity, all of which are hereby reserved by Landlord, and this Lease is made and accepted without prejudice to any such rights and remedies. All of the rights and remedies of Landlord under each of the Lease Documents shall be separate and cumulative and may be exercised concurrently or successively in Landlord's sole and absolute discretion.

## ARTICLE XXII

### LIMITATION OF LIABILITY

**Section 22.1 Liability.** No member, manager, officer, shareholder, employee or agent of Landlord or its respective affiliates shall be held to any personal liability, jointly, or severally, for any obligation of, or claim against Landlord under this Lease. All persons dealing with Landlord, in any way, shall look only to the assets of Landlord for the payment of any sum or the performance of any obligations.

Section 22.2 Consequential Damages. Under no circumstances shall Landlord be liable to Tenant or any subtenant or Affiliate of Tenant for any consequential, specified, exemplary or permitted damages.

Section 22.3 Liability Limited to Interest in Premises. Tenant shall look solely to Landlord's interest in the Leased Premises owned by Landlord to satisfy any liability arising under this Lease. It is specifically agreed that no constituent partner in Landlord or officer, director, member, manager or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. Except as otherwise expressly provided herein, in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause.

### ARTICLE XXIII

#### REGULATORY ACTIONS

Section 23.1 Notice of Litigation. (a) Promptly after receipt by Tenant or its Affiliates of notice of the commencement thereof, Tenant shall provide Landlord with notice of all actions, suits, and proceedings before any Governmental Authority affecting Tenant, or its Affiliates or its Subtenants, which, if determined adversely to Tenant, its Affiliates or its Subtenants, could result in a judgment equal to or greater than Fifty Thousand Dollars (\$50,000.00).

(b) Notice of Regulatory Actions. Promptly after receipt by Tenant or its Affiliates of the notice of commencement thereof, Tenant shall provide Landlord with notice of (i) any audit, investigation, claim (excluding adjustments, complaints, and corrective activity in the ordinary course of business), proceeding, settlement, judgment, consent order, or corporate integrity agreement by or imposed by any Governmental Authority, (ii) any suspension, debarment or disqualification of Tenant, its officers and members, or its Affiliates from being a health care provider, government contractor, holder of any health care license or recipient of reimbursement from any third party payor, (iii) any suspension, termination, or revocation of any health care license of Tenant or any or any of Tenant's Affiliates or (iv) any self or voluntary disclosure of any overpayment to a third party payor by Tenant or any of Tenant's Affiliates.

(c) Notice of Settlement Negotiations. Tenant shall provide Landlord with reasonable notice of any and all settlement discussions and/or negotiations (excluding adjustments, complaints and corrective activity in the ordinary course of business) between representatives of Tenant and/or its Subtenants and any Governmental Authority, including without limitation negotiations with respect to any claim, settlement agreement, consent order or corporate integrity agreement between Tenant and its Affiliates and any Governmental Authority ("Settlement Discussions"). In connection with Settlement Discussions, (i) Tenant shall timely provide Landlord with copies of any and all documents that Tenant and/or its Subtenants intends to submit, or that Tenant and/or its Subtenants receives, in connection with any Settlement Discussions, and (ii) Tenant shall advise Landlord as to the status of the Settlement Discussions.

No receipt of any such notice under subsections (a), (b) and (c) shall impose any obligation on Landlord to take any action or to enforce its rights hereunder or otherwise remedy the circumstances leading to such notice.

ARTICLE XXIV

ANTI-TERRORISM AND ANTI-MONEY LAUNDERING COMPLIANCE

Section 24.1 Compliance with Anti-Terrorism Laws Tenant represents and warrants to Landlord that it is not, and, after making due inquiry, that no person who owns a controlling interest in or otherwise controls Tenant is, (i) listed on the Specially Designated Nationals and Blocked persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (ii) a person (a "Designated Person") either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Order (collectively, the "Executive Orders"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "Anti-Terrorism Laws". Tenant represents and warrants that it requires, and has taken reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Tenant is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section 24.1 shall not apply to any person to the extent that such person's interest in Tenant is through a U.S. Publicly-Traded Entity. As used in this Lease, "U.S. Publicly-Traded Entity" means a person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person.

Section 24.2 Funds Invested in Tenant. Tenant represents and warrants that it has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in Tenant, to assure that funds invested by such holders in Tenant are derived from legal sources ("Anti-Money Laundering Measures"). The Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq. ("BSA"), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, "Anti-Money Laundering Laws").

Section 24.3 No Violation of Anti-Money Laundering Laws. Tenant represents and warrants to Landlord, to its actual knowledge after making due inquiry, that neither Tenant nor any holder of a direct or indirect interest in Tenant (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties

under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

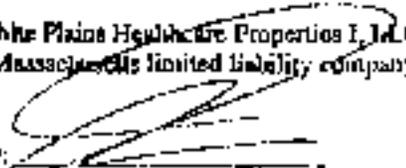
**Section 24.4 Tenant Compliance with Anti-Money Laundering Laws.** Tenant represents and warrants to Landlord that it has taken reasonable measures appropriate to the circumstances (in any event as required by law), to ensure that Tenant is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking.

[SEE ATTACHED SIGNATURE PAGES]

IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

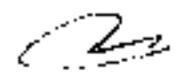
White Plains Healthcare Properties I, LLC,  
a Massachusetts limited liability company

By:   
\_\_\_\_\_  
\_\_\_\_\_, Manager

**TENANT:**

HBL SNF, LLC,  
a New York limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_





SCHEDULE 18(k)

Health Care Representations

**Health Care Representations.** Tenant, for itself, and for the Subtenants, do hereby represent and warrant to Landlord, its successors and assigns, as of the date of the Lease, that:

(a) All Medicare and Medicaid provider agreements, certificates of need, if applicable, certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by Health Care Authorities (as defined in the Lease) for the legal use, occupancy and operation of the Facility (collectively, the "Health Care Licenses") for the Facility have been obtained by the party required to hold such Health Care Licenses and are in full force and effect, including approved provider status in any approved third-party payor program. Each Subtenant (hereinafter "Operator") owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all such Health Care Licenses and will operate or cause the Facility to be operated in such a manner that the Health Care Licenses shall remain in full force and effect;

(b) The Facility is duly licensed as a skilled nursing facility as required under the applicable laws of the State of New York. The licensed bed capacity of the Facility and the actual bed count operated at the Facility is 160. The Tenant has not applied to reduce the number of licensed or certified beds of the Facility or to move or transfer the right to any and all of the licensed or certified beds of the Facility to any other location or to amend or otherwise change the Facility and/or the number of beds approved by the DOH or other applicable state licensing agency, and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility;

(c) The Health Care License with respect to the Facility (i) has not been and will not be (A) transferred to any location other than the Facility or (B) pledged as collateral security (other than any pledge as collateral security to Tenant's accounts receivable lender approved by Landlord which pledge is subject to the interests of (x) Landlord under the Lease and (y) Mortgagee, including the liens and security interests of the Loan Documents), (ii) is and will continue to be held free from restrictions or known conflicts that would materially impair the use or operation of the Facility as intended, and (iii) is not provisional, probationary, or restricted in any way, except in instances where a Governmental Authority or Health Care Authority has issued a provisional, probationary or restricted license, permit or certification in the ordinary course pending issuance of a final license, permit or certification;

(d) Tenant has or will take any action to renew, withdraw, revoke, amend, modify, supplement or otherwise alter the nature, tenor or scope of any Health Care

License or applicable provider payment program participation, other than non-material alterations effected in the ordinary course of business;

(e) Tenant and the operation of the Facility are in material compliance with the applicable provisions of the Laws and all orders, standards, policies, restrictions or rules of any Health Care Authority having jurisdiction over the ownership, use, occupancy or operation of the Facility, including (i) staffing requirements, (ii) health and fire safety codes including quality and safety standards, (iii) accepted professional standards and principles that apply to the Operator's provision of services at the Facility, (iv) federal, state or local laws, rules, regulations or published interpretations or policies relating to the prevention of fraud and abuse, (v) insurance, reimbursement and cost reporting requirements, government payment program requirements and disclosure of ownership and related information requirements, (vi) requirements of applicable Health Care Authorities, including those relating to the Facility's physical structure and environment, licensing, quality and adequacy of nursing facility care, distributions of pharmaceuticals, rate setting, equipment, personnel, operating policies, and additions of Facility and services, and (vii) any other applicable laws, regulations or agreements for reimbursement for the type of care or services provided by Tenant and/ with respect to the Facility. As used herein, "material compliance" means a level of compliance that would keep Tenant and/ (and the operation of the Facility) free from any final orders or sanctions by any Governmental Authority or Health Care Authority having jurisdiction over the operation of the Facility and would not adversely affect Tenant's and/'s operations, including, but not limited to, its right to receive reimbursement or insurance payments;

(f) Tenant and the Facility are each in material compliance with the requirements for participation in the Medicare and Medicaid programs with respect to the Facility that currently participates in such programs and has a current provider agreement under Title XVIII and/or XIX of the Social Security Act which is in full force and effect. Facility has not had any deficiencies on its most recent survey (standard or complaint that would result in a denial of payment for new admissions with no opportunity to correct prior to termination. The Facility had not any deficiencies at "level G" or above on its most recent survey (standard or complaint), nor has Tenant been cited with any substantial quality of care deficiencies (as that term is defined in Part 488 of 42 C.F.R.) for the past two consecutive surveys. The Facility has not been designated as a Special Focus Facility (as such term is defined by the Centers for Medicare and Medicaid Services Special Focus Facility Program);

(g) Neither Tenant nor the Facility is a target of, participant in, or subject to any action, proceeding, suit, audit, investigation or sanction by any Health Care Authority or any other administrative or investigative body or entity or any other third party payor or any patient or resident (including, without limitation, whistleblower suits, or suits brought pursuant to federal or state False Claims Acts, and Medicaid/Medicare/State fraud/abuse laws, but excluding medical malpractice claims and other civil liability lawsuits for which the Facility is maintaining insurance coverage in the ordinary course of business) which may result, directly or indirectly or with the passage of time, in the imposition of a fine, penalty, alternative, interim or final sanction, a lower rate

certification, recoupment, recovery, suspension or discontinuance of all or part of reimbursement from any Health Care Authority, third-party payor, insurance carrier or private payor, a lower reimbursement rate for services rendered to eligible patients, or any other civil or criminal remedy, or which could reasonably be expected to have a material adverse effect on Landlord, Tenant, or the operation of the Facility, including the Facility's ability to accept or retain residents, or which could result in the appointment of a receiver or manager, or in the modification, limitation, annulment, revocation, transfer, surrender, suspension or other impairment of a Health Care License, or affect Tenant's participation in the Medicare, Medicaid, or third-party payor program, as applicable, or any successor program thereto, as current rate certification, nor has any such action, proceeding, suit, investigation or audit been threatened;

(h) There are no agreements with residents of the Facility or with any other persons or organizations that deviate in any material adverse respect from or that conflict with, any statutory or regulatory requirements. All resident records at the Facility, including patient and/or resident accounts records, are true, complete, and correct in all material respects;

(i) Other than the Medicare, Medicaid, and Veteran Administration programs, Tenant is not a participant in any federal, state or local program whereby any federal, state or local government or quasi-governmental body, or any intermediary, agency, board or other authority or entity may have the right to recover funds with respect to any Individual Property by reason of the advance of federal, state or local funds, including, without limitation, those authorized under the Hill-Burton Act (42 U.S.C. 291, et seq.). Tenant has received no notice, and is not aware of any violation of applicable antitrust laws;

(j) Tenant's private payor, Medicaid, Medicare, and/or managed care company, insurance company or other third-party insurance accounts receivable with respect to the Facility are free of any liens and Tenant has not pledged any of its receivables as collateral security for any loan or indebtedness;

(k) Tenant is not a party to any collective bargaining agreement or other labor contract applicable to persons employed by it at the Facility and there are no threatened or pending labor disputes at the Facility;

(l) Tenant has instituted, and the Facility is operated in material compliance with, a compliance plan which follows applicable guidelines established by Health Care Authorities;

(m) Tenant is in compliance with the Health Care Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder;

(n) There is no threatened or pending revocation, suspension, termination, probation, restriction, litigation, or non-renewal affecting Tenant and/or the Facility or provider agreement with any third-party payor, Medicare or Medicaid;

(o) All Medicare, Medicaid, and private insurance cost reports and financial reports submitted by or on behalf of the Facility are and will continue to be materially accurate and complete and have not been and will not be misleading in any material respects;

(p) The Facility and the use thereof complies in all material respects with all applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements and no waivers of such physical plant standards exist at the Facility;

(q) Any existing agreement relating to the management or operation of the Facility is in full force and effect and is not in default by any party. In the event any management or operating agreement is terminated or in the event of foreclosure or other acquisition, the subsequent operator need not obtain a certificate of need prior to applying for and receiving a license to operate the Facility or prior to receiving Medicare or Medicaid payments, as applicable;

(r) There are no actions, suits, or proceedings at law or in equity by any person or entity, including any Governmental Authority or any Health Care Authority or other agency now pending or threatened against or affecting Tenant and/or the Facility, which actions, suits or proceedings, individually or collectively, if determined against Tenant and/or the Facility, might materially adversely affect the condition (financial or otherwise) or business of Tenant and/or the condition, ownership or operation of the Facility.

SCHEDULE 19.2

"Special Purpose Entity" shall mean a corporation, limited partnership or limited liability company (such entity sometimes referred to herein as the "Company") which at all times on and after the date hereof:

(d) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Leased Premises, entering into this Lease with Landlord, subleasing the Leased Premises to affiliated subtenants; and (ii) transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(e) is not engaged and will not engage, directly or indirectly, in any business unrelated to those activities required or permitted to be performed under the Lease, including pursuant to this definition of "Special Purpose Entity" and Subsection (a) above, as applicable;

(f) does not have and will not have any assets other than those (i) related to the Leased Premises or its partnership interest in the limited partnership or the member interest in the limited liability company that operates the Leased Premises or acts as the general partner or managing member thereof, as applicable, and (ii) incidental personal property necessary for the conduct of its business, as applicable;

(g) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendments of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(h) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(i) has not failed and will not fail to correct any known misunderstanding regarding its separate identity;

(j) has maintained and will maintain its accounts, books and records separate from those of any other person, individual or entity (a "Person") and maintain its bank accounts separate from those of any other Person. To the extent required by law to file a tax return, will file its own tax returns, except to the extent it is required to file consolidated tax returns by law;

(k) has maintained and will maintain its own records, books, resolutions and agreements;

(l) has not commingled and will not commingle its funds or assets with those of any other Person and has not participated and will not participate in any cash management system with any other Person other than pursuant to its *insert any credit facilities or accounts receivables financings*;

(m) has held and will hold its assets in its own name;

(n) has conducted and will conduct its business in its name;

(o) has maintained and will maintain its financial statements, accounting records and other entry documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(p) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees, if any, in light of its contemplated business operations and in accordance with all Laws;

(q) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(r) has and will have no indebtedness other than (i) liabilities under this Lease or any Sublease (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Leased Premises and the routine administration of Tenant, and (iii) such other liabilities that are permitted under this Lease;

(s) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Lease;

(t) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(u) has allocated and will allocate fairly, reasonably and in accordance with all Laws, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(v) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Tenant or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity;

(w) has not pledged and will not pledge its assets for the benefit of any other Person;

(x) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(y) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(z) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity;

(aa) has not identified and will not identify its partners, members or shareholders, or any Affiliates of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(ab) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (A) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are in compliance with all Laws and no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party and (B) in connection with this Lease;

(ac) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Rent payable under this Lease and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Rent is insufficient to pay such obligation;

(ad) it shall consider the interests of its creditors in connection with all limited liability company actions;

(ae) does not and will not have any of its obligations guaranteed by any Affiliate except obligations under this Lease;

(af) if such entity is a limited liability company, it shall have its own board of directors or board of managers, and shall cause such board to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other corporate formalities;

(ag) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct;

(ah) has not and will not permit any other Person independent access to its bank accounts;

(i) has ceased and will cause all representatives of Tenant to act at all times with respect to Tenant consistently and in furtherance of the foregoing; and

(ii) has not and will not form, acquire, or hold any subsidiary or own any equity interest in any other entity.



# Exhibit 2 to Verified Complaint

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Liza Jozefovic ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

**RECITALS**

A. Landlord has been requested by HBI SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Tenant is owned by Guarantor, and Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recovery against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim.

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

**3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.**

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease, (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)

an unconditional Letter of Credit, in accordance with the Section 7.1(a)(ii) of the Lease in the amount of \$3,700,000, or (b) \$3,700,000 in cash to secure the full and timely payment and performance of Tenant's obligations under the Lease, (j) an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached as Exhibit 7.1(a) of the Lease or otherwise approved by Landlord and Landlord's lessors in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months, and (k) and released to Landlord all funds in the controlled account number [REDACTED] in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held as an additional Security Deposit by Landlord. After the Guaranty Termination Date, Guarantor shall continue to remain personally liable pursuant to the terms of this Guaranty for (i) all obligations of Tenant under the Lease which arose or accrued on or prior to the Guaranty Termination Date and (ii) any liability of Tenant arising out of a breach of any warranty or representation of Tenant under Lease, and all documents executed by Tenant in connection therewith, (iii) and any liability of Guarantor arising out of a breach of any warranty or representation hereunder.

**4. WAIYERS OF GUARANTOR**

4.1 Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protest, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

4.2 QUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any commercial restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

**If to Landlord:**

White Plains Healthcare Properties I, LLC  
e/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Land LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Bilkow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

HBL SNP, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

8. **CONSENT TO JURISDICTION.** Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. **CERTAIN ADDITIONAL COVENANTS.**

9.1 Financial Delivery. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 18.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. MISCELLANEOUS.

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties herein, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guarantees of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

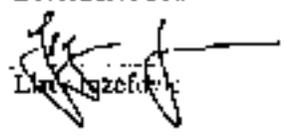
10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:

  
L. M. [unclear]



# Exhibit 3 to Verified Complaint

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Mark Neuman ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

**RECITALS**

A. Landlord has been requested by HBL SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recover against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (ii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease; (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)



GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full, however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against, or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

[[to Landlord:

White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Lued LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

HBL SNE, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Mark Neuman

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafria, Esq.

8. **CONSENT TO JURISDICTION.** Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. **CERTAIN ADDITIONAL COVENANTS.**

9.1 Financial Deliveries. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. MISCELLANEOUS.

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation"; and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:  
  
Mark Neuman

# Exhibit 4 to Verified Complaint

**HBI-SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520**

November 20, 2019

**White Plains Healthcare Properties, I, L.L.C.  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William Nicholson**

**Re: Letter of Intent  
Premises: 116-120 Church Street  
White Plains, New York**

Dear Mr. Nicholson

This Letter of Intent ("LOI") outlines our proposal for White Plains Health Care Properties, I, L.L.C (the "Contributor") to transfer the premises known as 116-120 Church Street, White Plains New York (the "Premises") to a Delaware Statutory Trust where we would jointly hold the beneficial interests in the Trust on the terms and conditions set forth below. The Building a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Facility") had been constructed pursuant to a Development Agreement dated November 19<sup>th</sup>, 2015 and for which we had simultaneously entered into that certain operating lease by and between you as Landlord and us as Tenant/Operator, (the "Lease").

- 1) **Basic Transaction:** (the "Transaction"): Contributor shall contribute premises 116-120 Church Street White Plains, New York to a newly formed Delaware Statutory Trust (the "Trust") formed by the parties. This transaction shall be memorialized by a contribution agreement in substantially the form annexed hereto as Exhibit A. The Contribution shall be governed by IRC Sec. 721. The agreed upon cost and fair market basis shall be \$67,345,348.00
  - a) Lizer Jozefovic and Mark Neuman will acquire from the Trust by a Purchase Agreement 77.50 Percent of the Beneficial Interests in the Trust and redemption of a portion of the Beneficiaries' interest for a purchase price of \$52,200,000.00 paid as follows:
    - i) By a down payment: (the "Down Payment") not to be held in escrow, but to be made upon the execution and delivery of this LOI of \$2,200,000.00 by wire transfer to the account of White Plains Healthcare Properties I, LLC according to the wire instructions annexed hereto.
    - ii) By the Trust obtaining a new first mortgage of \$51,000,000.00 to pay the balance of the Purchase Price and cover closing costs to be used as follows;

- (1) To pay the first Mortgage held by Security Benefit Life Insurance in the approximate amount of \$39,226,253 plus accrued interest and fees.
  - (2) To pay the loan encumbering the membership interests of the Contributors by Bradford Allen in the approximate amount of \$9,770,963 plus accrued interest and fees;
  - (3) By the Trust making a non-refundable down payment of \$2,200,000.00
  - (4) To pay the costs of the financing.
- b) Lizer Jozefovic and Mark Neuman shall be the A Beneficiaries of the trust holding a 77.50% Beneficial interest, and the present members of the Contributor or their designees shall be the B Beneficiary with a 22.5% equity position.
  - c) The A Beneficiaries shall be the personal guarantors of the new financing in the amount of Fifty-One Million (\$51,000,000.00) Dollars. The Transaction is to close thirty (30) days after Buyer has received approval for the Financing set forth in paragraph 1(a) ii). The Contribution Agreement shall call for a purchase price equal to Transferors cash basis in the property and shall not result in a taxable event for Contributor;
  - d) The Financing shall be an obligation of the Trust secured by a first mortgage loan on the Facility and the Premises.
  - e) Lizer Jozefovic and Mark Neuman shall act as the Personal Guarantors and shall be obligated if necessary, to secure additional personal guarantors to ensure that none of the B beneficiaries shall have any obligation to guarantee the Financing. Any additional guarantors on the Financing shall also execute and deliver a personal guaranty of Tenant's obligations to Landlord on the Lease. All guaranties on the Lease shall be full unlimited personal guarantees.
  - f) The Financing shall bear interest at a constant rate of no more than 7% per annum with Principal and Interest paid on an amortization schedule of 35 years and shall be subject to the reasonable approval of the Contributor, which consent shall not be unreasonably withheld or delivered without cost to the Tenant Borrower.
  - g) Formal Contracts: The Parties intend that additional agreements including the Contribution Agreement, Redemption Agreement and Trust Agreement (the Formal Contracts") shall be complete as of November 22nd, 2019, and absent execution of Formal Contracts this L.OI shall govern provided the Down Payment is received in good funds by Contributor upon execution of this L.OI, and in no event later than the end of business November 22, 2019. In the event Tenant defaults in the payment of rent on the Lease and such default continues for five (5) days, Contributor shall have the right to terminate this L.OI and all Formal Contracts.
  - h) Closing: The Closing of the Transaction ("Closing") will occur at the offices of the First Mortgagee Bank's counsel or such other location within the State of New York as may be agreed upon by the Parties thirty (30) days after receipt by the Trust of approval for

the Financing but no later than April 1st, 2020. If the Tenant has a commitment letter on April 1<sup>st</sup>, 2020 that is in the process of closing or if the closing is delayed by a title issue, the closing date shall be automatically extended for another Ninety-Days. If the closing does not occur by such date, time being of the essence, this LOI and the Formal Contracts shall be terminated and no party shall have any rights with respect thereto. The parties shall remain as Landlord and Tenant pursuant to the existing Lease until such time as the Transaction closes. The Lease may be amended as provided herein but only if and when such amendments are approved by Contributor's existing Lender.

- 2) **Structure of the Trust:** The Contributor and Tenant have agreed to create a Trust as a "statutory trust" in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. 3801 and enter into a Trust Agreement which shall constitute the "governing instrument" of the Trust. Each party will become a Beneficiary and will transfer certain sums of money and/or property to the Trust in exchange for a beneficial interest in the Trust as set forth above;
  - a) The Trust shall be a special purpose entity which is being formed solely for the purpose of acquiring the Trust Property from the Contributor and maintaining, improving, building upon, and leasing the Trust Property for use as a skilled nursing facility and all and such other activities incident or appropriate to the preceding
  - b) Simultaneously upon the closing of the transaction, the existing lease shall be modified only as set forth herein.
  - c) The trust shall be permitted to have only the following liens on the Trust Property and no other:
    - i) A Mortgage in the amount of Fifty-One Million (\$51,000,000.00) Dollars (the "First Mortgage") the terms of which shall be acceptable to the Department of Health and the Contributor.
    - ii) The Trust will designate Howard Fensterman and William Nicholson as the Administrative Trustees of the B interests.
      - (1) The Trust Agreement shall provide that Howard Fensterman and William Nicholson as the B beneficiaries Administrative Trustees shall have the sole authority to all issues governing administering and enforcing the terms of the Lease including the collection and distribution of rent.
      - (2) Lizer Jozefovic shall be responsible as the overall Administrative Trustee for all other matters concerning the building including but not limited to repairs, maintenance, and operation of the building. Any Trustee may be removed for cause including misconduct, bad faith, fraud or gross negligence.
      - (3) Except as otherwise provided in a Trust Agreement to be executed and notwithstanding any provision of the Act that otherwise so empowers the Trust, neither the Beneficiaries nor any Trustees nor any other Person shall be authorized or empowered, nor shall they permit the Trust, to take any of the following actions

without the prior unanimous written consent of all of the Beneficiaries:

- (a) Make any arrangements to reduce, modify, or forbear on the payment of rent by the Tenant.
- (b) Guarantee any obligation of any Person, including any Affiliate;
- (c) engage, directly or indirectly, in any business other than the actions required or permitted to be performed hereunder;
- (d) incur, create or assume any indebtedness;
- (e) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person;
- (f) To the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of their Interests subject to obtaining any approvals required under this Trust Agreement other than a sale of the interests to qualified purchasers under a syndicated offering of the B interests. The cost of such syndication shall not be charged to the B Beneficiaries and all monies derived therefrom and due hereunder shall be net of the costs of the syndication.
- (g) allow any business to be conducted on the Property other than the operation of a skilled nursing facility and ancillary uses;
- (h) own any other property or engage in any business other than owning and leasing the Trust Property for use as a skilled nursing facility;
- (i) take any action to consolidate or merge the Trust with or into any Person;
- (j) sell all or any portion of or any interest in the Trust Property;
- (k) grant an option to lease all or any portion of the Trust Property for a term (with all extension periods) ending on or after the 45th Anniversary Date;
- (l) amend, terminate or waive any material provisions of any lease for all or any portion of the Trust Property;
- (m) enter into any agreement with any Person giving any Person any rights with respect to the Trust Property that extend beyond the 45th Anniversary Date or which are not terminable without penalty on less than 90 days' notice;
- (n) encumber the Trust Property with any mortgages or another lien, easement, covenant or restriction other than the First Mortgage, or a HUD Mortgage to refinance the debt contemplated by this Agreement, at such time as HUD regulations shall allow;
- (o) modify the Trust Agreement or the Trust's certificate of trust in any manner, issue additional Interests in the Trust to any Person, or modify the rights and privileges of the Interest owners;
- (p) institute proceedings to have the Trust be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Trust or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrate (or other similar official) of the Trust or a substantial part of its property;
- (q) make any assignment for the benefit of creditors of the Trust;

- (r) ~~admit~~ in writing ~~the Trust's inability~~ to pay its debts generally as they become due;
- (s) take action in furtherance of any of the foregoing actions; or dissolve or liquidate the Trust.

iii) The 22.5% of the Trust Owned by the B Beneficiaries interest shall be subject to a Redemption Agreement where the B interests shall be sold to the A interests or their designees, assigns or transferees, over five years for a total price of \$19,800,000.00 in four tranches each representing interests of 5.625% each

- (1) Tranche one on or before August 1, 2020 in the amount of \$3,786,250.00
- (2) Tranche two on or before August 1, 2021 in the amount of \$3,786,250.00
- (3) Tranche three on or before August 1, 2022 in the amount of \$3,786,250.00
- (4) Final Tranche by August 1, 2023 in the amount of \$8,441,250

iv) Any purchase of the membership interests shall be a purchase of Beneficial Interests from the B Beneficiaries and shall reduce the Priority Return proportionate to the payments as a percentage of the total remaining price of \$19,800,000, which is the balance after payment of the non-refundable Down Payment.

v) The A Beneficiaries shall prepare at their sole cost and expense of the A Beneficiaries a Private Placement Memorandum for the Sale of Membership interests in the Trust by a Broker Dealer who specializes in sales of marginal interests in Delaware Statutory Trusts to individuals and other entities who have to designate property as target property in connection with 1031 Exchanges of Property. The A Beneficiaries shall have the right to designate a portion of their membership interests as C interests for the purpose of selling them as part of the same syndication, provided that (1) there is no change in control of the A Beneficiaries or the Tenant entity.

vi) The B Beneficiaries will be entitled to a priority return ( the "Priority Return") equal to all available rental and other income over and above the payment of the P&I on the New First Mortgage which shall in no event be less than \$2,000,000 per year (as adjusted by periodic redemptions) and shall be paid to the B Beneficiaries as a Priority Return until such time as they have been fully redeemed pursuant to the Redemption Agreement.

vii) The Trustee shall deposit all rents and other funds collected from the operation of the Real Estate in the bank designated by the first mortgagee (the "Operating Account") which shall be subject to both a Deposit Account Control Agreement and Deposit Account Instruction Agreement. The Trust shall maintain books and records of the funds from the Real Estate deposited in such account, interest earned thereon, and withdrawals therefrom. The Trustee shall pay from the Operating Account the operating expenses of the Real Estate (other than those paid by a tenant of the Real Estate as set forth in its lease) and any other payments relative to the Real Estate as required by this the Trust Agreement.

viii) The Trustee shall be responsible for receiving all cash from the Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust Agreement. The Trustees shall furnish quarterly and annual reports to each of the Beneficiaries as to the amounts of rent received from the Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficiaries.

ix) To the extent permitted by the Internal Revenue Code depreciation, which shall be calculated on a straight-line depreciation method shall be allocated as follows: a) first to the B Beneficiary to the extent necessary to shelter the Priority return from taxes and b) second to the beneficiaries, pro rata, in accordance with the ownership interests.

3) **Condition of Property and Title:** Contributor shall give, and the Trust and the Trust shall accept, a good and marketable title which any National Title Insurance Company (the "Title Company"), will approve and insure at standard rates, free and clear of all liens, hypothecations, mortgages, easements, and encumbrances, except for the Permitted Exceptions.

i) The Premises is being contributed subject to the following exceptions to the title (the "Permitted Exceptions"):

- (1) Zoning and building regulations, restrictions and ordinances now or hereafter adopted or imposed by any governmental or quasi-governmental body having or asserting jurisdiction over the Premises or any part thereof;
- (2) Future Real Estate taxes, assessments, water charges, sewer rents or other charges not yet due and payable (subject to apportionment as provided herein) and certified, confirmed or ratified assessment liens and pending assessments, if any;
- (3) The state of facts shown on an updated as built survey prepared originally prepared and revised to be an as built survey, (the "Survey") and such additional state of facts which said survey would show or reveal provided such additional state of facts do not render title unmarketable;
- (4) Any state of facts a physical inspection of the Premises would reveal;
- (5) Exceptions permitted by the Title Company (as defined herein) (the "Title Exceptions");

4) All payments made to purchase any portion of the B Beneficiaries 22.5% interest shall also act to proportionally reduce the amount of Priority Return paid to the B beneficiaries under the Trust and the proportionate difference shall be paid to the A Beneficiaries or whoever purchases the B Beneficiaries interests as the case may be.

a) **Distributions:** Provided that all required payments set forth herein have been made by the Tenant, During the interim period prior to the purchase of the premises Tenant may pay Management Fees so long as (i) the amount of such Management Fees paid in any twelve-month period shall not exceed five percent (5%) of Tenants' gross revenues for such period

and (ii) there shall not then exist, and/or the paying of such Management Fees shall not cause there to exist, a Default or Event of Default under the Lease the first mortgage on the property or the Tenant's Working Capital Loans, (iii) the Initial Payment, the payment of Rent, and all other payments set forth herein have been made by the Buyer/Tenant. Upon the occurrence of an Event of Default, Tenant shall not pay Management Fees. The Tenant will make no distributions to its shareholders, officers, affiliates, or any related party unless the Down Payment, the payment of Rent is current, and.

- 5) **Confidentiality and Disclosure:** Tenant and Contributor shall each maintain the confidentiality of all confidential and non-public information supplied by the other. If this Transaction is not consummated, each party shall return all documents obtained to the other. Except as required by law, without the prior written consent of the other party, neither Tenant nor Contributor will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this Letter of Intent. If a party is required by law to make any such disclosure, the parties shall consult with each other and seek to agree upon appropriate language for such disclosure. The Tenant acknowledges that Contributor will be unable to furnish any patient health information unless such disclosure complies specifically and completely with all terms, conditions, regulations, and guidelines in HIPAA.
- 6) **Interim Operation:** Subject to the approval in writing of Contributor's existing Lender, the parties will enter into an amendment of the Lease as follows to allow for the operation of the facility before the closing.
  - a) **Commencement Date:** The Commencement Date according to the Lease shall be September 30, 2019.
  - b) **Rent:** An initial rent payment of \$509,000.00 has been paid receipt of which is on account toward the rental period from September 30, 2019 to October 31, 2019 (the "October 2019 Rent") leaving a balance of \$13,735 for October 2019 Rent. November 1, 2019, to November 30, 2019 (the "November 2019 Rent") shall be postponed until November 18, 2019 and shall be paid by Tenant on that date. The next rental payment shall be the December monthly rent amount outlined in the Lease - \$506,097 which shall be paid on December 5, 2019. Also, the Tenant will reimburse the Landlord for their municipal maintenance escrow and utility deposits of \$5,500 and \$60,356, respectively. Such reimbursement payment shall be made on or before December 5<sup>th</sup>, 2019. Upon receipt of the \$60,356 for the utility deposits from the Tenant, Landlord will direct any refund from the Utility companies to the Tenant, or otherwise pay such refund over to the Tenant forthwith provided Landlord has previously received those funds from the Tenant.
  - i) The following amounts are in dispute, and neither party will be obligated to waive their rights and positions by the signing of this agreement. The landlord has demanded the following sums due to their Lender.

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- (1) Late and Default Interest costs of \$201,997.34 for September 2019 and October 2019,
  - (2) \$19,000 of Late Fees for November 2019,
  - (3) \$5,061 per day for Default Interest premium during November 2019.
- ii) The A Beneficiaries and the B Beneficiaries shall jointly negotiate with the Contributor's current Lenders to effectuate the best possible settlement of these late costs (the "Late Costs"). The amounts if any remaining after such joint negotiation will be paid by the 77.5% by the Buyer and 22.5% by the Contributor (provided the Initial Payment, the payment of Rent and all other payments set forth herein are made timely) from Financing proceeds. If not available from the Financing proceeds the Tenant shall pay all Late Costs.
- c) Security Deposit/ Guaranty: Section 7.1(a)(i) the Lease shall be amended to provide that Tenant shall enter into a Deposit Account Control Agreement with Metropolitan National Bank which can only be revoked with the consent of both parties, which shall provide that each month, the Tenant's Lender shall draw on the loan amount first to pay rent to the Landlord, notwithstanding the adequacy of any accounts receivable borrowing base calculations. This Document shall be part of the Closing Documents on the Tenant's first initial Term Loan and shall be delivered in full effect by December 1, 2019.
- d) Section 7.1(a)(ii) of the Lease shall be amended to provide that the obligation for the Security Deposit shall initially be reduced to 2,000,000 dollars.
- i) The sum shall be paid by Tenant as follows: (a) Provided that the Contributor has obtained a permanent Certificate of Occupancy the Tenant shall draw the initial \$1,000,000.00 from its credit line on or no later than December 1, 2019. (b) Landlord shall obtain a release of the lien of its Lender on the FF&E, upon delivery of free and clear title to the FF&E the Tenant will enter into a reverse lease and obtain at least \$1,000,000.00 which shall be paid on account of the Security Deposit no later than April 1, 2020.
  - ii) Also, Tenant shall pay the sum of \$40,000 per month commencing January 1, 2020 to be treated as additional rent until there is a total \$3,700,000 posted as Security Deposit under 7.1(a)(i).
- e) Section 7.1(a)(iii) of the Lease shall be amended to provide that instead of delivering the sum of \$1,600,000 in cash, the parties shall enter into a blocked account agreement wherein and whereby account number [REDACTED] in JP Morgan Chase Bank NA prohibiting any liquidation of that account until the Second Payment is paid. Such account shall be not be posted as collateral security to Landlord's Lender provided the Initial Payment has been made in full, and all payments of Rent are current and the Tenant is not otherwise in Default, except that the Landlord shall have a security interest in such account under a DAISA, which allows the Landlord to demand the liquidation of such account to pay any defaults under the lease.

- f) **Working Capital:** Section 7.7 of the Lease shall be amended to suspend the requirement for providing the working capital account. The Tenant shall be obtaining a single working capital line for \$8,000,000.00 no later than December 1, 2019.
- g) **Right of First Refusal and Option to Purchase:** The Tenant's rights with respect to the right of first refusal and option to purchase under Sections 3.7 and 3.7 of the Lease will be suspended pending payment in full of the Security Deposits required by Section 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) of the Lease as amended, the payment of the Initial Payment, the working capital required by Section 7.7 of the Lease and Tenant being in full compliance with the Lease.
- h) **Insurance:** Tenant shall obtain property insurance, effective as of September 30, 2019, and (2) provide the property insurance, and all other insurances required by the Lease by November 19, 2019, effective retroactively back to September 30, 2019.
- i) **Real Estate Taxes:** Real estate taxes shall be prorated as of September 30, 2019 and the Tenant's portion shall be paid to the Landlord no later than December 1, 2019, plus any late charges which the City of White Plains may impose.
- j) **Utilities:** Tenant shall pay actual costs of utilities incurred at the property covering the rental period from September 30, 2019 (prorated as the utility company billing periods may require) forthwith upon presentation of invoices for the same from the Landlord, no later than December 1, 2019.
- k) **Punchlist:** The punch list and all other developer obligations are deemed complete except for.
  - i) The White Plains Outstanding Punchlist November 5, 2019 (the Remaining Punchlist), the value of which is has been determined by the Architect and agreed herein to be \$3,800.
  - ii) The Electric Blinds in rooms (the "Suspended Work") the value of which is agreed herein to be \$35,000.
  - iii) Provided the Initial Payment is made by November 15, 2019 and provided there are no other Defaults by the Tenant, Landlord shall complete the Remaining Punchlist and the Suspended Work to the approval of the Architect, within 45 days from the date of the Contributor's receipt of the Initial Payment. Should Landlord not do so, then the Tenant may credit the agreed values of any uncompleted Punchlist or Suspended Work from the February, 2020 Rent payment, and the Landlord's Work under the Lease and Development Agreement shall be deemed complete.

Security: Tenant shall assume all property security obligations as of November 11, 2019.

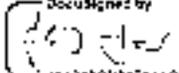
Upon the closing of the purchase of the premises by the Trust, the Trust shall take an assignment of the lease as amended above.

- 7) **Exclusivity:** In consideration of (1) the Initial Payment, (2) the payment of Rent as set forth herein, and (3) Tenant's efforts in pursuing the Transaction, Contributor agrees that (1) until the termination of this Letter of Intent, or execution of the Formal Contracts and (2) provided the payment of the Initial Payment and the payment of Rent as set forth herein is made, and (3) all other obligations of the Tenant set forth herein, Contributor will not permit any of its affiliates to, and will not authorize or permit any officer, director, employee, counsel, agent, investment banker, accountant, or other representative of any of them, directly or indirectly, to: (a) initiate contact with any person in an effort to solicit any proposal (other than that contemplated by this Letter of Intent for the acquisition (directly or indirectly, by sale of stock or assets, or by merger or consolidation or otherwise) of the operation of the Real Estate, or any of the Assets, or any other business combination or financing transaction involving such business (a "Proposal"); (b) cooperate with, or furnish or cause to be furnished any non-public information concerning the operation of the Real Estate, to, any person in connection with any Proposal; (c) negotiate or enter into discussions with any person with respect to any Proposal; or (d) enter into any agreements or understanding with the intent to effect a Proposal. Contributor will immediately give written notice to Tenant of the details of any Proposal of which Contributor becomes aware. Contributor will, and will cause its officers, directors, affiliates, agents, and representative to, terminate all discussions regarding a Proposal, other than those with Tenant and its representatives concerning the Transaction, and represents that neither it nor any of its officers, directors, affiliates, agents, or representatives have entered into any executory agreements or accepted any commitments concerning any Proposal other than the Transaction provided that (1) this LOI or successor Formal Contracts has not terminated, and (2) the payment of the Initial Payment, the payment of Rent as set forth herein have all been paid and are current, and (3) all other obligations of the Tenant set forth herein are not in Default and are current.
  
- 8) **Waiver of Claims:** Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the Lease, (3) any claims related to the Cost Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.
  
- 9) **Expenses:** Tenant and Contributor shall each be responsible for their respective accounting, legal, advisory, and other costs and expenses in connection with the Transaction. Tenant shall reimburse Contributor for its legal, advisory and other costs and expenses in connection with the Transaction and the Termination of the Lease. Reimbursement for such legal and transaction fees shall not to exceed \$125,000 and may be made from the proceeds of the Closing, provided the Closing occurs and the Contributor's existing 1<sup>st</sup> Mortgage Loan and Mezzanine Loan are paid off from the proceeds of the Financing by March 31, 2020, and (2) the Initial Payment is made as set forth herein above, and (3) the Tenant is not in default under this LOI or the successor Formal Contracts. Otherwise the \$125,000 cap shall expire and the Tenant shall pay the Contributor all such costs incurred after September 30, 2019.

10) **Letter of Intent:** This LOI represents a statement of all of the terms, conditions, representations, warranties, indemnities, covenants, and other provisions that would be contained in the definitive documentation for the proposed transactions. This LOI shall constitute a binding agreement upon payment of the or any of their respective affiliates will have any legal obligation under this LOI unless and until one or more subsequent definitive written agreements are mutually executed and delivered by each of Contributor and Buyer. No past, present, or future action, course of conduct, or failure to act relating to the transactions referenced in this LOI or relating to the negotiation of the terms of such transactions will give rise to or serve as the basis for any obligation or other liability on the part of Contributor or Buyer or any of their respective affiliates. [ These changes should be rejected]

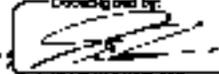
11) **Governing Law:** This Agreement shall be governed by and construed by the internal laws of the State of New York, Venue shall be in Westchester County without application of its conflicts of law rules. If you agree with the preceding, please sign and return one copy of this Letter of Intent.

**HBL-SNF, LLC**

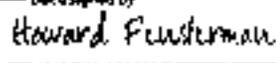
DocuSigned by  
  
 Lizer Jozelovic

**ACKNOWLEDGED AND AGREED**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

DocuSigned by  
  
 By: \_\_\_\_\_  
 Name: William A. Nicholson  
 Title: Manager

**Accepted and Agreed**

DocuSigned by  
  
 \_\_\_\_\_  
 Howard Fensterman

# Exhibit 5 to Verified Complaint

**DEI BELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP**

Alfred E. Donnellan  
Partner  
aed@ddw-law.com

CONSELLORS AT LAW  
THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601  
(914) 681-1200  
FACSIMILE (914) 684-0288

Commercial Office  
1111 SUMNER STREET  
STAMFORD, CT 06905  
(203) 391-0000

January 7, 2020

**BY EMAIL** lizerj@watersedgeusa.com  
**BY FEDERAL EXPRESS**

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**NOTICE OF DEFAULT  
AND LANDLORD'S ELECTION TO TERMINATE LEASE AND  
ACCELERATE ALL RENTS DUE FOR THE BALANCE OF THE LEASE TERM**

**PREMISES: 116-120 Church Street, White Plains, New York ("the Leased Premises")**

Mr. Josefovic:

We are attorneys for your Landlord, White Plains Health Care Properties I, LLC.

**PLEASE TAKE NOTICE**, that HBL SNF, LLC ("HBL") is in material violation of the provisions of its November 19, 2015 Lease, for the above referenced premises ("the Lease"), and the November 20, 2019 Letter of Intent (the "LOI"), the terms of which are in full force and effect (the "LOI"), and is in **DEFAULT** thereof, as follows:

1. **Lease Section 3.2, and LOI Para 6) d) ii) - Payment of Rent:** HBL has failed or refused to pay the following Rent:
  - a. Rent due for Sept. 30, 2019 - Dec. 31, 2019, totaling \$10,831.79.
  - b. Additional Rent due for Jan. 01 - 31, 2020, due Jan. 1, 2020, totaling \$40,000.00.
  
2. **Lease Section 4.2, and LOI Para 6) b) - Payment of Real Estate Taxes:** HBL has failed to pay the following Real Estate Tax payments:
  - a. Real Estate Taxes for the period 07/01/19 - 12/31/19, specifically the Tenant's prorated portion thereof, (exclusive of late fees, costs, penalties and interest per municipal regulations and per the Lease), totaling \$61,456.39.
  - b. Real Estate Taxes for the period Jan. 01, 2020 - June 30, 2020 totaling \$121,587.12

HBL SNF, LLC

part 2 Pg 10 of 150

Attn: Lizer Josefovic

January 7, 2020

Page 2

- 3. LOI Para 6) b) and Lease Section 5.2 – Payment of Utility Deposits and Municipal Maintenance Escrows: HBL has failed to pay the following Utility Deposits and Municipal Maintenance Escrows:
  - a. Utility Deposits totaling \$60,356.10
  - b. Municipal Maintenance Escrows totaling \$5,500.00
- 4. Lease Section 4.1, LOI Section 6) j) - Utility Charges: HBL has failed to pay the following Utility Charges:
  - a. ConEdison invoice paid by the Landlord to avoid power shutoff, in the amount of \$2,972.84.
- 5. Lease Article VI, including Section 6.2; LOI Para 6) h) – Delivery of Insurance Certificates:
  - a. HBL has failed to deliver certificates of insurance to Landlord in accordance with Article VI and Section 6.2 of the Lease.
- 6. Lease Section 7.4 (v) and (i) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility.
  - b. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider updated reimbursement rate sheets for the Facility.
- 7. Lease Section 7.4 (a) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required financial reporting required under the Lease.
- 8. Lease Section 7.4 (B) (vi) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required written reports providing an operational overview of significant events and circumstances at the Facility during each prior month of the Term of the Lease.
- 9. Lease Section 7.1(a)(ii), as amended by LOI Para 6) d) i) – Security Deposit:
  - a. HBL has failed or refused to deliver to the Landlord by December 1, 2019 the security deposit of \$1,000,000.00, to secure full and timely payment and performance of Tenant's obligations under the Lease.
- 10. Lease Section 7.1(a)(iii), as amended by LOI Para 6) e) – Additional Security Deposit:
  - a. HBL has failed to deliver the blocked account agreement prohibiting any liquidation of the of \$1,600,000.00 held by JPMorgan Chase Bank, N.A. in the controlled account number 3379737272.
- 11. Lease Section 4.1, 3.2 (c), and 9.1 (b) – Payment of Late Fees and Costs:
  - a. HBL has failed to pay late fees and costs related to the above failures to pay its obligations under the Lease and the LOI in the timeframes required thereunder, as set forth in the attached accounting, totaling \$23,425.09

**IDL SNF, LLC**  
Attn: Lizer Josefovic  
January 7, 2020  
Page 3

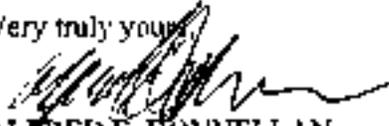
A true and accurate accounting of the amounts due and owing under the Lease and the LOI is attached herewith.

By reason of the aforementioned material Defaults under the Lease and the LOI, the Landlord hereby exercises its right under Section 16.1 of the Lease to terminate the Lease as well as Tenant's right of possession of the Leased Premises, effective January 13, 2020 at 5.00 PM NYC time.

**PLEASE TAKE FURTHER NOTICE**, that, in accordance with Section 16.1 of the Lease, all rent for the balance of the term of the Lease is accelerated, and pursuant to said lease provision, HBL is obligated to pay the Landlord \$84,073,989.91, being the present value of such accelerated rent, discounted at the rate of 6% per annum.

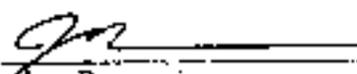
Landlord reserves all other rights and remedies at law or in equity as against the Tenant, all guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.

Landlord further reserves all rights arising from the Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 ("the Pledge"), including but not limited to all rights to enforce the Pledge through a private or public sale of the assignor's interest in Waterview Acquisition I, LLC or through a judicial foreclosure of the assignee's security interest therein.

Very truly yours,  
  
ALFRED E. DONNELLAN

**AUTHORIZED AND APPROVED:**

White Plains Health Care Properties I, LLC

  
Joshua Roccapriore  
Authorized Representative

cc: By Email (lizerj@watersedgeusa.com) & Federal Express  
Lizer Josefovic, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

HDL SNF, LLC  
Attn: Lizer Josefovic  
January 7, 2020  
Page 4

By Email (markn@epicmgt.com) & Federal Express  
Mark Neuman, Quarantor, Individually  
22 Lyncrest Drive  
Monsey, NY 10952

By Email (mzafrin@mwlj.com) & Federal Express  
Michelman & Robinson  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
Attn: Mark Zafrin, Esq.

By Federal Express  
Gerald Neuman, Individually  
c/o HDL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

**WHITE PLAINS HEALTH CARE PROPERTIES I, L.L.C.**

THE CONGRESS COMPANIES  
 General Contractors, Construction Managers, Property Managers, Development  
 90876th  
 West Kennedy Executive Center  
 1 Douglas Street  
 Westbury, MA 01981  
 Phone: 508-535-6100  
 Fax: 508-535-6701

7-Jan-19

**NOTICE OF AMOUNTS AND DELIVERABLES DUE UNDER LEASE & LOI of 11/20/19**

Gentlemen: Pursuant to the Lease and the LOI dated November 20, 2019, the following are due:

	<u>Due Date</u>	<u>Amnt Due</u>	<u>Amounts Paid</u>	<u>Amnt Past Due</u>
1 Rent January, 2020 (See Note 1 Below)	01/01/20	\$ 546,098.50	\$ 608,098.50	\$ 40,000.00
2 Rent 9/30/19 - 11/30/19	12/01/19	\$ 10,831.79	\$ -	\$ 10,831.79
<b>SUBTOTAL RENT AND ADDITIONAL RENT:</b>		<b>\$ 556,930.29</b>	<b>\$ 608,098.50</b>	<b>\$ 50,831.79</b>
3 RE Taxes 7/1/19-12/31/19, Tenant portion: 09/30/19-12/01/19	12/01/19	\$ 61,456.39	\$ -	\$ 61,456.39
4 RE Taxes for the period 1/1/20 - 03/31/20	12/01/19	\$ 121,587.12	\$ -	\$ 121,587.12
<b>SUBTOTAL REAL ESTATE TAXES</b>		<b>\$ 183,043.51</b>	<b>\$ -</b>	<b>\$ 183,043.51</b>
5 Utility Deposits	12/01/19	\$ 60,356.10	\$ -	\$ 60,356.10
6 Municipal Deposits	12/01/19	\$ 5,500.00	\$ -	\$ 5,500.00
7 Con Edison Electric Invoice	12/17/19	\$ 2,972.84	\$ -	\$ 2,972.84
<b>Subtotal</b>		<b>\$ 68,828.94</b>	<b>\$ -</b>	<b>\$ 68,828.94</b>
<b>TOTAL RENT, RE TAXES, &amp; OTHER</b>		<b>\$ 808,800.74</b>	<b>\$ 608,098.50</b>	<b>\$ 200,702.24</b>
8 Security Deposit 1st payment	12/01/19	\$ 1,000,000.00	\$ -	\$ 1,000,000.00
<b>TOTAL AMTS DUE EXCLUDING LATE FEES &amp; COSTS</b>		<b>\$ 1,808,800.74</b>	<b>\$ 608,098.50</b>	<b>\$ 1,200,702.24</b>
9 Interest on past due real estate taxes on a per-diem basis:	12/15/19	\$ 3,039.68	\$ -	\$ 3,039.68
10 Late Fees of 5% on Items 1,2,3,5,6,7	12/15/19	\$ 9,055.86	\$ -	\$ 9,055.86
11 Interest on Items 1,2,3,5 & 6 at the Overdue Rate (Prmt+5%)	12/15/19	\$ 11,329.55	\$ -	\$ 11,329.55
<b>TOTAL LATE FEES AND COSTS</b>		<b>\$ 23,425.09</b>	<b>\$ -</b>	<b>\$ 23,425.09</b>
<b>TOTAL AMOUNTS DUE</b>		<b>\$ 1,832,225.83</b>	<b>\$ 608,098.50</b>	<b>\$ 1,224,127.33</b>

**ADDITIONAL NOTICE OF ITEMS DUE: As required per the Lease and LOI, please provide the following:**

- Notice is hereby made to that Jan. 2020 & all subsequent Rent shall be due in the amount of: \$546,098.50, calculated as: \$506,098.50 rent plus \$40,000.00 additional rent 2nd Notice
- Notice is hereby made to provide all Medicare and Medicaid provider Agreements and rates. 2nd Notice
- Notice is hereby made to provide Annual Budget, Capital Expenditures, Operating Budget, Annual Financial Reporting, monthly Financial reporting Financial Reporting, Variance Reporting, Unaudited Financial Reports
- Notice is hereby made to provide per a written report of significant events at the facility including: Copies of all documents, reports, licenses and certificates from NY DOH pertaining to the Operations of the Facility 2nd Notice
- Notice is hereby made to provide Evidence of Insurance, including all required coverages under the lease, and all additional Insureds. 2nd Notice

NYSCEF DOC. NO. 6

part 2

RECEIVED

RECEIVED  
WESTCHESTER COUNTY CLERK  
100 BELMONT AVENUE  
NEWTON, NY 10820

SHIP DATE: 01/14/20  
ACT WT: 0.15 LB  
CAD: 114615709WVS0000

BILL SENDER

MR. MARK NEUMAN  
MR. MARK NEUMAN  
22 LYNCREST DR

MONSEY NY 10952

REF: 21900-001 WVT 14225

09/18/2020



7794 9844 8443

WED - 08 JAN 8:00P

STANDARD OVERNIGHT

RESS

10952

SWF

NY-US

EH PSBA



**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 1:37 PM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498448443 Delivered

# Your package has been delivered

Tracking # 779498448443

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 1:34 pm
<b>Ship to:</b> Marisa Warshaw DelBull, Deane Inc, Westport West White Plains, NY 10601 US	<b>Delivered to:</b> Mr. Mark Neuman Mr. Mark Neuman 22 LYNCREST DR MONSEY, NY 10952 U.S.



Delivered

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498448443

**Status:** Delivered 01/08/2020 1:34 PM  
 PD Signed for By: Signature not required

**Reference:** 0151960-001 MW 1/7/2020

**Signed for by:** Signature not required

**Delivery location:** MONSEY, NY

**Delivered to:** Residence

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx Envelope

**Number of pieces:** 1

**Weight:** 0.57 lbs.

**Special handling/Services:** Deliver Weekday  
Residential Delivery

**Standard transit:** 1-8-2020 by 8:00 am

RECEIVED

NOTICE

RECEIVED  
WESTCHESTER COUNTY CLERK  
100 N. MARKET ST.  
WESTCHESTER, NY 10992

DATE: 01/08/20  
ACTING: [illegible]  
CITY: WESTCHESTER, NY

BY: SENDER

MR. LIZER JOSEFOVIC, GUARANTOR, IND  
MR. LIZER JOSEFOVIC, GUARANTOR, IND  
53 MARINER WAY

MONSEY NY 10962

REF: 21-22623-SML-29-3

FEDEX

1990123725



7794 9836 3223

WED - 08 JAN 8:00P  
STANDARD OVERNIGHT

EH PSBA

NY-US  
10952  
SWF



COPY

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 10:37 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498363223 Delivered

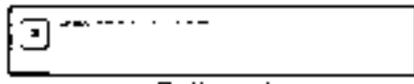
**Your package has been delivered**

Tracking # 779498363223

Ship date:  
Tue, 1/7/2020

Delivery date:  
Wed, 1/8/2020 10:35 am

Marisa Warshaw  
Do Boilo Donnolan Wegarden  
Wise  
White Plains, NY 10601  
US



Delivered

Mr. Lizer Josefovic.  
Guarantor, Ind  
Mr. Lizer Josefovic, Guarantor,  
Ind  
53 Manor Way  
MONSEY, NY 10952  
US

**Shipment Facts**

Our records indicate that the following package has been delivered:

**Tracking number:** 779498363223  
**Status:** Delivered: 01/08/2020 10:35 AM Signed for By: Signature not required  
**Reference:** 01810ev-001 MW 1/7/2020  
**Signed for by:** Signature not required  
**Delivery location:** Monsey, NY  
**Delivered to:** Res. person  
**Service type:** FedEx Standard Overnight®  
**Packaging type:** FedEx® Envelope  
**Number of pieces:** 1  
**Weight:** 0.50 lb.  
**Special handling/Services:** Deliver Weekday  
Residential Delivery  
**Standard transit:** 1/8/2020 by 8:00 pm

RECEIVED

ERIN DAVIESA (914) 681-9200  
KIMBERLY WASHINGTON  
GAILLE D. DONNELLY WASHINGTON WISE  
1210 HENRIETTA AVE  
CROTON ON HUDSON NY 10520

SHIP DATE: 01/18/20  
ACT WT: 0.15 LB  
CNO: 11407576664500000

BILL SPANER

MR. LIZER JOSEFOVIC  
HBL SNF, LLC  
1780 ALBANY POST RD

CROTON ON HUDSON NY 10520  
914 681-9200  
44-31-36000-0001-0001

09/18/2020



7794 9823 5404

WED - 08 JAN 3:00P  
STANDARD OVERNIGHT

EHANIA

10520  
NYLUS SWF



COPY

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:33 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498235404 Delivered

# Your package has been delivered

Tracking # 779498235404

Ship date: <b>Tue, 1/7/2020</b>	Delivery date: <b>Wed, 1/8/2020 9:27 am</b>
Marisa Warshaw	Mr. Cizer Josefowic
DelBela Donnellan Wegman	HEI, SNE, LLC
Yaso	1280 ALBANY POST RD
White Plains, NY 10601	CROTON ON HUDSON, NY
US	10520
	JS



**Delivered**

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498235404

**Status:** Delivered 01/08/2020 09:27 AM Signed for By: Signature Release on file

**Reference:** 0181990-001 MW 1/7/2020

**Signed for by:** Signature Release on file

**Delivery location:** CROTON ON HUDSON, NY

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 5:00 pm

Please do not rely solely on this message. This email was sent from an unattended mailbox. The report was generated approximately 9:32 AM CST on 01/08/2020.

As always, we appreciate your business.

ORIGIN: NESA 21-22623-SM  
DELIBELLO, DOMINIC M  
1 KILBUCKTON AVE

SHIP DATE: 01/08/2020  
ACT WT: 0.3 LB  
CAL: 19475, 19475, 19475

WHITE PLAINS, NY 10627  
UNITED STATES US

BILL SENDER

TO MR. GERALD NEUMAN  
CIO HBL SNF, LLC  
1280 ALBANY POST RD

19475, 19475, 19475

COPY



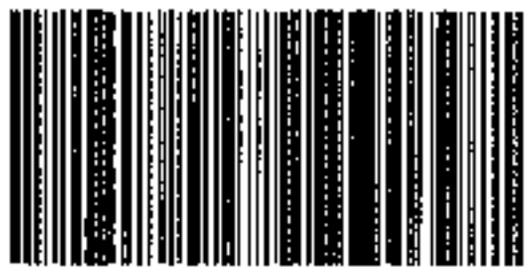
WED - 08 JAN 3:00P

STANDARD OVERNIGHT

7794 9862 7521

EH ANIA

10520  
NY-US SWF



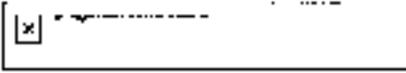
**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498627521 Delivered

# Your package has been delivered

Tracking # 779498627521

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 9:27 am
<b>Ship to:</b> Marisa Warshaw DelBelto Donnellan We... Wisc White Plains, NY 10601 US	<b>Delivered to:</b> Mr. Gerald Neuman ... 1782 A. BANY POST RD CROTON ON HUDSON, NY 10500 US



## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498627521

**Status:** Delivered: 01/08/2020 09:27 AM Signed for by: Signature Release on file

**Reference:** 0181980-001 MW 1/7/2020

**Signed for by:** Signature Release on file

**Delivery location:** CROTON ON HUDSON NY

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/6/2020 by 3:00 pm

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 8:32 AM CST on 01/08/2020.

All weights are estimates.

RECEIVED

MARK ZAFRIN, ESQ.  
MICHELMAN & ROBINSON  
800 3RD AVE  
24TH FLOOR  
NEW YORK NY 10022

SHIP DATE: 07 JAN 20  
ACTING: 0 18 LB  
CDD: 114015705W503200  
BILL SENDER

MARK ZAFRIN, ESQ.  
MICHELMAN & ROBINSON  
800 3RD AVE  
24TH FLOOR  
NEW YORK NY 10022

NY 07102-0001  
NY 07102-0001



7794 9653 9658

WED - 08 JAN 3:00P  
STANDARD OVERNIGHT

E3 JRBA

10022  
NY-US  
EWR



COPY

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498539658 Delivered

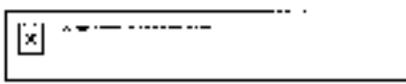
# Your package has been delivered

Tracking # 779498539658

Ship date:  
Tue, 1/7/2020

Delivery date:  
Wed, 1/8/2020 9:27 am

Marisa Warshaw  
Dolbeault-Dannebaum Weingarten  
Wise  
White Plains, NY 10604  
US



Delivered

Mark Zafra, Esq.  
M. Zafra & Robinson  
5th Floor  
800 BLDG AVE  
NEW YORK, NY 10022  
US

## Shipment Facts

Our records indicate that the following package has been delivered:

Tracking number:	779498539658
Status:	Delivered: 01/08/2020 09:27 AM SIGNED for By: E. ELAINE
Reference:	0181000001 MW 1/7/2020
Signed for by:	E. ELAINE
Delivery location:	NEW YORK, NY
Delivered to:	Receptionist/ Front Desk
Service type:	FedEx Standard Overnight®
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb
Special handling/Services:	Deliver Weekday
Standard transit:	1/8/2020 by 3:00 pm

Please do not respond to this message. This email was sent from an unsecured mailbox. This report was generated approximately 8:32 AM EST on 01/09/2020



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I LLC.

Plaintiff(s),  
-against-

Index No. 60278/2020

AFFIDAVIT OF SERVICE

HBL SNF, LLC, et al.,

Defendant(s).

STATE OF NEW YORK )  
S.S. )  
COUNTY OF NEW YORK )

DEBORAH LAPORTE, being duly sworn, deposes and says that she is over the age of eighteen years, is employed by the attorney service, DLS, INC., and is not a party to this action.

That on the 22<sup>ND</sup> day of September, 2020, at approximately the time of 2:45 P.M., at the office of the Secretary of State, of the State of New York in the City of Albany deponent served SUMMONS AND VERIFIED COMPLAINT WITH EXHIBITS 1-5 AND NOTICE OF ELECTRONIC FILING upon HBL SNF, LLC. in this action, by delivering to and leaving with SUE ZOUKY an agent of the Secretary of State, of the State of New York, two (2) true copies thereof and at that time of making such service deponent paid said Secretary of State a fee of forty dollars. That said service was made pursuant to Section, 303 of the Limited Liability Company Law

Deponent further says that she knew the person so served as aforesaid to be the individual in the Office of the Secretary of State of New York, duly authorized to accept such service on behalf of said defendant.

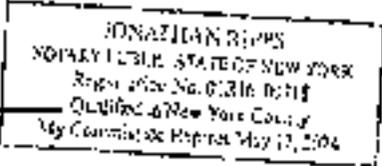
SUE ZOUKY is a white female, approximately 60 years of age, stands approximately 5 feet 9 inches tall, weighing approximately 100 pounds with brown hair.

DEBORAH LAPORTE

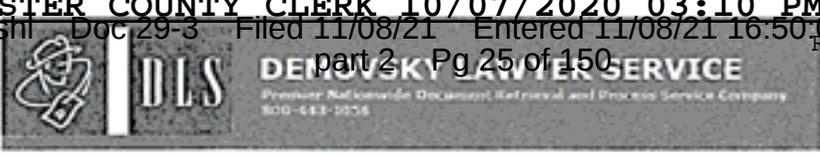
This notarization was made pursuant to Executive Order 202.7,

Sworn to before me this 23<sup>RD</sup> day of September, 2020

NOTARY PUBLIC



501 1<sup>st</sup> Floor  
13 State Street  
New York, NY 10038  
212-449-8411  
www.dlsnewyork.com



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I LLC,

Plaintiff(s),

Index No. 60278/2020

-against-

AFFIDAVIT OF SERVICE

HBL SNF, LLC, et al.,

Defendant(s),

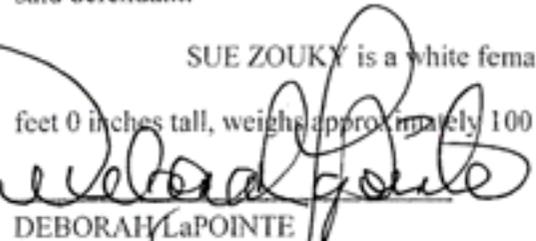
-----X  
STATE OF NEW YORK )  
S.S.:  
COUNTY OF NEW YORK )

DEBORAH LaPOINTE, being duly sworn, deposes and says that she is over the age of eighteen years, is employed by the attorney service, DLS, INC., and is not a party to this action.

That on the 22<sup>ND</sup> day of September, 2020, at approximately the time of 2:45P.M., at the office of the Secretary of State, of the State of New York in the City of Albany, deponent served SUMMONS AND VERIFIED COMPLAINT WITH EXHIBITS 1-5 AND NOTICE OF ELECTRONIC FILING upon HBL SNF, LLC, in this action, by delivering to and leaving with SUE ZOUKY an agent of the Secretary of State, of the State of New York, two (2) true copies thereof and at that time of making such service deponent paid said Secretary of State a fee of forty dollars. That said service was made pursuant to Section, 303 of the Limited Liability Company Law.

Deponent further says that she knew the person so served as aforesaid to be the individual in the Office of the Secretary of State of New York, duly authorized to accept such service on behalf of said defendant.

SUE ZOUKY is a white female, approximately 60 years of age, stands approximately 5 feet 0 inches tall, weighs approximately 100 pounds with brown hair.

  
DEBORAH LaPOINTE

This notarization was made pursuant to Executive Order 202.7.

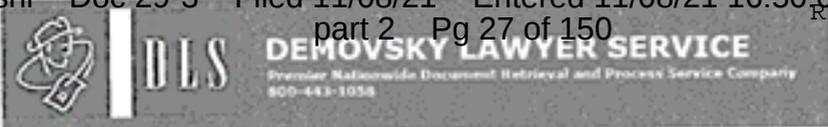
Sworn to before me this 23<sup>RD</sup> day of September, 2020

JONATHAN RIPPS  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01R16109718  
Qualified in New York County  
My Commission Expires May 17, 2024

NOTARY PUBLIC

D.L.S., Inc.  
100 State Street  
Ste. 220  
Albany, NY 12207  
518-449-8411  
www.dlsnational.com





SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES  
I LLC,

Plaintiff(s),

Index No. 60278/2020

-against-

AFFIDAVIT OF SERVICE

HBL SNF LLC, ET AL

Defendant(s).

-----X  
STATE OF NEW YORK )  
S.S.  
COUNTY OF ROCKLAND)

BRENDAN COLLISHAW, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, DLS, INC., and is not a party to this action.

That on the 1<sup>ST</sup> day of OCTOBER, 2020, at approximately the time of 5:30PM, deponent served a true copy of the SUMMONS, COMPLAINT, EXHIBITS, & NOTICE OF ELECTRONIC FILING upon MARK NEUMAN at 4 JAY COURT, MONSEY, NY 10952 by personally delivering and leaving the same with MARK NEUMAN at that address. At the time of service, deponent asked MARK NEUMAN whether HE is in active military service for the United States of America or for any state in the United States in any capacity whatever or dependent upon a person in active military service and received a negative reply.

MARK NEUMAN is a WHITE MALE, approximately 55 years of age, stands approximately 5 feet 8 inches tall, weighs approximately 160 pounds with GRAY hair and BLUE eyes.

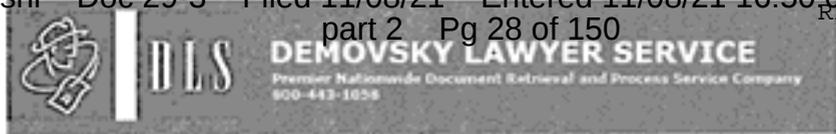
\_\_\_\_\_  
BRENDAN COLLISHAW

Sworn to before me this  
2<sup>ND</sup> day of OCTOBER, 2020



\_\_\_\_\_  
NOTARY PUBLIC

D.L.S., Inc.  
400 Rella Blvd.  
Ste. 165  
Suffern, NY 10901  
845-639-7559  
www.dlsnational.com



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES  
I LLC,

Plaintiff(s),

Index No. 60278/2020

-against-

AFFIDAVIT OF SERVICE

HBL SNF LLC, ET AL

Defendant(s).

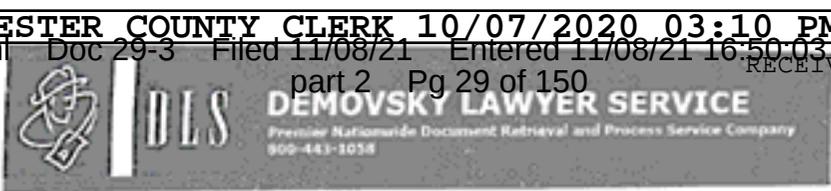
-----X  
STATE OF NEW YORK )  
S.S.  
COUNTY OF ROCKLAND)

BRENDAN COLLISHAW, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, DLS, INC., and is not a party to this action.

That on the 24<sup>TH</sup> day of SEPTEMBER, 2020, at approximately the time of 12:30PM, deponent served a true copy of the SUMMONS, COMPLAINT, EXHIBITS, & NOTICE OF ELECTRONIC FILING upon MARK NEUMAN C/O HBL SNF LLC at 537 ROUTE 22, PURDYS, NY 10578 by personally delivering and leaving the same with DENISE MOORE, a person of suitable age and discretion at that address, the actual place of MARK NEUMAN. At the time of service, deponent asked if MARK NEUMAN is in active military service for the United States of America or for the State in any capacity whatever or dependent upon a person in active military service and received a negative reply.

DENISE MOORE is a WHITE FEMALE, approximately 55 years of age, stands approximately 5 feet 6 inches tall, weighs approximately 150 pounds with SHORT GRAY hair and BLUE eyes.

D.L.S., Inc.  
400 Rella Blvd.  
Ste. 165  
Suffern, NY 10901  
845-639-7559  
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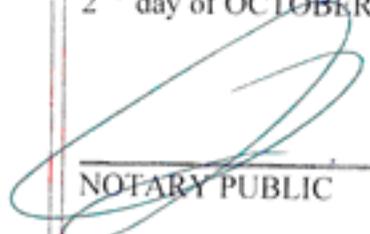


That on the 1<sup>ST</sup> day of OCTOBER, 2020, deponent served another copy of the foregoing upon MARK NEUMAN by first class mail, by enclosing a true copy thereof in a securely sealed and postpaid wrapper with the words "PERSONAL AND CONFIDENTIAL" written on the same envelope, and not indicating on the outside that it is from an attorney or concerns an action against the person to be served, and depositing the same into an official depository maintained by the Government of the United States, City of Suffern and State of New York, addressed as follows:

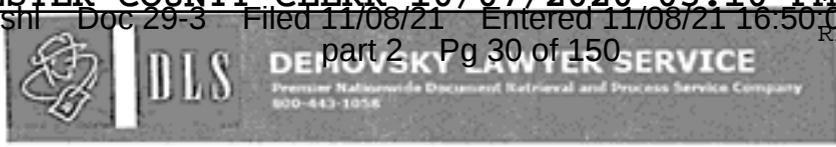
MARK NEUMAN  
C/O HBL SNF LLC  
537 ROUTE 22  
PURDYS, NY 10578

  
BRENDAN COLLISHAW

Sworn to before me this  
2<sup>ND</sup> day of OCTOBER, 2020

  
NOTARY PUBLIC

JONATHAN RIPPS  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01R16109718  
Qualified in New York County  
My Commission Expires May 17, 2024



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES  
I LLC,

Plaintiff(s),

Index No. 60278/2020

-against-

AFFIDAVIT OF SERVICE

HBL SNF LLC, ET AL

Defendant(s).

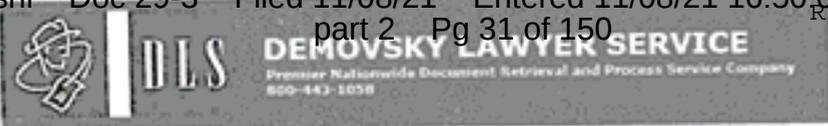
-----X  
STATE OF NEW YORK )  
S.S.  
COUNTY OF ROCKLAND)

BRENDAN COLLISHAW, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, DLS, INC., and is not a party to this action.

That on the 24<sup>TH</sup> day of SEPTEMBER, 2020, at approximately the time of 12:30PM, deponent served a true copy of the SUMMONS, COMPLAINT, EXHIBITS, & NOTICE OF ELECTRONIC FILING upon LIZER JOZEFOVIC C/O HBL SNF LLC at 537 ROUTE 22, PURDYS, NY 10578 by personally delivering and leaving the same with DENISE MOORE, a person of suitable age and discretion at that address, the actual place of LIZER JOZEFOVIC. At the time of service, deponent asked if LIZER JOZEFOVIC is in active military service for the United States of America or for the State in any capacity whatever or dependent upon a person in active military service and received a negative reply.

DENISE MOORE is a WHITE FEMALE, approximately 55 years of age, stands approximately 5 feet 6 inches tall, weighs approximately 150 pounds with SHORT GRAY hair and BLUE eyes.

D.L.S., Inc.  
400 Rella Blvd.  
Ste. 165  
Suffern, NY 10901  
845-639-7559  
www.dlsnational.com



That on the 1<sup>ST</sup> day of OCTOBER, 2020, deponent served another copy of the foregoing upon LIZER JOZEFOVIC by first class mail, by enclosing a true copy thereof in a securely sealed and postpaid wrapper with the words "PERSONAL AND CONFIDENTIAL" written on the same envelope, and not indicating on the outside that it is from an attorney or concerns an action against the person to be served, and depositing the same into an official depository maintained by the Government of the United States, City of Suffern and State of New York, addressed as follows:

LIZER JOZEFOVIC  
C/O HBL SNF LLC  
537 ROUTE 22  
PURDYS, NY 10578

BRENDAN COLLISHAW

Sworn to before me this  
2<sup>ND</sup> day of OCTOBER, 2020

NOTARY PUBLIC

JONATHAN RIPPS  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01R16109718  
Qualified in New York County  
My Commission Expires May 17, 2024

FILED: WESTCHESTER COUNTY CLERK 10/28/2020 03:25 PM

INDEX NO. 60278/2020

RECEIVED NYSCEF: 10/26/2020

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

Motion  
Withdrawn  
based on  
Stipulation  
dated Nov. 9, 2020  
NYSCEF No. 29.  
Decker  
Walt  
J.S.R.

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
- against -  
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants.  
11/10/2020

Index No. 60278/2020  
NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed Affirmation of Default of Alfred E. Donnellan Esq., dated October 28, 2020, and the exhibits annexed thereto, plaintiff, White Plains Healthcare Properties I, LLC, will move this Court, located at 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, in the Commercial Division, before the Judge to be assigned, on November 12, 2020, at 9:30 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to CPLR § 3215 granting a default judgment in plaintiff's favor against defendant, HBL SNF, LLC as prayed for in the Verified Complaint in the amount of \$115,517,567.01, with interest thereon continuing to accrue at the statutory rate, upon ground that defendant, HBL SNF, LLC, has failed to appear timely in the action and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that opposition papers shall be served upon the undersigned at least seven (7) days prior to the return date of this motion pursuant to CPLR §2214(b).

FILED: WESTCHESTER COUNTY CLERK 10/28/2020 03:25 PM

INDEX NO.: 60278/2020

RECEIVED NYSCEF: 10/28/2020

Dated: White Plains, New York  
October 28, 2020

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP

By:   
Alfred E. Donnellan, Esq.  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Tel.: (914) 681-0200

-and-

ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, FORMATO, FERRARA, WOLF &  
CARONE, LLP  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
Tel: (914) 607-7010

*Attorneys for White Plains Healthcare  
Properties I, LLC*

To: HBL SNF, LLC  
537 Route 22  
Purdys, New York 10578

Lizer Jozefovic a/k/a Lizer Jozefovic  
53 Mariner Way  
Monsey, New York 10952

Mark Neuman  
22 Lyncrest Drive  
Monsey, New York 10952

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
  
Plaintiff,  
  
against  
  
HBL SNF, LLC, LIZER JOZEOFVIC A/K/A LIZER  
JOZOFVIC and MARK NEUMAN,  
  
Defendants.

Index No. 60278/2020  
  
AFFIRMATION OF DEFAULT OF  
ALFRED E. DONNELLAN

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF WESTCHESTER    )

Alfred E. Donnellan, an attorney duly admitted to practice in the courts of the State of New York, affirms the following to be true under the penalty of perjury:

1. I am an attorney duly admitted to practice law in the State of New York. I am a member of the law firm of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, the attorneys for plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties"), in the above captioned action. I submit this affirmation in support of the instant motion of WPH Properties pursuant to CPLR § 3215, for a default judgment to be entered against defendant, HBL SNF, LLC ("HBL").

2. On September 18, 2020 WPH Properties commenced this action by filing its Summons and Verified Complaint with the Westchester County Clerk via the New York State Courts Electronic Filing System.

3. On September 22, 2020 said Summons and Verified Complaint, with a Notice of Electronic Filing in this action were served upon HBL pursuant to New York Limited Liability Company Law § 303.

4. A copy of the Summons and Verified Complaint and Notice of Electronic Filing is annexed as Exhibit "1".

5. The Affidavit of Service of Deborah LaPointe, showing service of said Summons and Verified Complaint and Notice of Electronic Filing upon HBL is annexed as Exhibit "2".

6. Confirmation Notices showing that WPH Properties filed said Summons and Verified Complaint, Notice of Electronic Filing, and Affidavit of Service via the New York State Courts Electronic Filing System are annexed hereto as Exhibit "3".

7. Pursuant to CPLR § 3215(f), WPH Properties hereby submits the Verified Complaint, annexed hereto as Exhibit "1", as the Affidavit of Facts constituting WPH Properties' claim and the amount due. Pursuant to the Lease alleged in the Verified Complaint, HBL was obligated to pay to WPH Properties the amount due and owing demanded in the Verified Complaint as of August 25, 2020.

8. On September 18, 2020, WPH Properties sent HBL additional notice with copies of said Summons, Verified Complaint and Notice of Electronic Filing by Federal Express. A copy of said additional notice with Federal Express receipts showing service thereof is annexed as Exhibit "4".

9. The time for HBL to answer, move or otherwise respond to the Summons and Verified Complaint has expired and has not been extended. HBL failed to answer, move or otherwise respond to the Summons and Verified Complaint. HBL is now in default. HBL's

counsel, John Giardino, asked for an extension of time and I proposed an extension with conditions for such extension. However, counsel has not agreed to those conditions.

WHEREFORE, WPH Properties respectfully requests that the Clerk enter judgment as set forth in the Default Judgment submitted herewith, and award costs and disbursements.

Dated: White Plains, New York  
October 28, 2020

  
Alfred E. Donnellan

# Exhibit 1 to Donnellan Aff.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
  
-- against --  
  
HBL SNF, LLC, LIZER JOZEOVIC A/K/A LIZER  
JOZOPOVIC and MARK NEUMAN,  
Defendants.

Index No. 60278/2020  
Date Purchased: 9/18/20

SUMMONS

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorney an answer to the Verified Complaint in this action within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Westchester County is designated as the place of trial. The venue designated is based upon Defendant's residence.

Dated: White Plains, New York  
September 16, 2020

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
Lead Counsel for Plaintiff White Plains Healthcare  
Properties I, LLC

By:   
Alfred E. Donnellan, Esq.  
Peter S. Dawson, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN,  
FORMATO, FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare  
Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

TO:

UBI SNF, LLC  
537 Route 22  
Purdys, New York 10578

Lizer Jozefovic a/k/a Lizer Jozofovic  
53 Mariner Way  
Monsey, New York 10952

Mark Neuman  
22 Lyncrest Drive  
Monsey, New York 10952

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
  
- against -  
  
HBL SNF, LLC, LIZER JOZEOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants.

Index No. 60278/2020

VERIFIED COMPLAINT

Plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties"), by its attorneys, DeBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Fisman, Formato, Ferrara, Wolf & Carone, LLP, for its complaint against defendants, HBL SNF, LLC ("HBL"), Lizer Jozefovic a/k/a Lizer Jozofovic ("Jozefovic") and Mark Neuman ("Neuman"), alleges:

NATURE OF THE CASE

1. This action concerns HBL's material default of its obligations under an amended and restated operating lease dated as of November 19, 2015 (the "Lease"), by which WPH Properties leased to HBL a brand new, state-of-the-art, 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York.

2. WPH Properties had constructed the nursing facility and entered into the Lease with HBL dated November 19, 2015. The Lease was amended and restated in 2017. It provided that HBL would operate the facility for 30 years, commencing September 30, 2019. HBL took possession of the facility on September 30, 2019. By the end of October 2019, HBL had defaulted.

3. On January 7, 2020, WPH Properties served notice of default and elected to terminate the Lease and accelerate all rents due. This action seeks to recover from HBL the Rent it owes and the other damages its defaults have caused and to enforce the unconditional guaranties of HBL's performance under the Lease given by Neuman and Jozefovic.

PARTIES AND VENUE

4. WPH Properties is a limited liability company duly organized and existing under the laws of the State of Massachusetts, with its principal place of business at 2 Bourbon Street, Suite 200, Peabody, Massachusetts. WPH Properties is duly authorized to do business in the State of New York.

5. HBL was and is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 537 Route 22, Purdys, New York.

6. Jozefovic is an individual residing at 53 Mariner Way, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

7. Neuman is an individual residing at 22 Lyncrest Drive, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

8. Pursuant to CPLR § 502(2), venue is properly designated in Westchester County based on the residences of WPH Properties and HBL, because a substantial part of the events giving rise to the claim occurred in Westchester County and because HBL agreed in the Lease that any action or proceeding arising out of the Lease be brought in Westchester County. Lease § 20.1(b).

### FACTS

9. WPH Properties is and was at all relevant times the owner of the real property known as 116-120 Church Street, White Plains, New York (the "Real Property").

10. WPH Properties constructed a brand new, state-of-the-art, 160-bed skilled nursing facility on the Real Property.

### The Lease

11. In 2017, WPH Properties, as landlord, and HBL, as tenant, entered into the amended and restated Lease, dated as of November 19, 2015, under which WPH Properties leased to HBL the Real Property and the improvements to be constructed on the Real Property, together with other assets, all as defined in Section 2.1 of the Lease (the "Facility"). A true and accurate copy of the Lease is annexed to this complaint as Exhibit 1 and is incorporated into this complaint by reference.

12. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019.

13. HBL entered into possession of the Facility on September 30, 2019.

14. The lease provided for a term of 30 years, with three 10 year options to the tenant, unless sooner terminated. Exhibit 1, Lease, § 3.1.

15. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 (the "Fixed Rent"). Exhibit 1, Lease, § 3.2.

16. The Lease also obligated HBL to pay WPH Properties other amounts which are defined as "Additional Rent." Fixed Rent and Additional Rent are referred to collectively as "Rent."

17. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Premises during the Term. Exhibit 1, Lease, § 4.1.

18. The Lease obligated HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit 1, Lease, § 4.2.

19. The Lease obligated HBL to keep the Premises in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses relating to the Premises. Exhibit 1, Lease, § 5.2.

20. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL, under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit 1, Lease, § 7.1.

21. A true and accurate copy of the Jozefovic Guaranty is annexed to this complaint as Exhibit 2.

22. A true and accurate copy of the Neuman Guaranty is annexed to this complaint as Exhibit 3.

23. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

24. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Jozefovic without the necessity of any notice of

nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Jozefovic expressly waived.

25. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

26. The Neuman Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

27. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an agreement by Capital Funding Group by which Capital Funding Group agreed to allow HBL to draw down on its credit line each month so as to enable Capital Funding Group to pay the Fixed Rent each month directly to WPH Properties on the commencement date and for the following 11 months. Exhibit 1, Lease, § 7.1.

28. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease. Exhibit 1, Lease, § 7.1.

29. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, \$1,600,000 as an additional security deposit. Exhibit 1, Lease, § 7.1.

30. The Lease obligated HBL to provide WPH Properties all reports, statements and

inspections as defined in the Lease, including all Medicare, Medicaid and other provider agreements and reimbursement rates for the Facility, updated reimbursement rates, financial reporting and written reports providing an operational overview of significant events and circumstances on a monthly basis. Exhibit 1, Lease, § 7.4.

31. The Lease obligated HBL to maintain working capital accounts in specified amounts. Exhibit 1, Lease, § 7.7.

32. The Lease provides that HBL will be in default of the Lease if, among other things, (i) HBL fails to pay any installment of Rent within five days of the date when Rent was due; (ii) HBL defaults in the prompt and full performance of any other of its obligations and fails to correct that failure within 30 days of receipt of written notice from WPH Properties of the default; (iii) HBL fails to give WPH Properties timely notice or timely deliver copies of documents as required by section 7.4 of the Lease; (iv) HBL defaults or breaches the provisions of section 7.4(b); (v) a Guarantor defaults beyond expiration of any applicable cure period; or (vi) any governmental authority assesses a fine or penalty against HBL in an amount in excess of \$75,000. Exhibit 1, Lease, § 16.1.

33. WPH Properties performed all of the conditions on its part required by the Lease.

34. The Lease provides in section 16.1 that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent.

35. Section 16.1 of the Lease also provides that upon the occurrence of a default, and in addition to all of the other remedies provided for in the Lease, WPH Properties is immediately

entitled to retain the security deposit required by section 7.1 of the Lease and HBL has no further claim, right, title or interest therein to the extent of WPH Properties' claims.

36. Section 16.1 of the Lease also provides that upon the occurrence of a default and the commencement of an action for Rent or for any other amount due under the Lease, HBL must pay to WPH Properties all of the expenses, including reasonable attorneys' fees, incurred by WPH Properties to enforce the Lease.

37. In addition, under the terms of the Lease, HBL's continuation in occupancy after termination does not constitute a renewal of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 201.13.

**HBL breached its obligations under the Lease**

38. HBL failed to perform its obligations, materially defaulting under the Lease, almost immediately after taking possession of the Premises.

39. HBL failed to pay Rent as required by the Lease.

40. HBL failed to pay real estate taxes as required by the Lease.

41. HBL failed to pay utility deposits as required by the Lease.

42. HBL failed to pay municipal maintenance escrows as required by the Lease.

43. HBL failed to pay utility charges as required by the Lease.

44. HBL failed or refused to deliver certificates of insurance as required by the Lease.

45. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility, as required by the Lease.

46. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider

updated rate sheets, as required by the Lease.

47. HBL failed to deliver to WPH Properties the required financial reporting, as required by the Lease.

48. HBL failed to deliver to WPH Properties the required written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease, as required by the Lease.

49. HBL failed or refused to deliver to WPH Properties the security deposits, as required by the Lease.

50. HBL failed to deliver and maintain the required credit line in an amount equal to 12 months rent, as required by the Lease.

51. HBL failed to have and maintain the working capital account required by the Lease.

52. HBL failed to pay late fees and costs, as required by the Lease.

#### The Letter of Intent

53. After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease, despite HBL's default.

54. On November 20, 2019, WPH Properties and HBL entered into a Letter of Intent (the "LOI") in which WPH Properties and HBL agreed that WPH Properties would sell the Facility for \$73,000,000 to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties or its designees would have a 22.5 percent interest.

55. A true and accurate copy of the LOI is annexed to this complaint as exhibit 4.

56. The LOI provides for the Lease to be amended to require that HBL pay the November 2019 rent by November 18, 2019, the December rent by December 5, 2019 and all real

estate taxes and utility payments by December 1, 2019, that by December 5, 2019 HBL reimburse WPH Properties for \$65,856 in municipal and utility deposits, that HBL enter into a Deposit Account Control Agreement with MNB requiring MNB to draw on the account first to pay the rent.

57. The LOI further provides for the Lease to be amended so that the \$3,700,000 security deposit required by section 7.1(a)(ii) is reduced to \$2,000,000, \$1,000,000 of which was required to be paid by HBL on or before December 1, 2019 or the date on which WPH Properties obtained a certificate of occupancy for the Facility, whichever was later, and the balance of which was required to be paid upon the closing of title on April 1, 2020.

58. In addition, the LOI provides for the Lease to be amended so that in lieu of providing the additional \$1,600,000 in security required by section 7.1(a)(iii) of the Lease, HBL would be required to enter into an agreement with JP Morgan Chase Bank prohibiting liquidation of that account until the second \$1,000,000 in security required by the LOI had been paid.

59. The LOI also provides for the Lease to be amended to require HBL to obtain a single working capital line of credit in the amount of \$8,000,000 by December 1, 2019.

60. HBL defaulted and breached its obligations under the LOI by failing to pay rent, failing to pay the municipal and utility payments to WPH Properties, failing to pay the real estate taxes and utility payments, failing to enter into the Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank, by failing to pay the first \$1,000,000 security deposit as required by the LOI and by failing to obtain the \$8,000,000 working capital credit line.

61. WPH Properties performed all conditions on its part required by the LOI.

62. Solely as a result of HBL's breach of the LOI, WPH Properties did not sell the

property to the Delaware Statutory Trust, causing damage to WPH Properties, and WPH Properties incurred interest and late charges on its loans, all of which are the direct result of HBL's breach of the LOI.

**Notice of default, termination of the Lease and acceleration of Rent**

63. On January 7, 2020, while the LOI was in effect, WPH Properties served a "Notice of Default And Landlord's Election To Terminate Lease And Accelerate All Rents Due For The Balance of the Lease Term" upon HBL (the "Notice of Default").

64. A true and accurate copy of the Notice of Default is annexed to this complaint as Exhibit 5 and incorporated into this complaint by reference.

65. The Notice of Default contains a true and accurate accounting of the amounts then due and owing under the Lease and LOI.

66. The Notice of Default gave HBL notice that by reason of HBL's defaults under the Lease, WPH Properties had exercised its right under section 16.1 of the Lease to terminate the Lease, effective January 13, 2020.

67. The Notice of Default further gave HBL notice that pursuant to section 16.1 of the Lease all Rent for the balance of the Term was accelerated and HBL became obligated to pay WPH Properties the present value of the accelerated rent, discounted at a rate of 6% per annum.

68. HBL continued, and still continues, to occupy the Premises, despite WPH Properties' termination of the Lease.

69. Because HBL has held over after its default resulted in termination of the Lease, HBL is a tenant month-to-month at a rent equal to 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

70. HBL has failed to perform its obligations as a tenant month-to-month by failing to pay rent in the amount of 300% of the most recent Rent payable by HBL under the Lease, remitting only the base rent which had been payable before WPH Properties terminated the Lease.

71. HBL is in default with respect to its obligations under the Lease and its obligations as a month-to-month tenant following termination of the Lease effective January 13, 2020.

**Amounts Due**

72. As a result of HBL's defaults, HBL is obligated to pay to WPH Properties, as of August 25, 2020, the sum of \$113,832,987.54 (the "Amounts Due"), as follows: (i) holdover rent and rent, \$7,096,182.79; (ii) municipal and utility deposits, \$26,725.35; (iii) security and working capital deposits, \$9,800,000.00; (iv) late fees, default fees, costs and professional fees, \$1,948,753.00; and (v) accelerated rent, \$94,961,326.40.

73. HBL is obligated to pay to WPH Properties the Amounts Due in full, plus any amounts that have accrued since August 25, 2020.

74. HBL has failed or refused to pay the Amounts Due.

75. WPH Properties has fully performed all obligations required to be performed on its part with respect to the Lease, the LOI, HBL's month-to-month tenancy after the termination of the Lease, the Jozefovic Guaranty, the Neuman Guaranty, the HBL Security Agreement, the Jozefovic HBL Security Agreement and the Neuman HBL Security Agreement.

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

76. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "75" with the same force and effect as if fully set forth here.

77. By reason of HBL's material default and breach of its obligations pursuant to the

Lease and its obligations as a month-to-month tenant after termination of the lease, WPH Properties is entitled to judgment against HBL for the Amounts Due, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law.

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

78. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "77" with the same force and effect as if fully set forth here.

79. By reason of HBL's material default and breach of its obligations pursuant to the LOI, WPH Properties is entitled to judgment against HBL in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

80. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "79" with the same force and effect as if fully set forth here.

81. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic for the Amounts Due pursuant to the terms of the Jozefovic Guaranty.

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

82. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "81" with the same force and effect as if fully set forth here.

83. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Neuman for the Amounts Due pursuant to the terms of the Neuman Guaranty.

WHEREFORE, WPH Properties demands judgment as follows:

1. On its first cause of action, against HBL in the amount of \$113,832,987.54, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

2. On its Second Cause of Action, against HBL, in an amount to be determined at trial; and

3. On its Third Cause of Action, against Jozefovic in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

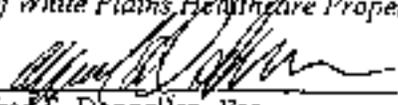
4. On its Fourth Cause of Action, against Neuman in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

5. On all causes of action, awarding costs, disbursements and attorneys' fees against HBL pursuant to the provisions of the Lease and against Jozefovic and Neuman pursuant to the provisions of the Jozefovic Guaranty and the Neuman Guaranty; and

6. Awarding such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
September 16, 2020

DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

By:   
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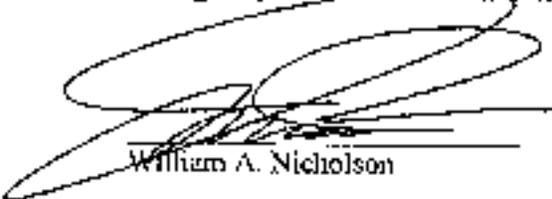
ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO,  
FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
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VERIFICATION

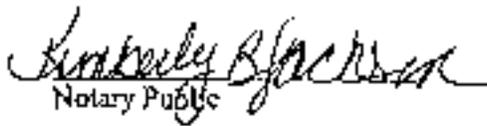
STATE OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the annexed Verified Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

  
William A. Nicholson

Sworn to before me this  
16th day of September 2020

  
Notary Public

Exp: 11-26-2021



# Exhibit 1 to Verified Complaint

AMENDED AND RESTATED OPERATING LEASE

By and Between

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
a Massachusetts limited liability company  
("Landlord")

and

HBL SNF, LLC,  
a New York limited liability company ("Tenant")

Dated as of November 19, 2015

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EXHIBIT "A"

Legal Description

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of White Plains, County of Westchester, and State of New York. Said parcel being more particularly described as follows:

BEGINNING at a point in the easterly line of Church Street where the same is intersected by the southerly line of Barker Avenue;

THENCE from said point North 70 degrees 40 minutes 10 seconds East a distance of 173.57 feet along the southerly line of Barker Avenue to a point where the same is intersected by the division line herein described parcel on the West and lands now or formerly of Koepffel & Mohr Equities on the East;

THENCE from said point and along said division line South 17 degrees 59 minutes 50 seconds East a distance of 200.51 feet to a point in the division line between the herein described parcel on the north and lands now or formerly of Hamilton Plaza Company, Inc. on the south;

THENCE from said point and along said line South 71 degrees 01 minutes 50 seconds West a distance of 173.24 feet to the easterly line of Church Street; and

THENCE from said point and along said line North 18 degrees 05 minutes 04 seconds West a distance of 199.41 feet to the point and place of BEGINNING.

EXHIBIT A

3375449 v 5/1 1057-6

EXHIBIT "B"

GUARANTY

See Attached

EXHIBIT

20201028102810



SCHEDULE 3.1

Definition of Material Default

Material Default shall mean the occurrence of any of the following:

(a) Any Lease Default except 16.1 (a) (xxv) and (xxxx), provided that the following Lease Defaults shall not be deemed a Material Default unless they occur two or more times within such period: 16.1 (a) (ix), (xvii), (xxx), (xxxii), and the following Lease Defaults shall not be deemed a Material Default unless they occur three or more times within such period: 16.1 (a) (i), (ii), (xvii).

(b) Any Lease Default during such period constitutes an "Event of Default" by Lessor under any Loan Document between Lessor and its Mortgagee(s) evidencing or documenting a loan secured by the Facility;

EXHIBIT 7.1(a)  
See Attached

EXHIBIT 7.1(b)  
See Attached

EXHIBIT 7.1(c)  
See Attached

SCHEDULE 7.4

<u>PERIOD</u>	<u>EBITDAR TARGET</u>
Quarter 1 (____, 20____ through _____, 20____)	\$ _____
Quarter 2	\$ _____
Quarter 3	\$ _____
Quarter 4	\$ _____
Quarter 5	\$ _____
Quarter 6 and thereafter	\$ _____

"EBITDAR" means with respect to any quarterly period for the Facility an amount determined on a consolidated basis equal to the sum of the following amounts for the Facility for a trailing twelve month period: (a) earnings/(net income or net loss) (including, as an expense an actual or theoretical management expense of five percent (5%) of gross receipts) from operations before (b) interest expense, (c) income tax expense, (d) depreciation expense, (e) amortization expense, and (f) Fixed Rent, defined in accordance with GAAP for such quarterly period. EBITDAR is not considered a measure of financial performance under GAAP. In calculating earnings for the trailing twelve months that encompasses any month prior to the Commencement Date, for the months prior to the Commencement Date, revenue shall be calculated using current rates of reimbursement, meaning reimbursement rates in effect as of the start of the applicable quarterly period.



**OPERATING LEASE**

THIS AMENDED AND RESTATED OPERATING LEASE ("Lease") is entered into as of November 19, 2015 (the "Effective Date"), by and between WHITE PLAINS HEALTHCARE PROPERTIES I, LLC a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 200, Peabody, MA 01960 ("WPHCP") or (the "Landlord") and HBL SNF, LLC a New York Limited Liability Company having an office at 537 Route 22, Parsippany, New York 10578 (the "Tenant"), and amends and restates in its entirety the lease between the Parties dated as of November 19, 2015.

**RECITALS**

A. WHEREAS, Landlord is the owner of the real property, improvements, and personal property constituting the long-term care facility commonly known as 116-120 Church Street, White Plains, New York and more particularly described on Exhibit A, attached hereto and made a part hereof, (the "Real Property"), and following execution of this Lease, upon which certain buildings and improvements shall be erected (the "Facility"); and

B. WHEREAS, Landlord desires to lease the entire Leased Premises (defined herein) to Tenant and Tenant desires to lease the Leased Premises from Landlord pursuant to the terms, conditions and covenants set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, promises, representations and warranties set forth herein and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

**ARTICLE I**

**INCORPORATION OF RECITALS; PRINCIPLES OF CONSTRUCTION, DEFINITIONS**

Section 1.1 Incorporation of Recitals. The aforesaid Recitals A through B are hereby incorporated into this Lease as if fully set forth herein. Landlord and Tenant are hereinafter sometimes individually referred to as a "Party" and collectively referred to as "Parties".

Section 1.2 Principles of Construction. All references to articles, sections, schedules and exhibits are to articles, sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Landlord" shall mean

"Landlord and its successors and assigns"; the words "Leased Premises" shall include any portion of the Leased Premises and any interest therein, and the phrases "attorneys' fees", "legal fees" and "court fees" shall include any and all reasonable attorneys', paralegal, legal assistant and law clerk fees and disbursements, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise, and, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Landlord in protecting its interest in the Leased Premises and its rights hereunder. Wherever pursuant to this Lease it is provided that Landlord shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees as defined above. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The words "includes", "including" and similar terms shall be construed as if followed by the words "without limitation". Whenever in this Lease any consent, approval, determination or decision of Landlord is to be made by Landlord, or any matter is to be satisfactory to Landlord, then unless expressly provided to the contrary, such provision shall be deemed to mean that such consent, approval, determination or decision of Landlord or determination whether a matter is satisfactory shall be made by Landlord in its sole and absolute discretion for any or no reason and shall be final and conclusive. Any reference in this Lease shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease shall be deemed to be a reference to this Lease (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease or in the Guaranty shall be deemed to be a reference to the Guaranty (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time.

Section 1.3 Definitions.

"Additional Rent" as defined in Section 3.2

"Affiliate" as defined in Section 20.31.

"Change of Ownership" means

"Commencement Date" as defined in Section 3.1.

"Commissioner" means the Federal Housing Commissioner also called the Assistant Secretary for Housing in the United States Department of Housing and Urban Development.

"DOH" means New York State Department of Health.

"Effective Date" as defined in introductory paragraph.

"Eligible Institution" as defined in Section 4.3.

"Extension Term" as defined in Section 3.1(b).

"Facility" as defined in Recital A.

"First Refinance" means the replacement or refinancing of the Original Mortgage and/or original Junior Debt, in whole or part, in an amount not less than \$42,200,000.

"First Refinance Date" means the date of the First Refinance.

"Fixed Rent" as defined in Section 3.2.

"Governmental Authority" as defined in Section 5.2.

"Guarantors" means Lizur Josefowic and Mark Neuman.

"Hazardous Materials" as defined in Section 10.3

"Hazardous Waste" as defined in Section 10.3.

"Health Care Authority or Authorities" means any Governmental Authority (including HUD) having responsibility for the approval, licensing, certification, payment, issuance of guarantees and insurance for, and/or otherwise setting standards for the operation and occupancy of skilled nursing facilities.

"Health Care Licenses" means all Medicare and Medicaid certifications and provider agreements, all public third party payor certifications and provider agreements, and all certifications, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses and certificates of need required by Health Care Authorities for the legal use, occupancy and operation of the Facility.

"HUD" means the United States Department of Housing and Urban Development.

"Junior Debt" means a mortgage on the Premises junior to the first Mortgage, and/or debt relating to the development and construction of the Premises.

"Landlord" as defined in introductory paragraph, and Section 3.2.

"Landlord's Indemnitees" as defined in Section 9.1

"Landlord's Work" as defined in Section 5.1.

"Laws" as defined in Section 5.1.

"Lease Default" as defined in Section 16.1.

"Leased Premises" as defined in Section 2.1.

"Lease Year" as defined in Section 3.1.

"Letter of Credit" as defined in Section 7.1.

"Material Default" as defined in Schedule 3.1.

"Mortgages" shall refer to the first and second priority mortgages secured by fee simple interest in the Real Property as amended, restated, extended or replaced from time to time in Landlord's discretion.

"Original Mortgage" means the original Mortgage placed on the Premises by Landlord.

"Overdue Rate" as defined in Section 9.1(b).

"Primary Market of the Facility" means a fifteen mile radius of the Leased Premises.

"Prime Rate" as defined in Section 9.1.

"Prospective Mortgagee" means any Person chosen by Landlord as a Mortgagee prior to a closing of a Mortgage to be held by such Person.

"Real Property" as defined in Recital A.

"Refinance" means the replacement or refinance of the Mortgage, or Junior Debt, or any debt in replacement thereof, in whole or part, including the First Refinance.

"Refinance Date" means the date of any Refinance including the First Refinance.

"Rent" as defined in Section 3.2.

"Security Deposit" as defined in Section 7.1.

"Special Purpose Entity" as defined in Schedule 19.2.

"Substantial Completion Date" means the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Landlord's architect, that the Facility was substantially completed and in substantial compliance with the plans and specifications for the Facility, and (ii) the date Landlord delivers a Temporary Certificate of Occupancy (the "TCO") for the Facility, provided, however, if the Landlord is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOJ approvals then delivery of the TCO shall not be a condition under this clause (ii).

"Tenant's Lease Coverage Ratio" means EBITDAR divided by Fixed Rent.

"Term" as defined in Section 3.1 (including all exercised Extension Terms).

"Total Project Cost or "TPC" is the actual cost of purchasing, developing, constructing, and equipping the Facility, including without limitation, the cost of the Real Property and improvements, development costs, financing costs, and the cost of Landlord's Work and all equipment.

"Utilities" as defined in Section 4.1.

ARTICLE II

LEASED PREMISES

Section 2.1 Leased Premises. Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions set forth in this Lease, the following assets:

(a) all of Landlord's right, title, and interest in and to the Real Property, including, without limitation, all buildings, structures, erections, improvements, appurtenances, easements and fixtures, including fixed machinery and fixed equipment situated thereon or forming a part thereof; and

(b) all of Landlord's right, title and interest in and to all machinery, trade equipment, trade fixtures, furniture, furnishings, beds, and accessories of all kinds used in connection with the Facility located on the Real Property.

All of the items described in Sections 2.1(a) and 2.1(b) herein are collectively referred to as the "Leased Premises." Landlord and Tenant acknowledge and understand that all of the items which comprise the Leased Premises, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, shall be transferred back to Landlord in accordance with the terms and conditions set forth herein upon the expiration or earlier termination of this Lease.

Section 2.2 In connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein, and each successor in interest, shall have the right to transfer all amounts deposited pursuant to Section 4.3 with respect to the Facility, less any amount used pursuant to Section 4.3, to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, Landlord or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto. If Landlord's interest in the Leased Premises is sold or conveyed as provided above or otherwise or by operation of law: (i) at the new owner's option, Tenant shall attempt to and recognize the new owner as Tenant's Landlord under this Lease and Tenant shall take such actions to confirm the foregoing within ten (10) days after request.

ARTICLE III

TERM AND RENT

Section 3.1 Term of Lease

(a) The term (the "Term") of this Lease shall be for a period of thirty (30) years commencing on the later to occur of (i) the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility and (ii) the date that New York State Department of Health (hereinafter sometimes, "DOH") determines that the Landlord's Work is sufficiently complete as constructed (but not necessarily the Tenant's operations) to accept patients, provided, however, if the Landlord is unable to obtain a permanent or temporary Certificate of Occupancy because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of a permanent or temporary Certificate of Occupancy shall not be a condition under clause (i) (the "Commencement Date"), and ending at 11:59:59 P.M. on the day preceding the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date (the "Expiration Date"). Under any and all circumstances, Landlord shall not be liable to Tenant, in damages or otherwise, for any delay in delivering the Leased Premises to Tenant and Tenant shall have no right to terminate or rescind this Lease on account thereof. Notwithstanding the Commencement Date, certain of the rights and obligations of the parties shall commence on the Effective Date, but not including Tenant's obligations to pay Fixed Rent and Impositions prior to the Commencement Date, or to maintain the Leased Premises, insure the Leased Premises or restore the Leased Premises after a casualty or condemnation prior to the Commencement Date, or any other rights and obligations, which by their terms are intended to commence as of the Commencement Date, which rights and obligations shall commence on the Commencement Date.

As used herein with respect to the Term and the periods for payment of Rent (unless the context otherwise requires) the term "Lease Year" shall mean a 365 day period (or 366 day period in the case of a leap year), first commencing on the Commencement Date and thereafter on successive anniversaries thereof, and ending on the day prior to the next succeeding anniversary of the Commencement Date.

Landlord and Tenant hereby acknowledge that the Commencement Date is presently indeterminate and shall occur only as hereinabove provided in this Section. Except for the rights of Tenant expressly stated herein, Tenant hereby waives any right to rescind this Lease under the provisions of Section 223-a of the Real Property Law of the State of New York, and agrees that the provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of said Section 223-a. Landlord and Tenant shall execute a memo specifying the Commencement Date immediately following its occurrence.

(b) Provided a Lease Default has not occurred and is then continuing either at the time of the exercise of the options provided below or at the end of the Term or Extension Term, or there has not been any Lease Default listed in Schedule 3.2 attached hereto (a "Material Default"), whether or not cured, within two years of the end of the Term or Extension Term, Tenant shall have the option to extend the Term of this Lease for three (3) additional periods of ten (10) years each (each a "Extension Term"), by giving written notice to Landlord

not less than five forty-five (545) days nor more than seven hundred (700) days prior to the expiration of the Term (or Extension Term as the case may be) of this Lease, TIME BEING OF THE ESSENCE to these time periods. These options may be exercised by Tenant serving written notice upon Landlord stating that Tenant is exercising the option to extend. If Tenant fails to give such notice in writing to Landlord within the time period specified herein, all rights and privileges granted to Tenant to extend this Lease shall lapse and become null and void. No later option may be exercised if Tenant has failed to exercise a prior option. If Tenant has validly exercised its option(s) to extend the Term, references herein to the "Term" shall be deemed to include an Extension Term.

Section 3.2 Rent

(a) Beginning in the first (1st) Lease Year of the Term and for each succeeding Lease Year thereafter, including during any and all Extension Terms, until the First Refinance Date, Tenant shall pay Landlord an annual amount of Six Million Seventy Three Thousand One Hundred Fifty Eight (\$6,073,158; Dollars ("Fixed Rent") in monthly installments of \$506,096.50.

(b) Tenant shall pay the Rent to Landlord during the term without deduction or setoff and without demand.

(c) The terms "Additional Rent" or "additional rent" means all sums, amounts, fees, expenses and costs (including, without limitation, legal fees and disbursements) payable or reimbursable to Landlord under this Lease other than Fixed Rent, and all of same shall be and constitute Additional Rent hereunder. The terms "Fixed Rent" and "Additional Rent" shall be collectively referred to as "Rent." Landlord shall have the same rights and remedies hereunder consequent upon a failure of Tenant to pay any item of Additional Rent as upon a failure of Tenant to pay any item of Fixed Rent.

(d) Rent shall be due and payable in advance in equal monthly installments during each year on the first (1st) day of each calendar month thereof (or in the event the first day of the calendar month is not a business day, on the first business day following the first day of each calendar month) throughout the Term. Rent for any period which is less than a full calendar month or full year, as the case may be, during the Term, shall be pro-rated on a daily basis. Rent shall not be paid more than one (1) month in advance. Rent shall be paid to Landlord at Landlord's address set forth in Section 1.3.1 or at such other place as Landlord designates from time to time by written notice to Tenant. Tenant agrees to pay Rent, at Landlord's direction, by electronic transfer or wire, as directed by Mortgagee in writing.

(e) TENANT HEREBY ACKNOWLEDGES THAT LATE PAYMENT BY TENANT TO LANDLORD OF RENT WILL CAUSE LANDLORD TO INCUR COSTS NOT CONTEMPLATED HEREUNDER, THE EXACT AMOUNT OF WHICH IS PRESENTLY ANTICIPATED TO BE EXTREMELY DIFFICULT TO ASCERTAIN. SUCH COSTS MAY INCLUDE PROCESSING AND ACCOUNTING CHARGES AND LATE CHARGES WHICH MAY BE IMPOSED ON LANDLORD BY THE TERMS OF ANY LOAN AGREEMENT AND OTHER EXPENSES OF A SIMILAR OR DISSIMILAR NATURE. ACCORDINGLY, IF ANY INSTALLMENT OF RENT THAT IS PAYABLE TO LANDLORD

OR ITS DESIGNEE SHALL NOT BE PAID WITHIN FIVE (5) DAYS OF THE DATE WHEN DUE, TENANT WILL PAY LANDLORD ON DEMAND A LATE CHARGE EQUAL TO FIVE PERCENT (5%) OF THE UNPAID PORTION OF THE AMOUNT OF SUCH INSTALLMENT. THE PARTIES AGREE THAT THIS LATE CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE COSTS THAT LANDLORD WILL INCUR BY REASON OF LATE PAYMENT BY TENANT. THE PARTIES FURTHER AGREE THAT SUCH LATE CHARGE IS RENT AND NOT INTEREST AND SUCH ASSESSMENT DOES NOT CONSTITUTE A LENDER OR BORROWER/CREDITOR RELATIONSHIP BETWEEN LANDLORD AND TENANT. IN ADDITION, THE AMOUNT UNPAID, INCLUDING ANY LATE CHARGES, SHALL BEAR INTEREST AT THE OVERDUE RATE FROM THE DUE DATE OF SUCH INSTALLMENT TO THE DATE OF PAYMENT THEREOF, AND TENANT SHALL PAY SUCH INTEREST TO LANDLORD ON DEMAND. THE PAYMENT OF SUCH LATE CHARGE AND/OR SUCH INTEREST SHALL NOT CONSTITUTE A WAIVER OF, NOR EXCUSE OR CURE, ANY DEFAULT UNDER THIS LEASE, NOR PREVENT LANDLORD FROM EXERCISING ANY OTHER RIGHTS AND/OR REMEDIES AVAILABLE TO LANDLORD.

(j) If a default is declared by the Commissioner under the provisions of the Regulatory Agreement, provided a copy of Notice of Default is given to Tenant, Tenant shall thereafter make all future payments under this Lease to the Commissioner.

Section 3.3 Net Lease Provisions. Landlord and Tenant intend that the Rent herein specified shall be net to Landlord in each year during the Term, and that all costs, expenses and obligations of every kind and nature, (known or unknown, general or special, ordinary or extraordinary, foreseen or unforeseen, direct or indirect, contingent or otherwise) relating to the operation, repair and maintenance of the Leased Premises (except Landlord's income taxes) which may arise or become due during the Term shall be timely paid by Tenant; and that Landlord shall be indemnified by Tenant against such costs, expenses and obligations. Tenant's obligation to pay Rent is independent of all, and is in no manner conditioned upon any, other covenants, conditions and obligations of Landlord or Tenant under this Lease. There shall be no abatement of Rent payments for any reason nor shall Tenant be entitled to any offsets or deductions from Rent payments due hereunder.

Section 3.4 Rent Tax. If any governmental taxing authority levies, assesses, or imposes any tax, sales or use tax, privilege tax, excise or assessment (other than income or franchise taxes) upon or against the Rent payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise or assessment, or, if Landlord pays same, Tenant shall reimburse Landlord for the amount thereof within ten (10) days after written demand by Landlord.

It is the intent of this Section 3.4 and all other provisions of this Lease to insure that the Rent (including Additional Rent) paid to Landlord by Tenant will be received by Landlord without diminution by any tax, assessment, charge or levy of any nature whatsoever, except United States, State of New York and local net income taxes, and the terms and conditions of this Lease shall be liberally construed to effect such purpose. Without limiting the generality of the foregoing, if any tax is assessed or based on gross income actually or



constructively received by Landlord pursuant to this Lease, Tenant shall pay such amount which, when added to said gross income, shall yield to Landlord, after deduction of all such tax payable by Landlord with respect thereto, a net amount equal to that which Landlord would have realized therefrom had no such tax been imposed.

Section 3.5 Assignment of Lease to Mortgagee. Tenant acknowledges that all of the interest of Landlord in and to this Lease has been or will be assigned to Mortgagee pursuant to the Loan Documents.

Tenant agrees to promptly execute and deliver to Landlord from time to time any and all documents required by a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender, or any successor, commercial, agency or private lender, including, without limitation, a lease addendum, regulatory agreement, subordination agreement, non-disturbance and attornment agreement, and/or estoppel certificate, in order to finance or refinance the Facility or otherwise.

Tenant will on request at any time or from time to time by Landlord or any Mortgagee or Prospective Mortgagee subordinate this lease and all of Tenant's rights and estate hereunder to such Person's Mortgage and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, or declare such Mortgage to be prior to this lease and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, and agree with such holder that Tenant will assist therein in the event of foreclosure. Landlord agrees to use reasonable efforts (except that Landlord shall not be obligated to expend money for any such agreement) to obtain a written agreement from any such holder in the form typically used by such holder which consents to this lease and provides that, notwithstanding such mortgage or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting said Mortgage, Tenant shall not be disturbed in peaceful enjoyment of the Leased Premises or this lease terminated or canceled at any time, except in the event Landlord shall have the right to terminate this lease under the terms and provisions set forth herein.

Section 3.6 True Lease. It is the intent of Landlord and Tenant and the parties agree that this Lease is a true lease and that this Lease does not represent a financing agreement. Each party shall reflect the transaction represented hereby in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

Section 3.7 Right of First Refusal/ Buyout. (a) Landlord shall not sell, transfer or convey the Leased Premises to a third person or entity unless Tenant first is given the opportunity to purchase the Leased Premises pursuant to the terms and conditions set forth in this Section 3.7(a). If at any time during the first eleven years of Term Landlord receives from any third person or entity an Offer (as hereinafter defined) to purchase the Leased Premises which Landlord desires to accept, Landlord shall notify Tenant of such Offer by delivering written notice to Tenant, which notification (the "Offer Notice") shall contain a copy of the written Offer or, at Landlord's election, a written summary of the terms of the Offer. For purposes of this Lease, an "Offer" shall mean any bona fide written instrument or verbal communication setting forth the terms pursuant to which Landlord will convey the Leased Premises. Tenant shall have ten (10) Business Days after receipt of the Offer Notice in which to elect by written



notice delivered to Landlord (the "Acceptance Notice") to enter into a formal agreement on the same terms and conditions as those contained in the Offer ("Tenant's Purchase Right"). Such election shall be effective only if within ten (10) Business Days after delivery of the Acceptance Notice the parties enter into a written purchase agreement on terms reasonably acceptable to Landlord in good faith for the sale of the Leased Premises to Tenant containing all terms of the Offer. If Tenant fails to timely deliver the Acceptance Notice, or if Tenant fails to timely enter into said purchase agreement as provided herein, Landlord shall have the right to accept the Offer or any modification thereof on terms substantially similar as those set forth in the Offer. Tenant's right to purchase the Leased Premises identified in the Offer Notice shall not apply to (i) transfers of less than one hundred percent of the ownership interests in Landlord, (ii) a public offering of ownership interests in Landlord, (iii) a recapitalization transaction of any kind involving Landlord, (iv) condemnation, eminent domain or similar proceedings, or (v), rights exercised by Mortgagees in foreclosure or in lieu thereof pursuant to Mortgage or other documents executed by Landlord in connection therewith, including the subsequent disposition of the Premises by Mortgagee or its affiliate or designee that acquires the Leased Premises in connection therewith.

(b) Notwithstanding anything to the contrary, if Landlord's Offer Notice states that it is purchasing from Tenant Tenant's Purchase Right, then (i) Tenant shall have no further rights under Section 3.7(a), and Section 3.7(a) shall be null and void without further effect, and (ii) upon the closing of the purchase and sale of the Leased Premises pursuant to the Offer, Landlord shall pay Tenant ten percent (10%) of the excess of the sales price agreed to pursuant to the Offer (less costs and fees, including broker's fees) over the TPC, the "Offer Fee", and (iii) the Rent shall be the greater of the amount as determined by Section 3.2(a) or fair market value, as shall be determined by an independent third party appraiser jointly appointed by Landlord or and Tenant, and absent their agreement appointed by the then chairman or similar officer of the Westchester County Society of Real Estate Appraisers. For purposes of classification, Tenant shall not be entitled to the receipt of the Offer Fee if Tenant exercises Tenant's Purchase Right as set forth in Section 3.7(a) above.

(c) Upon expiration of the eleventh Lease Year, Tenant's Right of First Refusal as set forth in in Section 3.7(a) shall lapse and become null and void.

Section 3.8. Option to Purchase. Commencing on the latter of (i) the first day after the Commencement Date and (ii) 24 months from the date of the closing of the Original Mortgage, and ending on the last day of the fifteenth Lease Year of the Lease, Tenant shall have the option to purchase the Leased Premises from Landlord for a purchase price of \$65,055,000 by giving written notice of its exercise of the Option to Purchase including a proposed closing date, provided if Tenant does not exercise the Option to Purchase prior to receiving an Offer Notice pursuant to Section 3.7, Tenant's Option to Purchase under this Section 3.8 shall lapse unless and until the conveyance of the Leased Premises contemplated under Section 3.7 does not occur. Upon expiration of the fifteenth Lease Year, Tenant's the right to purchase the Leased Premises from Landlord, all as set forth above, shall lapse, become null and void, and Tenant shall have deemed to waived all such rights hereinafter.

ARTICLE IV



UTILITIES AND TAXES

Section 4.1 Utilities. From and after the Commencement Date, Tenant shall pay or cause to be paid all charges next coming due and payable for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Leased Premises (the "Utilities") during the Term. Tenant covenants to place all Utilities in Tenant's name as of the Commencement Date. Adjustment shall be made for Utilities applicable to any period prior to the Commencement Date. In the event Landlord is billed directly by any service provider or utility company for any Utilities or services supplied to Tenant during the Term, Landlord shall send Tenant the bill and Tenant shall promptly pay the same. Landlord shall have no obligation or liability with respect to any interruption or failure in the supply of any such Utilities. If Landlord elects to or shall be required to pay for any Utilities to preserve and/or protect the Leased Premises, Tenant shall reimburse Landlord for the cost and expense thereof plus interest at the Prime Rate.

Section 4.2 Taxes. Tenant shall be solely responsible for the payment, prior to the date when penalties would attach, of all general and special real estate taxes and assessments (together with any excise taxes on such real estate taxes and assessments levied or imposed by any governmental taxing authority), fire district taxes, liens, impositions, including capital stock, franchise, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes; personal property taxes, assessments including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; ground rents; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Premises, and all interest and penalties thereon attributable to any failure in payment by Lessee which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon the Leased Premises (collectively, the "Impositions") that accrue from the Commencement Date through the Term. Adjustment shall be made for Impositions applicable to any period prior to the Commencement Date. Tenant shall pay all of the Impositions directly to the applicable taxing authorities and Tenant shall promptly forward proof of payment to Landlord in such form as shall be reasonably acceptable to Landlord unless Landlord elects to require escrow deposits in accordance with Section 4.3 hereof. Landlord shall promptly forward any tax bills which it may receive to Tenant. Landlord shall only bill Tenant for any of the Impositions if Tenant does not pay any of the Impositions before delinquency and Landlord is obligated or elects (in Landlord's sole and absolute discretion) to pay any of the Impositions directly to remain current with all taxing authorities. Tenant shall pay the full amount of any increases in any of the Impositions resulting from alterations or improvements made by or for the benefit of Tenant. After the expiration or termination of this Lease, Tenant shall pay all bills for any of the Impositions which become due and payable after the expiration or termination of the Lease covering any period through the expiration or earlier termination of the Lease. If any governmental taxing authority acting under any present or future ordinance or regulation, shall levy, assess or impose a tax, excise and/or assessment (other than any net income or franchise tax) upon Landlord or Tenant for rental payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise and/or assessment

or shall reimburse Landlord for the cost and expense thereof, as the case may be. Provided that Tenant shall have deposited a sufficient amount of funds to pay the Impositions pursuant to Section 4.3 and Tenant has done nothing to prevent payment by Landlord or its lender of the Impositions, then Tenant shall not be responsible for any and all late payment fees and/or penalties, including interest, imposed by any applicable taxing authorities with respect to the untimely payment of Impositions.

Section 4.3 Escrow Deposits.

(a) Escrow. At the option of Landlord, which may be exercised at any time by Landlord in its sole and absolute discretion Tenant shall, on the first day of the first calendar month commencing after notice from Landlord, and on the first day of each calendar month thereafter during the Term (each of which dates is referred to as a "Monthly Deposit Date"), pay to and deposit with Landlord a sum equal to one-twelfth (1/12th) of the Impositions to be levied, charged, filed, assessed or imposed upon or against the Leased Premises within one (1) year after said Monthly Deposit Date and a sum equal to one-twelfth (1/12th) of the premiums for the property insurance policies required pursuant to Article VI which are payable within one (1) year after said Monthly Deposit Date. If the amount of the Impositions to be levied, charged, assessed or imposed or insurance premiums to be paid within the ensuing one (1) year period shall not be fixed upon any Monthly Deposit Date, such amount for the purpose of computing the deposit to be made by Tenant hereunder shall be reasonably estimated by Landlord with an appropriate adjustment to be promptly made between Landlord and Tenant as soon as such amount becomes determinable. In addition, Landlord may, at its option, from time to time require that any particular deposit be greater than one-twelfth (1/12th) of the estimated amount payable within one (1) year after said Monthly Deposit Date, if such additional deposit is required in order to provide to Landlord sufficient funds from which to make payment of all Impositions on or before the next due date of any installment thereof, or to make payment of any required insurance premiums not later than the due date thereof. If any Mortgagee or the Commissioner requires Landlord to impound insurance premiums on a periodic basis during the term, Tenant, on notice from Landlord indicating this requirement, shall pay a sum of money towards its liability under this Lease to Landlord on a periodic basis in accordance with Landlord's requirements. Landlord shall impound the premium payments received from Tenant in accordance with the requirements of Mortgagee and shall utilize such funds to timely pay insurance premiums.

(b) Use of Deposits. The sums deposited by Tenant under this Section 4.3 shall be held by Landlord or Mortgagee and shall be applied in payment of the Impositions or insurance premiums, as the case may be, when due. Any such deposits may be commingled with other assets of Landlord or such Mortgagee, and shall be deposited by Landlord or such Mortgagee in an Eligible Institution in such account or accounts as Landlord or the Mortgagee may, from time to time select, and Landlord shall not be liable to Tenant or any other person (i) based on Landlord's or the Mortgagee's (or any bank's) choice of investment vehicles, (ii) for any consequent loss of principal or interest or (iii) for any unavailability of funds based on such choice of investment. Furthermore, subject to the foregoing regarding the use of depositories and accounts, Landlord and its Mortgagee shall bear no responsibility for the financial condition of, nor any act or omission by the depository bank. No income, if any, from such investment or interest on such deposits shall be paid to Tenant. To the extent that Landlord does not have an

invoice or bill specifying the due date for payment, Tenant shall give not less than thirty (30) days prior written notice to Landlord in each instance when an Imposition or insurance premium is due, specifying the Imposition or premium to be paid and the amount thereof, the place of payment, and the last day on which the same may be paid in order to comply with the requirements of this Lease. If Landlord, in violation of its obligations under this Lease, does not pay any Imposition or insurance premium when due, for which a sufficient deposit exists, Tenant shall not be in default hereunder by virtue of the failure to pay such Imposition or such insurance premium and Tenant shall not be liable for any late payment fees and/or penalties, including interest imposed as a result of such failure to pay. The term "Eligible Institution" shall mean a depository institution or trust company, the short term unsecured debt obligations of commercial paper of which are rated at least "A-1+" by S&P, "P-1" by Moody's and "P-1+" by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's).

(c) Deficit. If for any reason any deposit made by Tenant or held by Landlord under this Section 4.3 shall not be sufficient to pay any Imposition or insurance premium within the time specified therefor in this Lease, then, within ten (10) days after demand by Landlord, Tenant shall deposit an additional amount with Landlord, increasing the deposit held by Landlord so that Landlord holds sufficient funds to pay such Imposition or premium in full (or in installments as otherwise provided for herein), together with any penalty or interest thereon. Landlord may change its estimate of any Imposition or insurance premium for any period on the basis of a change in an assessment or tax rate or on the basis of a prior miscalculation or for any other good faith reason; in which event, within ten (10) days after demand by Landlord, Tenant shall deposit with Landlord the amount in excess of the sums previously deposited with Landlord for the applicable period which would therefore have been payable under the revised estimate.

(d) Transfers. Consistent with Section 2.2, in connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein and each successor in interest shall have the right to transfer all amounts deposited pursuant to the provisions of this Section 4.3 and not used pursuant to this Section 4.3 to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, the original Landlord named herein or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto.

(e) Security. All amounts deposited with Landlord pursuant to the provisions of this Section 4.3 shall be held by Landlord as additional security for the payment and performance of Tenant's obligations under this Lease and, upon the occurrence and during the continuance of any Lease Default, Landlord may, in its sole and absolute discretion, apply such amounts towards payment or performance of such obligations.

(f) Return. Upon the expiration or earlier termination of this Lease, as long as all of the Rent and any and all other obligations due under this Lease have been fully paid and performed, any sums then held by Landlord under this Section 4.3 shall be refunded to Tenant.

and subject to the rights of a Mortgagee, together with all interest, if any, earned thereon and all income, if any, earned therefrom; provided, however, that if a Lease Default has occurred and is continuing, all of such sums may be applied by Landlord towards any amounts owed to Landlord pursuant to this Lease.

(g) Receipts. Tenant shall deliver to Landlord copies of all claims and bills in relation to the Impositions and Insurance premiums promptly upon receipt thereof by Tenant.

This Article and the obligations herein shall survive expiration or earlier termination of this Lease.

ARTICLE V

LANDLORD'S WORK, MAINTENANCE AND REPAIR; IMPROVEMENTS

Section 5.1 Landlord's Work. (a) Landlord shall cause the Facility to be constructed ("Landlord's Work").

(b) Landlord will give Tenant thirty (30) days' notice of the date Landlord expects to be the Substantial Completion Date. On or prior to the Substantial Completion Date, Landlord and Tenant shall jointly prepare a list of the items for the Facility that remain to be completed or corrected, set a dollar value for the cost to complete the work, and fix time for their completion or correction (collectively the "Punchlist").

(c) Notwithstanding anything in this lease to the contrary, on and after the Substantial Completion Date Tenant shall be deemed to have agreed Landlord has completed Landlord's Work to Tenant's complete satisfaction, except for (i) the Punchlist, (ii) such items of decoration or mechanical adjustment of which Tenant gives Landlord written notice within thirty (30) days after the Substantial Completion Date (the "Initial Correction Items") or (iii) any defects in the Facility which were not known or reasonably discoverable by Tenant in the time period specified in the immediately prior clause (ii) ("Latent Defects"); provided that, as to Latent Defects, Landlord will have no responsibility or liability therefor, or for the correction thereof, unless (A) Tenant conducts at least one inspection of the Facility with a qualified engineer or other expert, within one year from the Substantial Completion Date, and (B) Tenant gives Landlord notice of such Latent Defects within thirty (30) days after discovery thereof and in any event not later than one year after the Substantial Completion Date, which notice will be accompanied by the certification of such engineer or other experts, specifying, in detail, such Latent Defects in the Facility.

(d) At its sole expense, Landlord shall complete the Punchlist, and remedy the Initial Correction Items, and the Latent Defects provided with respect to Latent Defects that the conditions set out in clause (iii) of section (c) are satisfied.

(e) To the extent assignable at no cost to Landlord, Landlord assigns to Tenant all manufacturer warranties on materials and equipment. Tenant shall have the benefit and right to enforce such warranties at its sole cost and expense.

**Section 5.2 Maintenance and Repair.** Except as provided in Section 5.1, Tenant, at Tenant's sole cost and expense, shall keep the Leased Premises, including all buildings, fixtures, trade equipment, trade fixtures, furniture, beds and other personal property leased to Tenant pursuant to this Lease, including, without limitation, all structural and non-structural components, the roof, foundation, all outer walls, plumbing, sprinklers, electrical, mechanical, heating, ventilation, utility service, air conditioning, vertical transport, telephone, communications, cable, computer, fire-life-safety, nursing call, and all other systems of the Leased Premises in good condition and repair and in compliance with all Laws. Landlord shall not be responsible to make any improvements, repairs, maintenance or replacements whether occasioned by the act, omission, active negligence, or passive negligence of Landlord or Tenant and/or its agents, employees, invitees or licensees or otherwise, and Tenant shall pay for all improvements, repairs, replacements, maintenance and expenditures relating to the Leased Premises, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the commencement of the Lease, by Tenant's use or by a change in applicable Laws. The Leased Premises and its appurtenances shall at all times be kept clean, safe and sanitary and in good order, condition, replacement and repair by Tenant, at Tenant's sole cost and expense, except for ordinary wear and tear (provided, however, that, without limiting the generality of this Section 5.2, Tenant shall be obligated to replace any portion of the Leased Premises upon any obsolescence thereof or if proper repair is impractical). Tenant shall provide (if not currently a part of the Leased Premises) and maintain, repair and replace, as necessary, all furniture, fixtures, equipment and/or other personal property required by any Governmental Authority (other than furniture, fixtures, equipment and/or other personal property owned by contractors providing ancillary services at the Facility) necessary for the operation of the Facility and to comply with all Laws. All such property provided by Tenant shall immediately become the property of Landlord and Tenant shall execute such documentation as Landlord may reasonably require vesting title in such property in Landlord. Landlord shall have no liability or obligation with respect to such property or any of Tenant's operations relating thereto. All replacements made by Tenant hereunder shall be made in a good and workmanlike manner in accordance with Laws using the same, similar or better quality of materials as being replaced and shall immediately become the property of Landlord. Tenant acknowledges that title and ownership of all repaired and replaced furniture, fixtures, equipment and/or other personal property made hereunder shall belong to and is for the benefit of Landlord. Tenant shall not enter into any equipment lease or conditional sales contracts for any furniture, fixtures, equipment and/or other personal property relating to the Facility without Landlord's consent which it may grant or withhold in its sole discretion. The term "Laws" means, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Leased Premises or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Tenant, at any time in force affecting the Leased Premises or any part thereof. The term "Governmental Authority" means any court, board, agency, arbitrator, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, districts, municipal, city or otherwise) whether new or hereafter in existence.

**Section 5.3 Improvements, Renovation, Alterations and Additions.** Tenant shall have the right during the Term to make such non-structural interior alterations, changes and improvements to the Leased Premises as may be proper and necessary for the conduct of Tenant's business, to cause the Leased Premises to conform to all Laws, for patient comfort and safety, or for the full beneficial use of the Leased Premises, so long as such improvements do not (i) exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) in any given calendar year, (ii) interfere with any of the purposes for which the Facility was leased or affect the roof or structure, (iii) decrease the value of the Leased Premises, (iv) affect any building system, including, heating, ventilation, air conditioning, mechanical, electrical, plumbing or vertical transport systems, or (v) affect the exterior appearance of the Leased Premises. Tenant shall not make any other alterations, changes, or improvements without the express written approval in each instance by Landlord, which consent shall not be unreasonably withheld; provided, however, that the granting or withholding of consent shall not result in any liability to Landlord. Furthermore, Tenant may make all repairs or replacements required by a Governmental Authority without obtaining Landlord's consent, provided, however, Tenant shall give Landlord no less than ten (10) days prior written notice of such government mandated repairs or replacements prior to making or implementing same, unless emergency factors necessitate the making of such repairs before Tenant can reasonably give notice to Landlord, in which event Tenant shall give notice to Landlord as soon as reasonably possible. Tenant shall pay for all costs, fees and penalties imposed by the applicable state agencies or the Center for Medicare and Medicaid Services ("CMS") or other Governmental Authority in connection with any survey or the Change of Ownership. Tenant shall notify Landlord of any alterations, changes or improvements required and/or permitted by the applicable state agencies or the CMS or other Governmental Authority prior to the commencement thereof. Tenant shall pay all costs and expenses of any required and/or permitted alterations, changes, and improvements, shall make the same in a good and workmanlike manner, and in accordance with all Laws, having obtained all necessary permits and approvals from Governmental Authorities having jurisdiction over the Facility and work performed thereon or therein, and shall assure Landlord, in form reasonably satisfactory to Landlord, all necessary permits and authorizations have been received and that payment for the work and materials will be made by Tenant. Tenant hereby completely and fully indemnifies Landlord against any mechanic's liens or other liens or claims in connection with the making of any alterations, changes, and/or improvements. Any liens arising out of any required and/or permitted alterations, changes, and/or improvements shall be discharged of record by Tenant within the earlier of thirty (30) days after the same have been filed by payment, bonding or otherwise, as permitted by law, or five (5) days after commencement of a foreclosure or enforcement action. Notwithstanding any provision of this Lease to the contrary, Tenant shall not undertake any alterations, renovations, or improvements to the Facility or otherwise commence any project or activity with respect to the Facility, which may result in any bed being taken out of service for more than seven (7) days without Landlord's and/or Mortgagee's prior written consent, which Landlord's consent shall not be unreasonably withheld. Tenant shall give Landlord written notice ten (10) days prior to commencing repairs, construction, or alterations whose costs exceed One Hundred Thousand Dollars (\$100,000.00).

**Section 5.4 Signage.** All signs installed by Tenant at the Facility shall comply with all Laws, and all necessary permits or licenses shall be obtained by Tenant. Tenant shall maintain all signs in good condition and repair, and/or replace as may be required by applicable law, at all times at Tenant's sole cost and expense. Upon vacating the leased

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Premises, Tenant shall remove all signs and supporting material or installations so installed by Tenant, but only if Landlord shall request such removal, and Tenant shall repair all damage caused by such removal. Landlord acknowledges and agrees that neither Landlord nor any subsequent tenant of Landlord shall be authorized to use any company or registered trade name of Tenant or any of Tenant's affiliates or subtenants.

Section 5.5 Surrender. (a) Subject to applicable law and to receipt of any necessary DOH approval, Tenant shall deliver up and surrender to Landlord possession of the Leased Premises and all improvements and replacements thereof, including all of Tenant's alterations, improvements work (and all replacements thereof) and all fixtures permanently attached to the Leased Premises by Tenant during the Term, upon the expiration of this Lease or its termination in any manner whatsoever, in as good condition and repair and in substantially similar form, character and manner as the same shall be on the Commencement Date, reasonable wear and tear excepted (without compensation to Tenant), with permitted changes, improvements and additions made during the Term as authorized herein, subject to no liens, encumbrances, charges, restrictions, conditions, limitations or claims whatsoever to the extent not encumbering the Leased Premises as of the Commencement Date, and deliver the Keys and/or operational security cards to the Leased Premises to Landlord or Landlord's designated agent.

(b) Licenses and Transfer of Operations. Upon the expiration of the Term or earlier termination of the Lease, Tenant shall and shall cause its subtenants to, (i) transfer to Landlord or Landlord's nominee a fully operational, licensed and certified, and staffed facility and shall cooperate with Landlord or Landlord's designee or nominee in connection with the processing by Landlord or Landlord's designee or nominee of any applications for all licenses, operating permits and other governmental authorization, all contracts, including contracts with all Governmental Authorities or quasi governmental entities (provided that except following a Lease Default, the reasonable costs and expenses of the processing of any such application shall be paid by Landlord or Landlord's designee or nominee), (ii) transfer to Landlord or Landlord's nominee all tangible personal property of Tenant, including financial and accounting records, business records, data, employee and/or personnel records, patient and resident records, and all records held in electronic form, (all subject to the Laws requiring confidentiality), all equipment and small ware and all inventory used in connection with the Facility, (iii) transfer to Landlord or Landlord's nominee all intangible property except accounts receivable of Tenant, and (iv) transfer to Landlord or Landlord's nominee all residents in the Facility. With respect to resident funds, Tenant shall transfer to Landlord or its designee, all patient and resident trust accounts, and shall cause its subtenant to prepare and submit to Landlord or its designee a true, correct, and complete accounting and inventory (properly reconciled) of any patient trust funds and resident property to be transferred to Landlord, or its designee. Tenant shall, and shall cause its subtenant, not to commit any act or be remiss in the undertaking of any act that would jeopardize the licensure or certification of the Facility, and Tenant shall and shall cause its subtenant to comply with all requests for an orderly transfer of the same upon the expiration or early termination of the Term, including, but not limited to, upon the request of Landlord or its designee, the transitioning of employees in compliance with applicable laws. Without limiting the generality of the foregoing, if requested by Landlord or a proposed replacement operator for the Facility, Tenant hereby agrees to enter into a reasonable operations transfer agreement with such replacement operator. Tenant shall not unreasonably withhold, condition or delay its

consent to entering into any interim subleases or management agreements as may be necessary to effectuate an early transfer of the operations of the Facility prior to the time that such replacement operator holds all licenses and permits from all applicable Governmental Authorities with jurisdiction necessary to operate the Facility for its intended use. In addition, upon request, Tenant shall and shall cause subcontractors to promptly deliver copies to Landlord or Landlord's designee of all books and records relating to the Leased Premises and operations thereon (including inventories, employee lists and personnel records, and policies and procedures manuals). Tenant shall allow Landlord or a proposed replacement operator for the Facility to utilize Tenant's, subcontractors' computer hardware and software for a minimum of ninety (90) days to facilitate the transfer of operations, the collection of accounts receivables, the billing of providers, and the provision of patient care. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any loss, damage, cost or expense incurred by Landlord or Landlord's designee or nominee in connection with the correction of any and all deficiencies of a physical nature identified by any Governmental Authority responsible for licensing the Leased Premises in the course of any change of ownership inspection and audit. Tenant shall be responsible for any alterations or renovations necessitated by, or imposed in connection with, a change of ownership inspection survey for the transfer of operation of the Leased Premises to Landlord or its designee. Tenant shall not commence to wind up and terminate the operations of the Facility or relocate the patients or occupants of the Facility to any other health care facility. In addition, Tenant shall not terminate the employees of the Facility except in connection with and upon the transfer of operations of the Facility to Landlord or its designee.

(c) If Landlord notifies Tenant in writing that it intends to transfer the operations of the Facility to a new operator and desires to have Tenant continue to operate the Facility after the Expiration Date or earlier termination of the Lease, then Tenant shall continue to operate the Facility until the earliest to occur of (i) the date on which such successor operator shall assume operation of the Facility, or (ii) the date that is 180 days after the applicable Expiration Date or termination date (the "Reimbursement Period"). During the Reimbursement Period (x) Landlord shall provide Tenant with an operating budget, (y) Landlord shall include in the aforesaid operating budget, and Tenant shall continue to pay during the Reimbursement Period, all Rent that would have been owing under this Lease as to the Leased Premises if this Lease had not expired or terminated as to and/or Tenant had not been dispossessed from, such Leased Premises, and (z) provided that this Lease was not terminated with respect to, and Tenant was not dispossessed from, such the Lease Premises due to a Lease Default, Landlord shall reimburse Tenant for any operating deficits with respect to the Facility that Tenant may be required to fund out-of-pocket on account of operating losses and expenses incurred by Tenant by reason of, or arising out of compliance with, such budget with respect to the Reimbursement Period. Any such reimbursement shall be due from Landlord to Tenant within 60 days after request by Tenant, provided that Tenant shall furnish such documentation of any operating deficits, losses and expenses as Landlord may reasonably request. The terms of this Section 5.5(c) shall survive the expiration or earlier termination of this Lease and/or any dispossession of Tenant from the Lease Premises.

(d) Use of Legacy Tradename. Without limitation of the other provisions of this Section 5.5 and notwithstanding anything to the contrary contained in this Lease, Tenant agrees to allow Landlord or its designee operator, at its option and at no cost to Landlord or any such designee, to continue to use, in its signage, marketing and advertising materials, operations

and otherwise, any or all name(s) (including trademarks) associated with the operation of the Facility as a going concern for up to 180 days following (i) the expiration or termination of this Lease and (ii) the vacation from, and surrender of, the Leased Premises and Facility by Tenant. At the end of such 180 day period, or upon sooner written notice from Landlord to Tenant, Tenant shall, promptly and at its expense, remove its aforesaid name(s) from all signs on the Facility and repair any damage to such signs caused by such removal. Landlord acknowledges and agrees that Tenant, not Landlord, owns the aforesaid names and that neither Landlord nor any designee of Landlord may use the same except as described in this Section 5.5(d) or as otherwise agreed in writing by Tenant.

(c) Management of Terminated/Dispossessed Premises. Commencing on the applicable Termination/Dispossession Date as to any Terminated/Dispossessed Premises, Landlord or its designee, upon notice to Tenant, may elect to assume the responsibilities and obligations for the management and operation of the Business at such Terminated/Dispossessed Premises, and Tenant agrees to cooperate fully to accomplish the transfer of such management and operation without interrupting the operation of such Business to the extent allowable by Law. Tenant shall permit Landlord or its designee to operate the Facility under Tenant's licenses, certifications and other authorizations pending the issuance of new licenses, certifications and other authorizations Landlord or its designee. Tenant shall not commit any act or be remiss in the undertaking of any act that would jeopardize any licenses, certifications and other authorizations related to the Facility, and Tenant shall comply with all requests for an orderly transfer of all licenses, certifications and other authorizations related to the Facility and any payor's certifications.

(d) In addition, upon any expiration or termination of this Lease, Tenant covenants and agrees to do such things and to take such action as may, from time to time, be necessary or appropriate to permanently surrender and withdraw from possession and operation (including but not limited to licensure and certification) of the Leased Premises, and shall thereafter be fully and permanently relieved of all powers, duties, responsibilities and obligations that are conferred or imposed upon Tenant under this Lease (except those continuing obligations, including but not limited to the obligation to pay all Rent due and owing under this Lease, and the obligation to pay all amounts owed by Tenant to the Medicare, Medicaid, third party payor programs and residents for the period of the Term, which survive the termination hereof as provided herein) and to restore and place Landlord or its designee in possession and operation of the Leased Premises, or any portion thereof, and Tenant covenants and agrees to execute and deliver to Landlord or Landlord's designee (each subject to the approval of DOH) all assignments, operation transfer agreements, consents, consents to assignments (including Medicare and Medicaid provider agreements, if requested by Landlord) documents and other instruments, to the reasonable satisfaction of Landlord in order to effectuate the provisions hereof.

Section 5.6 Condition of Leased Premises. (b) Subject to Section 5.1, Tenant shall accept and take possession of the Leased Premises in its "AS IS," "WHERE IS," "WITH ALL FAULTS" condition, and acceptance of possession of the Leased Premises on the Commencement Date shall be deemed an acknowledgment by Tenant of Tenant's acceptance of the condition of the Leased Premises. Tenant acknowledges and agrees that Landlord is not making any representation, warranty or covenant whatsoever with respect to the condition of the

Leased Premises, or any portion thereof, or its suitability for any particular purpose, and Tenant shall be relying solely on its inspection of the Leased Premises and due diligence investigations with respect thereto.

(b) LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND FOR COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. EFFECTIVE AS OF THE DATE OF THIS LEASE, TENANT SHALL RELEASE LANDLORD FROM ALL CLAIMS WHICH TENANT OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MANAGER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTING ON TENANT'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH TENANT ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES, INCLUDING THE INFORMATION AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS, AND TENANT SHALL NOT LOOK TO LANDLORD IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS LEASE: (A) TENANT WILL ACQUIRE THE LEASED PREMISES SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS, AND (B) WITHOUT LIMITING THE FOREGOING, WAIVES ANY RIGHT IF OTHERWISE MAY HAVE AT LAW OR IN EQUITY AGAINST LANDLORD WITH RESPECT TO ANY ASPECT OF LEASED PREMISES.

ARTICLE VI

INSURANCE

Section 6.1 Insurance. (a) Tenant shall obtain and maintain, or cause to be maintained, insurance for Tenant and the Facility providing at least the following coverages or as required from time to time by any Mortgagee:

(i) comprehensive "all risk" insurance on the Facility and the Personal Property, including Building Ordinance Coverage from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation (except with respect to the insurance pursuant to clauses (D), (x), (y) and (z) below); (B) containing an agreed amount

endorsement with respect to the Facility and Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Ten Thousand Dollars (\$10,000.00) for all such insurance coverage (except as stated in the penultimate sentence of this subsection); and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if the Facility or the use of the Facility shall at any time constitute legal non-conforming structures or uses and covering the increased cost of construction, demolition cost, value of the undamaged portion of the structure and any increased expenses to rebuild due to the enforcement of building or zoning laws or requirements following a covered loss of the Leased Premises. In addition, Tenant shall obtain: (x) if any portion of any of the Leased Premises is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of any loan encumbering the Leased Premises or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or successor legislation, or such greater amount as Landlord and/or Mortgagee shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in an area with a high degree of seismic activity and (z) coastal windstorm insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in a coastal region; provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive insurance policy required under this Subsection (i); and further provided that the earthquake insurance pursuant to clause (y) may provide for a deductible of up to the greater of One Hundred Thousand Dollars (\$100,000.00) and two percent (2%) of the amount of such coverage, (III) the flood insurance pursuant to clause (x) may provide for a deductible of up to One Hundred Thousand Dollars (\$100,000.00), and (IV) the ordinance and law coverage pursuant to clause (D) may have a sub-limit of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in, or about the Facility, such insurance (A) with a combined limit of not less than Five Million Dollars (\$5,000,000.00) in the aggregate and Two Million Dollars (\$2,000,000.00) per claim, (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) to continue at not less than the aforesaid limit until required to be changed by Landlord and Mortgagee in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability; and (5) contractual liability covering the indemnities contained in Section 9.1 of the Lease to the extent the same is available;

(iii) business income with extra expense insurance (A) with loss payable to Landlord and Mortgagee; (B) covering all risks required to be covered by the insurance provided for in Subsection (i) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Facility and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Facility is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred

percent (100%) of the projected net profit and extra expense with respect to the Facility for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire at the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Tenant's reasonable estimate of the gross income from the Facility for the succeeding twelve (12) month period. Nothing herein contained shall be deemed to relieve Tenant of its obligations to pay the Rent when due except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Facility, and only if the Facility coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above and (3) with an agreed amount endorsement waiving co-insurance provisions;

(v) worker's compensation insurance with respect to any employees of Tenant, as required by any Governmental Authority, Health Care Authority, Legal Requirement or Health Care Requirement;

(vi) boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lardlord and Mortgagee on terms consistent with the commercial property insurance policy required under Subsection (i) above;

(vii) intentionally omitted;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million Dollars (\$1,000,000.00);

(ix) if the Facility is or becomes a legal "non-conforming" use, ordinance or law coverage and insurance coverage to compensate for the cost of (upon a Casualty) demolition or rebuilding of the undamaged portion of the Facility along with any reduced value and the increased cost of construction in amounts as requested by Lardlord and Mortgagee;

(x) the commercial property and business income insurance required under Sections 6.1(a)(i) and (ii) above shall cover perils of terrorism and acts of terrorism and Tenant shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i) and (ii) above at all times during the Term;

(xi) professional liability and malpractice insurance with limits of at least Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate. Tenant shall also require each medical director for the Facility and the associated nurse practitioner at the Facility to carry professional liability and malpractice insurance with

limits of not less than Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate; and

(xii) notwithstanding anything to the contrary in the foregoing, all insurance coverage required by any mortgagee of Lendlord shall be met by Tenant, from time to time as necessary;

(xiii) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Lendlord and/or Mortgagee from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Facility located in or around the region in which the Facility is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or, in the singular, the "Policy"), and shall be subject to the approval of Lendlord and Mortgagee as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State of New York and having a claims paying ability rating of "A" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the companies (one of which shall be S&P if they are rating the securities and one of which will be Moody's if they are rating the companies), or if only one Rating Agency is rating the companies, then only by such Rating Agency and shall specifically name Lendlord and Mortgagee as loss payees and additional insureds, as applicable. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Lendlord and Mortgagee, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lendlord and Mortgagee of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Tenant to Lendlord and Mortgagee.

(c) Any blanket insurance Policy shall specifically allocate to the Facility the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Facility in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Tenant as the insured and Lendlord and Mortgagee as the additional insured, as their interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called lender's loss payee endorsement in favor of Mortgagee providing that the loss thereunder shall be payable to Mortgagee.

(e) All Policies provided for in Section 6.1 shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Tenant, or anyone acting for Tenant, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lendlord and Mortgagee are concerned;

- (ii) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' written notice to Landlord and Mortgagee and any other party named therein, as an additional insured;
- (iii) the issuers thereof shall give notice to Landlord and Mortgagee if the Policies have not been renewed fifteen (15) days prior to its expiration; and
- (iv) Neither Landlord nor Mortgagee shall be liable for any insurance premiums thereon or subject to any assessments due thereunder.

(f) If at any time Landlord and Mortgagee is not in receipt of written evidence that all Policies are in full force and effect, either shall have the right, without notice to Tenant, to take such action as either deems necessary to protect its interest in the Leased Premises, including, without limitation, the obtaining of such insurance coverage as either in its sole discretion deems appropriate. All premiums incurred by Landlord and/or Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Tenant to Landlord and/or Mortgagee, as the case may be, upon demand and, until paid, shall be secured by the Mortgagee and shall bear interest at the Overdue Rate.

(g) Tenants Insurance. If Tenant has claims made insurance coverage of any type, upon expiration or earlier termination of this Lease, Tenant shall purchase so-called "tail" insurance for a period of three years in an amount not less than its existing coverages in order to assure Tenant is covered by insurance after the expiration or earlier termination of this Lease for all claims arising or relating to the period prior to the expiration or earlier termination of this Lease, and Landlord and Mortgagee shall be named as additional insured thereunder.

Section 6.2 Certificates of Insurance. Upon the Commencement Date of this Lease, Tenant shall furnish Landlord, Mortgagee and other third parties which Landlord shall designate with appropriate certificates of insurance on acceptable Acpord forms, together with an additional insurance endorsement showing that each type of insurance required under this Article VI is in full force and effect and not cancelable or modifiable without thirty (30) days prior written notice to Landlord, and upon request of Landlord or one or more of such additional insureds, deliver copies of such insurance policies. Tenant will provide Landlord with acceptable certificates of insurance pursuant to this Section 6.2 evidencing the renewal of such Policies ten (10) Business Days prior to the Policies' expiration date. Tenant acknowledges that all such certificates shall name Landlord, its successors and assigns, and Mortgagee, its successors and assigns, as additional insureds on the general liability and umbrella policies and as a loss payee/mortgagee, as their interests may appear, on the property and boiler and machinery policies.

Section 6.3 Waiver of Subrogation. Landlord and Tenant hereby waive all rights of recovery for causes of action which either has or may have or which may arise hereafter against the other for any damage to the Leased Premises or the property or business of either of them or of anyone claiming through either of them, by way of subrogation or otherwise, caused by any of the perils covered by a special form policy of property insurance or contents insurance or by any other insurance for damage to property owned by the party whose property was damaged; provided, however, that the foregoing waiver shall apply only if and to the extent that:

a waiver of subrogation for property damage is not prohibited in the State of New York, has been consented to by the applicable insurance carrier, and only to the extent of such insurance coverage.

ARTICLE VII

SECURITY, ACCESS AND REPORTING OBLIGATIONS, WORKING CAPITAL.

Section 7.1 Security Deposit/Guaranty.

(a) Contemporaneously with the execution of this Lease, Tenant, shall deliver a guarantee of this Lease (the "Guaranty") from Lizer Josefovic and Mark Neuman (collectively, the "Guarantors") in the form of Exhibit "B" attached hereto, or in form and amount as may be otherwise required by the Landlord and Landlord's first and second Mortgages. The Guaranty shall set forth that the Guarantors will be required to cooperate in turning the license over to the Landlord's designee or be personally liable for all costs, expenses and damages or deficiencies. The Guarantors shall ensure that the Tenant shall deliver all of the documents required to transfer the license in screw to Postmark, Blackstein & Lind, or such other party as Landlord designates. As further security for the Tenant's performance under the Lease, the Tenant hereby agrees as follows:

(i) Tenant agrees that it shall deliver to Landlord 60 days prior to the Commencement Date, an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached hereto as Exhibit 7.1(a) or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,056.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months.

(ii) Tenant agrees that it shall deliver 60 days prior to the anticipated Commencement Date either (i) an unconditional Letter of Credit, in accordance with the Letter of Credit Agreement attached hereto as Exhibit 7.1(b) (which shall be executed simultaneously herewith), in the amount of \$3,700,000, or (ii) \$3,700,000 in cash ("Security Deposit") to secure the full and timely payment and performance of Tenant's obligations under this Lease. Tenant's failure to deliver the Letter of Credit or timely pay to Landlord the Security Deposit shall be deemed a Lease Default by Tenant. Landlord may retain the Security Deposit in such accounts as Landlord elects in its sole discretion and Landlord may commingle the Security Deposit with other funds of Landlord or its affiliates. Tenant shall have no right to any interest on the funds comprising the Security Deposit that it delivers to Landlord.

(iii) Sixty days prior to the anticipated Commencement Date, the funds in the controlled account number [REDACTED] in JPMorgan Chase Bank, N.A. (the "Bank") in the amount not less than \$1,000,000 shall be delivered by Tenant to Landlord and released by Tenant to Landlord to be held as an additional Security



Deposit by Landlord. The letter to Bank implementing the Tenant's obligations pursuant to the preceding sentence, attached hereto as Exhibit 7.1(c), which shall be held in escrow by Posternak, Blankstein, & Lund, shall be delivered by it to the Bank sixty days prior to the anticipated Commencement Date upon notice from Landlord.

(b) The term "Letter of Credit" shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit in favor of Landlord in form and content reasonably satisfactory to Landlord and entitling Landlord to draw thereon without the payment of any fees or charges in New York, New York, issued by a domestic banking institution or the U.S. agency or branch of a foreign banking institution; provided, that such banking institution has a long term senior unsecured debt obligation rating of at least "AA" by S&P. The Letter of Credit shall have an expiration date of the date that is the first anniversary of the date hereof. The Letter of Credit shall provide that it shall be deemed automatically renewed (without amendment) for consecutive periods of one year each thereafter during the Term unless the issuing bank sends written notice to Landlord and Tenant by certified mail, return receipt requested, not less than thirty (30) days preceding the then expiration date of the Letter of Credit that it elects not to have such Letter of Credit renewed. If such notice is sent, then at least twenty (20) days prior to the expiration of the Letter of Credit (and each subsequent or replacement Letter of Credit), Tenant shall deliver to Landlord a new Letter of Credit in the same amount and a failure to do so shall entitle Landlord to draw upon the existing Letter of Credit and to receive the proceeds therefrom and hold such proceeds as a cash Security Deposit pursuant to this Section 7.1 pending delivery of a new Letter of Credit.

(c) Upon a Lease Default, Landlord shall have the right, but not the obligation, in Landlord's sole and absolute discretion, to draw upon the Security Deposit and/or Letter of Credit and apply some or all of the funds to remedy such default or occurrence and to compensate Landlord for any loss or damage resulting therefrom, without prejudice to any other rights or remedies of Landlord under this Lease or at law or in equity. Upon any such application by Landlord, Tenant shall promptly deposit with Landlord an amount in cash equal to the amount from the Security Deposit so utilized by Landlord. Landlord shall at all times have, no security hereunder, Letter of Credit and cash Security Deposit in the amounts stated in Section 7.1(a). Upon the termination or expiration of this Lease, as long as Tenant has performed all of its obligations pursuant to this Lease and no Lease Default has occurred which is continuing, the remaining amount of the Security Deposit shall be returned or refunded to Tenant, without interest, subject in all events to Landlord's right to apply the Security Deposit as provided herein.

(d) Upon the occurrence of a Lease Default, Landlord may use, apply or retain the whole or any part of the Security Deposit or draw under a Letter of Credit to the extent required for the payment of any Rent or any other sums as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the relating of all or any portion of the Leased Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the Security Deposit, Tenant shall upon demand immediately deposit with Landlord a sum equal to the amount so used, applied or retained. In the event of any sale or financing of Landlord's interest in the Leased Premises, Landlord shall have the right to assign its interests in the

Security Deposit to the transferee, assignee or mortgagee, as the case may be, and if Landlord has given notice to Tenant of the assignment of Landlord's interest in the Security Deposit and if assignee or transferee of the Security Deposit has accepted liability for the Security Deposit, Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof; and Tenant shall look solely to the new landlord or mortgagee for the return or payment of the same. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit and neither Landlord, nor its successors or assigns, shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Section 7.2 Access to Leased Premises. Tenant shall permit Landlord, Mortgagee and their agents to enter upon the Leased Premises at all reasonable times during ordinary business hours and upon at least twenty-four (24) hours advance oral notice (except that in the case of emergency, Landlord may enter at any time and without prior notice) to inspect and examine the Leased Premises, to perform repairs as to Landlord's Work pursuant to Section 5.1, and to inspect and copy any operating manuals, procedures manuals, training manuals, and other books and records concerning unemployment, workers' compensation, insurance, tax, and any other business issues pertaining to the Leased Premises (subject to applicable laws and regulations governing patient confidentiality and privacy and the confidentiality of medical records) and any information necessary for audit relating to cost reimbursement, collections, general financial matters, litigation, inquiries and related activities (as may be necessary in connection with the Lease or the Leased Premises or any matters relating to periods prior to the Commencement Date). Any access by Landlord to patient records or medical records shall be strictly governed by Laws governing patient confidentiality and privacy and the confidentiality of medical records and all appropriate consents and/or waivers from residents or their guardians or representatives shall have been obtained before access to such records shall be granted. Landlord shall make reasonable efforts not to materially interfere with or materially disrupt Tenant's business and use and enjoyment of the Leased Premises during any such inspection or examination. Landlord shall also have the right but not the obligation to conduct a physical inspection of the Facility and from time to time and within thirty (30) days prior to the expiration of the Term or earlier termination of the Lease, upon twenty-four (24) hours advance oral notice. If Landlord reasonably determines based on this inspection that the Facility, or any portion of the Facility, requires repairs or maintenance so that the condition of the Facility is in compliance with this Lease and all Laws, then within thirty (30) days of notification by Landlord, Tenant shall commence making said repairs and diligently pursue such repairs to completion. Should Tenant fail to do so, within seven (7) days of notification by Landlord, Tenant shall pay to Landlord a deposit of funds in an amount equal to Landlord's reasonable estimate of the costs of such repairs or maintenance, which funds shall be released to Tenant from time to time during the progress of such repairs and maintenance based on submission by Tenant of evidence reasonably satisfactory to Landlord that such work is complete and all costs and expenses incurred to date have been paid in full. Tenant and Landlord acknowledge that the operations of the Facility and its maintenance are the sole and absolute responsibility of Tenant. Landlord shall have no liabilities or obligations with respect to the Facility, including no liabilities or obligations with respect to inspections of the Facility or the failure by Landlord to inspect the Facility.

Notwithstanding anything to the contrary in this Lease, Landlord and Tenant agree that all information, records and data collected or maintained regarding Facility



residents shall be confidential). Landlord, Tenant, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable New York and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) and the regulations issued in connection therewith (collectively, "HIPAA"). No employee or agent of Landlord or Tenant shall discuss, transmit or narrate in any manner the Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility's assets, or otherwise fulfilling its obligations under this Lease or under law. The obligations under this Section 7.2 shall survive the termination of this Lease, whether by rescission or otherwise.

Section 7.3 Changes in Licensure and Certification Status. As of the Commencement Date, Tenant represents and warrants that the number of beds licensed or certified for the Facility is one hundred sixty (160). Tenant shall not increase or decrease the licensed or certified number of beds, or change the licensure or certification thereof, without the consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; Tenant may increase the number of licensed or certified beds of the Facility upon thirty (30) days prior written notice to Landlord, but without the prior written consent of Landlord. If required, Tenant shall not increase the number of beds without the consent of the Commissioner and/or the DOH and Tenant agrees to return to Landlord upon the expiration of the Lease, the Leased Premises. Should Tenant increase the number of licensed beds at the Facility, the Fixed Rent payable for the Facility shall be increased proportionately for such additional beds. In no event shall the Fixed Rent be reduced in the event the number of Licensed Beds at the Facility is reduced. Landlord and Tenant acknowledge that the Leased Premises are, and at all times under the Term of this Lease are, the sole and absolute property of Landlord. Upon any termination of this Lease or any Lease Default by Tenant hereunder (which breach or default is not cured within any applicable grace period), and subject to the approval of the DOH, Landlord shall have the right to cause the Facility's licenses to be reissued in Landlord's name or in the name of Landlord's designee upon application therefor to, and the receipt of approval from, the DOH and to further have the right to have any and all Medicare, Medicaid and any other provider and/or third party payor agreements issued in Landlord's name or in the name of Landlord's designee. In the event Landlord exercises its rights pursuant to this Section 7.3, Tenant and Guarantors shall cooperate with Landlord in transferring the aforementioned items to Landlord's name or for the benefit of Landlord or as Landlord may direct pursuant to the terms of this Lease.

Section 7.4 Reporting and Other Obligations.

(a) During the Term, Tenant shall and shall cause all Subtenants, sub-subtenants and any operators of the Facility to provide (without duplication) Landlord and Mortgagee with the following reports, statements, and inspections:

(i) Annual Budget. Within 60 days prior to the projected Substantial Completion Date, and no later than thirty (30) days prior to the end of each calendar year thereafter, Tenant shall submit to Landlord an annual budget (each an "Annual Budget") covering the operations of and proposed capital expenditures to be made with respect to the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Annual Budget).

(A) Capital Expenditures. The Annual Budget shall include a capital budget (the "Capital Budget") outlining a program of capital expenditures as may be required by Law, any tender to Landlord, or Tenant's reasonable business judgment during the next calendar year (or the remainder of the current calendar year, in the case of the initial Capital Budget), in which each proposed capital expenditure will be designated as either mandatory, highly recommended or desirable. Tenant shall be responsible for designating as a "mandatory capital expenditure" any expenditure which, if not made would, in Tenant's reasonable judgment: (a) cause the Facility to lose or put at risk its License; (b) place at risk the safety of a patient or resident or employee of the Facility; (c) cause the ineligibility of the Facility under any third party payor program applicable to the Facility; (d) cause the issuance of a formal notice that any of the operating licenses for the Facility or any substantial portion of the Facility will be revoked or suspended or qualified in any material adverse respect; or (e) subject Landlord or Tenant to criminal prosecution. Tenant shall make during the calendar year, or calendar quarter for which they are budgeted, all capital expenditures approved by Landlord. On and after the Commencement Date, Tenant shall expend at least Five Hundred Twenty-Three Dollars (\$523.00) per bed per annum for capital expenditures at the Facility, including amounts expended to comply with the licensure and other expenditures required by any Governmental Authority or such other amounts as may be required by Mortgagee from time to time. If Mortgagee requires Landlord to deposit sums for capital expenditures, replacements and/or refurbishments relating to furniture, fixtures, equipment and/or improvements to the Facility, then Tenant shall pay to Landlord, as Additional Rent hereunder, all reserve or escrow amounts, sums and/or deposits which Landlord is required to pay to such Mortgagee with respect to such capital expenditures, replacements and/or refurbishments. Tenant shall pay any and all of such amounts and sums to or as directed by Landlord as Additional Rent hereunder together with each payment of Fixed Rent hereunder. Tenant acknowledges that as of the date hereof, Mortgagee requires a monthly deposit of Five Hundred Twenty-Three Dollars (\$523.00) per bed with respect to the Facility. In the event that such deposits are made by Tenant hereunder, Landlord shall use its reasonable efforts, subject to the terms and conditions of the loan agreements with Mortgagee, to obtain disbursements of such funds to be used for the payment of or reimbursement for the costs of such capital expenditures, replacements and/or refurbishments.

(B) Operating Budget. The Annual Budget shall include an operating budget (the "Operating Budget") setting forth an estimate of operating revenues and expenses for the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Operating Budget), together with an explanation of anticipated changes in the Facility. Tenant shall provide to Landlord upon written request such other reports, including a cost comparison report, and all appropriate Medicare and Medicaid reports, as may be required under these programs, as are normally provided by Tenant to the owners of other similar rehabilitation hospitals, psychiatric hospitals, and skilled nursing facilities leased by Tenant.

(ii) Financial Reporting. Tenant will keep and maintain or will cause to be kept and maintained on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Tenant and all items of income and expense in connection with the operation on an individual basis of the Facility. Notwithstanding the foregoing, Tenant's interim unaudited financial statements shall be prepared in accordance GAAP for interim financial information, but may not include all information or notes required by GAAP for a complete set of financial statements; such financial statements

shall include all adjustments and reclassifications of a normal recurring nature considered necessary for a fair and comparable presentation; all such interim financial statements shall be read in conjunction with most recent audited financial statements. Landlord and Mortgagee shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Tenant or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Landlord and/or Mortgagee shall desire. After the occurrence of a Lease Default, Tenant shall pay any costs and expenses incurred by Landlord and/or Mortgagee to examine Tenant's accounting records with respect to the Facility, as Landlord and/or Mortgagee shall reasonably determine to be necessary or appropriate in the protection of Landlord and/or Mortgagee's interest.

(iii) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, as soon as available, and in any event (A) within thirty (30) days after each calendar month's end, unaudited monthly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the month then-ended and year to date, prepared on a basis consistent with the annual statements; monthly census and revenue information of the Facility as of the end of such month and year to date in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average monthly census of the Facility and year to date; an aged accounts receivable report from the Facility in sufficient detail to show amounts due from each class of patient-mix by the account age classifications of 30 days, 60 days, 90 days, 120 days, and over 120 days; (B) within forty-five (45) days after the end of each calendar quarter, unaudited quarterly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the quarter then-ended, prepared on a basis consistent with the annual statements; quarterly census and revenue information of the Facility as of the end of such quarter in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average quarterly census of the Facility; (C) no later than 120 days after the end of each calendar year of Tenant, audited annual financial statements of Tenant, prepared by an independent certified public accounting firm reasonably acceptable to Landlord, prepared in accordance with generally accepted accounting principles, with an unqualified opinion, and including a balance sheet, a statement of income and expenses for the year then ended, a statement of cash flow, and a schedule audited by such independent certified public accountant reconciling Tenant's net operating income to net cash flow, which shall itemize all adjustments made to net operating income to arrive at net cash flow deemed material by such independent certified public accountant.

(iv) Each financial report provided by Tenant shall reconcile and show variances between the actual experience incurred during each such reporting period with respect to each metric to the metric shown on the Operating Budget and Capital Budget for such period.

(v) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, any other reports and certificates reasonably requested by Landlord or Mortgagee from time to time.

(v) In addition, Tenant shall prepare and deliver to Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, a written report providing an operational overview of significant events and circumstances at the Facility during the prior month, during the first six months of the Term and then quarterly thereafter, including, but not limited to, clinical events, employee relations and staffing matters and provide such other information as Mortgagee may require from time to time. Tenant shall provide Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, with a copy of all federal income tax returns of Tenant and its Subsidiaries within fifteen (15) days after filing thereof. Whenever practicable, all reports shall be delivered to Landlord electronically in a format usable by Landlord.

(h) All unaudited financial reports from Tenant shall include an Officer's Certificate certifying that such financial statements present fairly the financial condition and the results of the operations of Tenant and the properties being reported upon and that such financial statements have been prepared in accordance with the Tenant's customary accounting procedures. The Officer's Certificate accompanying the annual audited financial statements of Tenant shall also include a statement that they have been prepared in accordance with GAAP and whether there exists an event or circumstance which constitutes a default or an event of default under the Lease, the nature thereof, the period of time it has existed, and the action then being taken to remedy the same.

(c) Tenant shall furnish Landlord and Mortgagee, within five (5) days of the receipt by Tenant, any and all notices (regardless of form) from any Health Care Authority that Tenant's license, Medicare or Medicaid certification, or VA or other governmental program participation is being, or could be revoked or suspended, that action is pending, being considered or being taken to revoke or suspend the Tenant's license or certification or to fine or penalize the Tenant, or that action is pending, being considered, or being taken, to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Tenant or related to the operation of the Facility other than in the ordinary course of business related to billing adjustments.

(d) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the receipt by Tenant, any and all notices (regardless of form) from any Governmental Authority or third party payor (i) alleging that the Facility has three or more deficiency(ies) of a scope and severity of "G" or hire, or one or more deficiency(ies) of a scope and severity of "J" or higher, (ii) alleging that the residents of the Facility are in jeopardy, (iii) freezing admissions to the Facility or (iv) denying reimbursement for any class of residents by any third party payor.

(e) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the sending or receipt by Tenant of any communication copies thereof, including a plan of correction, with respect to the matters referenced in Section 7.4(d).

(f) Tenant shall file all required reports, including without limitation, Medicare or Medicaid cost reports, on or prior to the date such reports are due (such due date to include approved regulatory extensions allowed by the applicable Governmental Authority for the filing of such reports) and shall furnish Landlord and Mortgagee, within thirty (30) days of the date of filing, a complete and accurate copy of the annual Medicare or Medicaid cost report

for Tenant, which will be prepared by Tenant and accompanied by an Officer's Certificate of Tenant certifying as of the date thereof that such report is accurate, complete and not misleading, and promptly furnish Landlord and Mortgagee any amendments filed with respect to such reports and all notices, responses, audit reports or inquiries with respect to such reports.

(g) Tenant shall furnish Landlord and Mortgagee, within thirty (30) days of the receipt by Tenant, the annual Medicaid and Medicare provider agreement(s) and the annual Medicaid and Medicare reimbursement rate sheets for the Facility.

(h) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt but at least five (5) days prior to the earliest date on which Tenant is required to take any action with respect thereto or would suffer any adverse consequence, a copy of any Medicare, Medicaid or other licensing or accreditation or rating agency or entity survey, report, warning letter, or notice, and any statement of deficiencies, and within the time period required by the particular agency for furnishing a plan of correction also furnish or cause to be furnished to Landlord and Mortgagee a copy of the plan of correction generated from such survey, report, warning letter, or notice to Tenant and any subsequent correspondence related thereto, and correct or cause to be corrected any deficiency, the curing of which is a condition of continued licensure or of full participation in Medicare or Medicaid or a care program offered by an insurance company, managed care company, or other third-party payor by the date required for cure by such agency or entity (plus extensions granted by such agency or entity).

(i) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any other notices or charges issued relating to the non-compliance by Tenant with any Governmental Authority, insurance company, managed care company, or other third-party payor laws, regulations, requirements, licenses, permits, certificates, authorizations or approvals, but only such matters which could reasonably be expected to have a material adverse effect on the financial condition of such Person or the operation of the Facility.

(j) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any new, revised or amended Medicare or Medicaid reimbursement rate sheets which may be issued subsequent to the annual reimbursement rate sheets.

(k) Tenant shall notify Landlord within five (5) days of any condition or event that constitutes a breach of any term, condition, warranty, representation or provision of this Lease or any other agreement between Landlord or its Affiliates and any Tenant, any Guarantor or any of their Affiliates, and of any adverse change in the financial condition of any Tenant, any Guarantor or any Affiliate of any Tenant or any Guarantor and of any Event of Default. Additionally, Tenant shall notify Landlord within seven (7) days after receipt of any formal or informal written notice or advice from its insurance carrier, reinsurance provider, accountants, actuary, any Governmental Authority, or any third party payor program provider of any actual, pending, threatened or contemplated increase in Tenant's reserves for expenses relating to malpractice or professional liability claims or any material increase in the premium costs for malpractice or professional liability insurance.

(l) To the extent performed, Tenant shall furnish Landlord and Mortgagee, a copy of written external consultant reports (including environmental, operations,

quality assurance, physical plant, property inspection, etc.) (which shall be delivered promptly upon receipt from the consultant).

(m) Tenant shall furnish Landlord and Mortgagee, a copy of cost reports as filed by Tenant.

(n) Any supporting documents or data requested by Landlord in connection with the items in this Section 7.4.

(o) Within 10 days of event of any of the following, Tenant shall deliver to Landlord, notice of:

(i) any rate appeal brought before any Governmental Authority or any administrator of any third party payor program or referral source;

(ii) any reimbursement appeals or recoupment claims made or contests pending or threatened as a result of any audits by any third party payor; and

(iii) any claim, requirement or demand (excluding all claims, requirements, and demands, if any, that have been waived) of any Governmental Authority, third party payor or insurance body or carrier having or claiming any licensing, certifying, supervising, evaluating or accrediting authority over the Leased Premises to rework or redesign the Leased Premises, its professional staff or its professional services, procedures or practices in any material respect or to make any of the Leased Premises conform to or comply with a legal requirement.

(p) The receipt by Landlord of any reports, statements, financial information, surveys or otherwise from Tenant or its Affiliates shall not in any way impose any obligation or liability upon Landlord to act or take any action upon any information, facts or circumstances which may be disclosed or shown therein and Landlord shall have no liability for its failure to act thereon or as a result thereof.

(q) **Financial Covenants.** Tenant covenants and agrees to the following, as may be amended time to time as required by Landlord's 1st or 2nd Mortgagee:

(i) Commencing the third full quarter of the Term Tenant's Current Ratio shall not be less than 1.1 to 1.0. The term "Current Ratio" means the current assets of Tenant divided by the current liabilities of Tenant determined in accordance with GAAP.

(ii) For each quarter of the Lease Term commencing the third full quarter following the Commencement Date, Tenant's Lease Coverage Ratio shall be not less than 1.25 to 1.0.

(iii) For each quarter of the Lease Term commencing the second full quarter following the Commencement Date, the Facility shall have achieved the EBITDAR benchmarks as described on Schedule 7.4, attached hereto. The term "EBITDAR" is defined in Schedule 7.4.

**Section 7.5 Payment in the Ordinary Course.** Tenant shall pay in full: (i) prior in each case to the date when penalties would attach, all Impositions (except only those so long as and to the extent that the same shall be contested in good faith by appropriate and timely proceedings and for which adequate reserves have been established in accordance with GAAP), provided that (i) Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) for which Tenant may be or become liable; (ii) no Lease Default has occurred and remains uncured; (iii) such proceeding shall suspend the collection of such Impositions or the Impositions shall have been paid; (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Tenant is subject and shall not constitute a default thereunder; (v) no part of or interest in the Leased Premises will be in danger of being sold, forfeited, terminated, canceled or lost; (vi) Tenant shall have furnished such security as may be required in the proceeding, or as may be requested by Landlord or Mortgagee, to insure the payment of any such Impositions, together with all interest and penalties thereon, which shall not be less than 125% of the unpaid Impositions being contested and (vii) Tenant shall promptly upon final determination thereof pay the amount of such Impositions, together with all costs, interest and penalties; (b) all of Tenant's wage obligations to Tenant's employees in compliance with the Fair Labor Standards Act (29 U.S.C. §§ 206-207) or any comparable provisions under federal, state or local law; (c) all obligations owed in connection with any claim, demand or notice of any overpayment received from Medicare, Medicaid or other third party payor; and (d) all of Tenant's obligations calling for the payment of money (except only those so long as and to the extent that the same shall be contested in good faith and for which adequate reserves have been established in accordance with GAAP, provided that Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) before such payment becomes overdue.

**Section 7.6 Security Agreement.** In order to secure the payment and performance of all of Tenant's obligations under this Lease and all of Tenant's obligations to Landlord, and all and all other documents contemplated thereby, Tenant hereby grants to Landlord a first priority security interest in and lien upon, all of the assets of Tenant including, without limitation, (i) all trade fixtures, equipment, furniture, merchandise, inventory and other personal property located from time to time on or upon the Leased Premises (including the proceeds thereof), and (ii) to the fullest extent permitted by applicable law, all accounts, accounts receivable, licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, certificates of need, and other authorizations issued to or held by Tenant with respect to the operation of the Facility skilled nursing facility and Tenant's interest in and rights under all third party payor provider agreements with respect to the Facility (the items listed in clauses (i) and (ii), together with the proceeds of same, are collectively, "Collateral"). The security interest granted to Landlord with respect to Tenant's tangible personal property is intended to be subordinate to any purchase money security interest or capital lease on any of Tenant's tangible personal property provided that Tenant has notified Landlord of the creation of such security interest or capital lease prior to the creation thereof and Landlord has approved same. Landlord agrees to subordinate its lien on Tenant's accounts receivable in favor of Tenant's accounts receivable lender, which shall be a nationally recognized nursing home accounts receivable lender with experience acceptable to HUD or Mortgagee on at least 20 nursing homes, securing up to a \$2,000,000.00 accounts receivable loan, provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. Should

Mortgagee require a subordination of the priority of Landlord's security interest in the Collateral, Landlord and Tenant shall execute such documents as Mortgagee may request to subordinate Landlord's lien to the Mortgagee's security interest in the collateral. In addition, Tenant's members shall grant to Landlord a first lien pledge (subject to the following sentence) of the membership interests of Tenant. To the extent required by Tenant's accounts receivable lender, Landlord agrees to subordinate its lien on Tenant's membership interests to a lien in favor of such lender securing up to a \$2,000,000.00 accounts receivable loan; provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. On or before the Commencement Date, Tenant shall provide Landlord with a detailed list and description of all the Collateral. Upon a Lease Default by Tenant, Landlord shall have all the rights and remedies of a secured party under the laws of the State of New York. Tenant, as Debtor, shall cause to be executed (if appropriate or necessary) and delivered to Landlord, as the secured party, upon execution of this Lease by Tenant, UCC-1 Financing Statements in proper form, and thereafter, from time to time, deliver to Landlord such extensions and/or updates of such financing statements as are required for the purpose of perfecting and maintaining the priority of the security interest granted to Landlord herein, and to perform any other acts reasonably necessary to the perfection of such security interest. Tenant and Tenant's members consent to Landlord's preparation of and the filing of such financing statements by Landlord and agrees that the provisions of this Section 7.6 shall constitute a security agreement for the purposes contemplated hereby. The security interest granted by this Section 7.6 shall be in addition to any lien of Landlord that may now or at any time hereafter be provided by law. In the event Landlord exercises its remedies to foreclose the security interest created under this Section 7.6, or elsewhere in this Lease, Tenant shall cooperate with Landlord in transferring all of the aforementioned items promptly as requested by Landlord in Landlord's or its designee's name or for the benefit of Landlord. Tenant covenants and agrees that it shall not sell, move, surrender, cancel, modify, transfer, assign, relocate, pledge, grant a security interest in, convey or in any other manner encumber any assets of Tenant including, without limitation, the personal property, the certificate of need approval or any of the licensed or Medicare- and/or Medicaid-certified beds at the Facility, or any licenses for the Facility, or attempt at any time to do same, except as expressly provided hereunder and with the written consent of Landlord. This Section 7.6 and Landlord's rights and remedies hereunder shall survive the termination of the Lease.

Section 7.7 Working Capital. As of the Effective Date, Tenant shall have and maintain until the Commencement Date in accounts, acceptable to Landlord in its sole and complete discretion, an amount of funds equal to the greater of ("Working Capital") (i) any debt service reserve required by Mortgagee, (ii) the aggregate negative net operating income of Tenant for the period of months from the Commencement Date to the first day of the first two month period in which aggregate net income from operations exceeds zero, all as reflected in the projections attached hereto as Schedule 7.7 ("Cash Requirement"); for the purpose of this calculation net operating income shall be determined on a cash basis, and (iii) 4.5 million dollars. Working Capital shall not include any accounts or reserves established to satisfy the requirements of Section 7.1(a) (i) and (ii). From and after the Commencement Date, the Working Capital, subject to any requirement of the Mortgagee, may be used by Tenant only to fund the Cash Requirement.

7.8 Refinancing. Tenant shall fully cooperate with Landlord in its efforts to Refinance from time to time, including without limitation, providing all information and executing all

documents required by Lender(s). On and after each Refinance Date the Fixed Rent for each twelve month period shall equal the sum of the amounts provided for in clauses (a) through (e): (a) the annual debt service payments (principal, interest, and mortgage insurance premiums, if any) that Lender is required to pay to Lender pursuant to the first Mortgage (the "Mortgage Debt"), plus such additional amounts as Lender may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations; (b) the annual aggregate debt service payments or preferred equity payments that the Lender is required to pay pursuant to the Junior Debt (or replacement thereof) (with the Mortgage Debt, the "New Debt Service"); plus such additional amounts as Lender may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations under the Junior Debt (or replacement thereof); (c) an annual amount equal to \$1,390,115; (d) an additional amount of \$250,000 per year prior to the fourth year of the Term; \$350,000 per year during Lease Years 4 and 5; and \$400,000.00 per Lease Year thereafter until the end of the Term, including all Extension Terms; and (e) an additional amount equal to one-half of the amount that (i) a sum equal to the last 12 months interest payment on the original Mortgage and Junior Debt exceeds (ii) New Debt Service.

#### ARTICLE VIII

#### PERSONAL PROPERTY

Section 8.1 Landlord's Personal Property. Upon the expiration or termination of this Lease, Tenant shall leave all personal property leased to Tenant hereunder, as required, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, in or on the Leased Premises, except for ordinary wear and tear. Any and all restorations, alterations or replacements of, or repairs, reconstructions or additions to, the personal property at the Facility made by Tenant shall become part of Landlord's personal property, and any and all security interests (except in favor of Landlord) in Tenant's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Tenant shall pay off in full the remaining payments due on all personal property leased by Tenant and such personal property shall become part of Landlord's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Any of Tenant's software, software licenses, proprietary information, and policies, and procedures of Tenant ("Retained Assets") shall not become part of Landlord's personal property except in the event of the termination of this Lease as a result of a Lease Default, in which case the Retained Assets shall become the personal property of Landlord; provided, however, upon request of Landlord, in consideration of a payment by Landlord or its designee of Ten Dollars (\$10.00) and any applicable lease, rent, or license fees owed to any third parties during the Transition Period (hereinafter defined), Tenant shall license Landlord or its designee(s) (at Tenant's cost with no mark-up) to utilize the Retained Assets for a period of one hundred twenty (120) days (the "Transition Period") in connection with the transition of operations from Tenant and Landlord's new operator(s). To the extent Tenant or any Subtenants are obligated under license agreements with third party vendors supplying software (and/or computer hardware which Tenant does not own or lease) to such Tenant, Tenant shall use its best

efforts to arrange for Landlord or Landlord to enter into licensing agreements with such third party vendors to allow Landlord or its designee to utilize such software and computer hardware supplied by such third party vendors for the duration of the Transition Period.

Section 8.2 Tenant's Retained Assets. At the termination of the Lease, Landlord shall have the right to purchase all or a portion of Tenant's Retained Assets located at the Facility at the lower of its fair market value or book value. To the extent any of Tenant's Retained Assets is subject to a license, Landlord shall have the right but not the obligation to assume some or all of such license Landlord's sole cost and expense and at no additional liability to Tenant.

ARTICLE IX

INDEMNIFICATION

Section 9.1 Tenant's Indemnification (a) During the Term of this Lease and after the surrender of the Leased Premises in accordance with Section 5.5 of this Lease, Tenant shall protect, defend (at Landlord's request), indemnify and hold harmless Landlord, Landlord's members, managers, officers, owners, directors, employees, agents, representatives, and Mortgagee and their respective agents, executors, heirs, representatives and assigns, and any entity providing financing which is secured by the Leased Premises (collectively the "Landlord's Indemnitees"), from and against any claims, losses, costs, penalties, damages, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) imposed or resulting from, arising out of or attributable in whole or in part to any of the following: (i) any violation of any Law, order of Governmental Authority, whether occasioned by the intentional act, omission, or negligence of Tenant or those holding under Tenant, (ii) any accident or other occurrence on or about the Leased Premises on or after the Commencement Date causing injury to any person or property whatsoever or whatsoever, including but not limited to patient care claims or elder abuse, (iii) any failure of Tenant in any respect to comply with or perform any term, condition, covenant, requirement and/or provision of this Lease, or a breach of this Lease by Tenant, including, but not limited to, a breach of any of Tenant's representations and warranties under Section 19.1 of this Lease, (iv) in any way relating to Tenant's use, operation and/or maintenance of the Facility (including, without limitation, third-party claims, whether by the State of New York, the United States, private insurers, private parties, for reimbursement, false claims, or any other claims, assumption of and use by Tenant of Landlord's permits, variances, waivers, and certificate of need approval or its possession of the Leased Premises and/or (v) any liability under Section 20.14. The indemnity provided for herein shall survive the expiration of this Lease or the surrender of the Leased Premises for the period of the relevant statute of limitations.

(b) Any amounts which become payable by Tenant under this Article IX shall be paid within ten (10) days after liability therefor is determined by litigation or otherwise, and if not timely paid shall bear interest at the Prime Rate plus 5% (the "Overdue Rate") from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or may compromise or otherwise dispose of the same as Tenant sees fit provided that Landlord receives a full and complete release with respect to such claim, action or proceeding. Any legal

counsel selected by Tenant to defend Landlord shall be reasonably satisfactory to Landlord. All indemnification covenants are intended to apply to losses, damages, injuries, claims, costs, penalties, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) incurred directly or indirectly by the indemnified parties and their property, as well as by the indemnifying party or third party, and their property. For purposes of this Article IX, any acts or omissions of Tenant, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant. It is understood and agreed that payment shall not be a condition precedent to enforcement of the foregoing indemnification obligations. The "Prime Rate" shall mean on any date, a rate equal to the annual rate on such date publicly announced by Citibank, N.A., as its prime, base or reference rate. Such rate need not be the lowest rate charged by Citibank, N.A. If Citibank, N.A. discontinues its use of such prime, base or reference rate or ceases to exist, Landlord shall designate the prime, base or reference rate of another state or federally chartered bank with offices in New York, N.Y. to be used for the purpose of calculating the Prime Rate hereunder.

ARTICLE X

USE OF LEASED PREMISES

Section 10.1 Compliance with Laws and Regulations. Tenant shall use the Leased Premises solely as a licensed Medicare- and Medicaid-certified skilled nursing facility with at least the number of licensed and certified beds existing at the Facility on the Commencement Date, and for no other purpose (the "Intended Use"). On or before the Commencement Date, Tenant shall have acquired, and thereafter Tenant shall maintain all licenses, certificates, accreditations, approvals, permits, variances, waivers, provider agreements and other authorizations needed to operate the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility. Tenant hereby covenants, warrants and represents to Landlord that as of the Commencement Date and throughout the Term: (a) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be validly licensed and Medicare and Medicaid certified to operate a skilled nursing facility in accordance with the applicable rules and regulations of the DOJ, federal governmental authorities and accrediting bodies, including, but not limited to, the United States Department of Health and Human Services ("DHHS"), CMS, and the DOH; (b) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be, certified by and the holder of valid provider agreements with Medicare and Medicaid issued by DHHS, DOH and/or CMS and shall remain to certified and shall remain such a holder in connection with its operation of the Leased Premises as a licensed and Medicare and Medicaid certified skilled nursing facility; (c) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be in compliance with and shall remain in compliance with all applicable Laws with regard to the operation of the Facility, including, without limitation, compliance under Laws governing patient confidentiality and privacy and the confidentiality of medical records; (d) Tenant (and any subtenant, operator or manager of Tenant) shall operate the Facility in a manner consistent with high quality skilled nursing services and sound reimbursement principles under the Medicare and Medicaid programs and as required under Laws; and (e) Tenant (and any subtenant, operator or manager of Tenant) shall not abandon, terminate, vacate or fail to renew any licenses,

certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or any other authorization which relates to the operation of the skilled nursing facility business or other permitted operations on the Leased Premises or in any way commit any act which will or may cause any such licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or other authorization to be revoked by any Governmental Authority or accrediting body having jurisdiction thereof.

Section 10.2 No Waste. Tenant shall not commit or suffer to be committed any waste on the Leased Premises nor shall Tenant cause or permit any nuisance thereon.

Section 10.3 Hazardous Materials and Hazardous Waste. (a) Tenant shall not place or hold any Hazardous Materials on or at the Leased Premises, except as is necessary for the ordinary course of its business as a skilled nursing facility in compliance with Section 10.1. If Tenant's business requires the use of any Hazardous Materials, other than such cleaning materials as are typically found in skilled nursing facilities in compliance with Section 10.1, Tenant shall notify Landlord in writing and shall comply with hazard communication and notification requirements of the Occupational Safety and Health Act ("OSHA") and all Laws which require notification of employees, the community or any governmental agency of the hazardous properties of such Hazardous Materials. For purposes of this Lease, "Hazardous Materials" means and includes any hazardous substance defined as such in OSHA, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous substance or material, as now or at any time hereafter in effect.

(c) Tenant shall not cause or allow any asbestos or any asbestos containing materials to be incorporated into any improvements or alterations which it makes or causes to be made on or to the Leased Premises. Tenant shall obtain and maintain O&M Programs for the Facility is if the Facility is determined to contain asbestos or asbestos containing materials and upon Landlord's request, shall furnish copies of same to Landlord, Mortgagee or their designer(s).

(d) Tenant shall not place, hold or dispose of any Hazardous Waste on, under or at the Leased Premises except as specifically allowed in this Section 10.3. Tenant further agrees that it shall not use the Leased Premises as a treatment, storage, or disposal (whether permanent or temporary) facility for Hazardous Waste. If Tenant, in the ordinary course of its business as a skilled nursing facility generates Hazardous Waste, then Tenant shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to the appropriate use, storage, transportation and disposal of Hazardous Waste. For the purposes of this Lease, "Hazardous Waste" means and includes any hazardous material that has entered the waste stream or any contaminant or pollutant as defined as such in the Resource Conservation and Recovery Act, CERCLA, as amended, any so-called "Superfund" or "Superfund" law, the TSCA, or any other Law, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste. Tenant further agrees that it shall properly dispose in accordance with Laws of all "infectious waste" such as laboratory waste, pathological waste, blood specimens or products, patient or resident waste including, without

limitation, bandages and disposable gowns, sharp waste and any material generated by the production or testing of biological agents. Immediately upon receipt of any Environmental Notice (as hereinafter defined) from any Person, Tenant shall deliver to Landlord a true, correct and complete copy of same. "Environmental Notice" shall mean any note, notice, or report of any suit, proceeding, investigation, order, consent order, injunction, writ, award, or action related to or affecting or indicating the treatment, storage, handling, disposal, generation, spill, release or discharge of any Hazardous Waste or Hazardous Materials in, upon, under, from or affecting the Lensed Premises. All of the terms, covenants, warranties and indemnifications contained in this Section 10.3 shall survive the expiration or termination of this Lease.

(e) Without in any way limiting Tenant's obligation to indemnify Landlord and Landlord's Indemnitees under Section 9.1 of this Lease, Tenant shall indemnify, defend (at Landlord's request) and hold harmless Landlord and Landlord's Indemnitees from and against any claims, losses, costs, damages or expenses of any and every kind whatsoever (including reasonable attorney's fees and expenses and consultant's and expert's fees and expenses) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord and/or Landlord's Indemnitees for, with respect to, or as a direct or indirect result of: (a) a breach by Tenant of the covenants set forth in Section 10.3 or, (b) caused, permitted or allowed by Tenant or any agent, employee, invitee, or licensee of Tenant, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, onto, or into the Lensed Premises, the atmosphere, or any watercourse, body of water, or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, as amended, any so-called "Superfund" or "Superfund" law, or any other Law, relating to or imposing liability or standards of conduct concerning, any Hazardous Material) occurring from and after the Commencement Date; and the provisions of and undertakings and indemnification set out in this Section 10.3(e) shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever. If required by Mortgagee, Tenant shall enter into an agreement to indemnify, defend and hold harmless Mortgagee with respect to matters contained in this Section 10.3, and other similar matters pursuant to a form of agreement reasonably acceptable to Mortgagee. In no event however shall Tenant have any liability to Landlord or Landlord's Indemnitees for Hazardous Materials located at or under the Lensed Premises prior to the Commencement Date or for the remediation of same.

(f) If Tenant or its employees, agents, or contractors violate the provisions of this Section 10.3, then, in addition to any other duty or obligation of Tenant hereunder, at law or in equity, Tenant shall be obligated to clean up, remove, and dispose of the material causing the violation, in compliance with all applicable environmental laws and repair any damage to and remediate the Lensed Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord; provided that such work shall commence no later than thirty (30) days from the date of such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time and procedure for any clean-up, remediation or removal of material causing the violation under this provision, and Landlord shall have the right to require reasonable changes in such method, time or procedure.

(g) Landlord reserves the right from time to time, but not more than once a year, except in the event of an emergency or during the occurrence and continuation of an uncured Lease Default during the Term hereof, at Landlord's cost and expense (except that, in the event of a continuing and uncured Lease Default, at Tenant's sole cost and expense), to have the Leased Premises inspected by environmental engineers and/or specialists for the purpose of determining compliance by Tenant with any environmental laws, rules and regulations applicable to Tenant's operations in or about the Leased Premises and with the terms and conditions of this Lease dealing with environmental matters, including without limitation, the provisions of this Section 10.3. If the environmental assessment or report resulting from such inspection discloses any non-compliance with Laws, Tenant shall immediately, following receipt of the environmental assessment, take all such steps as are necessary to put the Leased Premises into compliance, including without limitation, cleaning up any spills or other emissions of Hazardous Wastes or Hazardous Materials, and reimburse Landlord for the costs of its inspection.

(h) Upon the expiration of the Term, or the earlier termination thereof, subject to the last sentence of Section 10.3(d) above, Tenant shall forthwith remove all Hazardous Materials and Hazardous Waste from the Leased Premises or any portion thereof in accordance with applicable Law. Landlord shall have the right to inspect the Leased Premises with regard to the management and disposal of Hazardous Materials and Hazardous Waste at all reasonable times during the Term.

ARTICLE XI

DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction. Tenant shall immediately notify Landlord of any casualty, fire, damage, destruction or injury ("Casualty") affecting the Facility, including a description of the Casualty, and whether the Casualty is such as to cause the Leased Premises to be unusable, in whole or in part, for the intended Use. Tenant shall proceed with reasonable diligence to repair or reconstruct the Leased Premises and Tenant shall be liable for any costs of repair or replacement to the Leased Premises, whether or not such Casualty, or the costs of repairing such Casualty, are fully covered by the proceeds of Tenant's insurance required to be carried hereunder. If such Casualty renders the Facility unusable for the purpose of this Lease and if Landlord's Mortgagee so requires, Landlord, upon notice to Tenant, Landlord may terminate this Lease and Landlord and Tenant shall be released from any further liability hereunder thereafter according with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance to the extent such difference results from Tenant's breach of Article VI. Notwithstanding the foregoing, if Landlord's obligations to its Mortgagee have been satisfied in full and the DOH approves and agrees to reimburse the costs of rebuilding the Facility, Landlord shall not so terminate this Lease with respect to the Facility, and Tenant shall repair or reconstruct the Leased Premises in substantially the same condition as just prior to the incident with the proceeds of the property casualty insurance carried by Tenant, as required hereunder (if not otherwise paid to the Mortgagee), and/or with funds of Tenant. Regardless of any Casualty, except as provided above, this Lease shall continue in full force and effect without any abatement of Rent, and Tenant shall

not be entitled to surrender possession of the Leased Premises as a result of such casualty. Landlord's receipt of Rent from Tenant's rental interruption insurance shall be credited against Rent payments due from Tenant hereunder. If Tenant fails to commence such repair or reconstruction within thirty (30) days of the Casualty, Landlord shall have the option, subject to the approval of the DOH if required by Laws, to either terminate this Lease upon written notice to Tenant or repair and reconstruct the Leased Premises in substantially the same condition just prior to the incident and costs and expenses incurred as a result thereof shall be deemed Additional Rent hereunder and shall be payable to Landlord by Tenant, upon demand. Upon payment of all such sums demanded by Landlord, Tenant may re-enter and resume possession of the Leased Premises pursuant to the terms of this Lease. All insurance proceeds collected under the Policies shall be paid to Landlord, and made available to Tenant to pay for or reimburse Tenant for the costs and expenses for such repairs and reconstruction subject to the terms, conditions and provisions of any mortgage or other loan documents encumbering the Leased Premises. If Mortgagee does not make the insurance proceeds available to Landlord, then Landlord may terminate this Lease upon thirty (30) days' notice to Tenant, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance.

Section 11.2 Precedence of Rights of Mortgagee. All provisions contained in the lease documents between Landlord and Mortgagee, or any other document in connection therewith which concern or pertain to the restoration of the Leased Premises, the application of insurance proceeds and any and all matters concerning a casualty, shall take precedence over and be in lieu of any contrary provision provided for in this Lease, and in all respects are binding upon Tenant who agrees to and acknowledges the same.

Section 11.3 Tenant hereby waives the provisions of Section 227 of the Real Property Law of the State of New York and acknowledges that the terms of this Article XI shall govern in lieu thereof.

ARTICLE XII

EMINENT DOMAIN

Section 12.1 Eminent Domain. (a) In the event that all or substantially all of the Leased Premises, or such portion of the Real Property which renders the balance of the Facility unsuitable for the purpose of this Lease, shall be taken by condemnation or right of eminent domain, this Lease shall terminate as of the day the taking authority takes possession of the Leased Premises, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except as otherwise expressly provided in this Lease. In the event only a portion (and less than substantially all) of the Leased Premises is taken by condemnation or right of eminent domain and the portion so taken does not render the balance of the Leased Premises unsuitable for the purposes of this Lease, as determined by Landlord, this Lease shall not terminate. In such an event, Tenant shall restore the Leased Premises with reasonable diligence with its own funds and with the proceeds of any award from the applicable public or quasi-public authority, or private corporation or individual having the



power of condemnation ("Award") to an architectural unit as nearly like its condition prior to such taking as shall be practicable. Notwithstanding anything to the contrary herein, this Section 12.1(a) is subject to the terms, conditions and provisions of any mortgage and other loan documents encumbering the Leased Premises.

(i) Notwithstanding anything to the contrary contained in Section 12.1(e), Landlord may cancel this Lease with no further liability to Tenant, in the event that following a taking by condemnation or right of eminent domain, Mortgagee elects to require Landlord to repay the mortgage on the Leased Premises.

(j) Tenant shall not be entitled to any part of any award or settlement of damages representing the value of land and buildings appropriated, the value of this Lease or any estate therein, or damage to the residue of the Leased Premises or other property of Landlord; it being agreed as between Landlord and Tenant any such award shall be the sole property of Landlord. No appropriation of part or all of the Leased Premises or cancellation of this Lease pursuant to this Article XII shall be deemed an eviction of Tenant or a breach of any covenants of Landlord hereunder.

ARTICLE XIII

NOTICES

Section 13.1 Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if (a) hand delivered or sent by (b) certified or registered United States mail, postage prepaid, return receipt requested or (c) Federal Express or other nationally recognized overnight next business day courier service at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 13.1:

If to Tenant:

MBL SNP, LLC  
1280 Albany Post Road  
Croton-on-Hudson, New York 10520

with a copy to:

Michelman & Robinson  
800 Third Avenue, 24th Floor  
New York, NY 10022  
Attn: Mark Zefrin, Esq.  
Telephone: 212.730.7700

If to Landlord:

White Plains Healthcare Properties I, LLC,

2 Bourbon Street, Suite 200  
Pensacola, Ma 01960

with a copy to:  
Gerald J. Billow, Esq.  
Postrema Blankstein & Lund LLP  
800 Boylston Street, Suite 3200  
Boston, Massachusetts 02199

-and-

Howard Fensterman, Esq.  
Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042

The effective date of such notices shall be as follows: (a) upon delivery or refusal of delivery if sent by personal delivery, (b) two (2) Business Days after mailing (or upon actual receipt, if earlier), if sent by certified or registered mail, (c) one (1) Business Day after deposit with the courier for next business day delivery, if sent by overnight courier. The term "Business Day" means any day other than (i) a Saturday or a Sunday, and (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

Section 13.2 Notice to Mortgagee. (a) Tenant hereby agrees, upon request of Mortgagee, to give to Mortgagee copies of all notices given by Tenant of default by Landlord under this Lease at the same time and in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord. Such Mortgagee shall have the right to remedy any default under this Lease, or to cause any default of Landlord under this Lease to be remedied, and for such purpose Tenant hereby grants such Mortgagee such period of time as may be reasonable to enable such Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default which is a default. Tenant shall accept performance by such Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No default by Landlord under the Lease shall exist or shall be deemed to exist (i) as long as such Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (ii) if possession of the Leased Premises is required in order to cure such default, or if such default is not susceptible of being cured by such Mortgagee, as long as such Mortgagee, in good faith, shall have notified Tenant that such Mortgagee intends to institute proceedings under the mortgage and, thereafter, as long as such proceedings shall have been instituted and shall prosecute the same with reasonable diligence and, after having obtained possession, prosecutes the cure to completion with reasonable diligence. This Lease shall not be assigned by Tenant or modified, amended or terminated without Mortgagee's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed. In the event of the termination of this Lease by reason of any default thereunder or for any other reason whatsoever except the expiration thereof, upon such Mortgagee's written request, given

within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Mortgagee or its designee or nominee a new lease of the Leased Premises for the remainder of the Term of the Lease upon, at a minimum, all of the terms, covenants and conditions of this Lease. Neither such Mortgagee or its designee or nominee shall become liable under this Lease unless and until such Mortgagee or its designee or nominee becomes, and then only for so long as such Mortgagee or its designee or nominee remains, the fee owner of the Leased Premises or the owner of the leasehold interest of Landlord under this Lease. Such Mortgagee shall have the right, without Tenant's consent, to, as the case may be, foreclose its mortgage or to accept a deed in lieu of foreclosure of such mortgage.

(b) In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Mortgagee, and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such Mortgagee within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Mortgagee shall have become entitled under its loan documents with Landlord in connection therewith, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy).

ARTICLE XIV

QUIET ENJOYMENT

Section 14.1 Quiet Enjoyment. Landlord covenants, warrants and represents to Tenant that, provided no Lease Default exists under this Lease, Tenant shall at all times during the Term peaceably and quietly have, hold, occupy and enjoy the Leased Premises, subject to the terms and conditions of this Lease, without any hindrance, interference or molestation by Landlord or by, under or through Landlord.

ARTICLE XV

SUBLETTING AND ASSIGNMENT

Section 15.1 Subletting and Assignment. (a) Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in the Landlord's sole and absolute discretion (and, if required by law, without the prior written consent of the Commissioner, which consent may be withheld in the Commissioner's sole and absolute discretion), transfer or assign this Lease or Tenant's interest in the Leased Premises or any part thereof or sublease all or any part of the Leased Premises. In all events of assignment, transfers or subletting, the prior approval of the DOH shall be required. Tenant shall not at any time, without the prior written consent of Landlord, which consent may be withheld or given in the sole and absolute discretion



of Landlord, pledge, mortgage, or hypothecate the leasehold estate hereby created or any interest of Tenant therein. The issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant aggregating to forty-nine percent (49%) or more of the stock, membership or ownership interest in Tenant or any subtenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; notwithstanding anything to the contrary, any change in the management or control of Tenant such that Lizer Josefovic does not control all of the decisions of Tenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof. Notwithstanding anything to the contrary, the issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant resulting in the aggregate interest of Lizer Josefovic, Marc Neuman, and their spouse or issue, or a trust for their benefit, equaling less than seventy-five percent (75%) of the stock, membership or ownership interest in Tenant or any subtenant to any person or entity shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; provided that any assignment by Lizer Josefovic to Joseph Josefovic made after five years after the Commencement date shall not be unreasonably denied by Landlord taking into account, among other things, the experience, performance record, and financial strength of Joseph Josefovic. The consent by Landlord to my transfer shall not constitute consent to any subsequent transfer or to any successive transfer. Further, subject to the provisions of Section 2.2, and without in any way limiting or otherwise affecting the provisions of this Lease, Landlord shall be permitted to assign this Lease and all agreements, duties, obligations and rights incidental thereto to any entity related to, or affiliated with Landlord, without any consent from Tenant. The term "transfer" shall mean: any direct or indirect sale, conveyance, transfer, lease (including any amendment, extension, modification, waiver or renewal (hereof)), sublease, sub-sublease, assignment, mortgage, pledge, grant of a security interest or hypothecation, whether by operation of law or otherwise, whether voluntary or not, of or in (i) all or part of the Leased Premises (including any legal or beneficial direct or indirect interest therein) or (ii) any direct or indirect interest in Tenant. Notwithstanding anything to the contrary contained herein, Tenant may assign this Lease to, or enter into a sublease with, or transfer interests in an entity comprising Tenant to, an affiliate under common control with Tenant, or owned by Lizer Josefovic, Marc Neuman, or their spouse or issue, or a Trust for their benefit, without Landlord's consent, provided (x) Landlord is given thirty (30) days prior written notice of such intended transfer, assignment or sublease with copies of the organizational documents of the assignee, transferee or sublessee, (y) after such transfer, assignment or sublease, Lizer Josefovic controls all of the decisions of the assignee, transferee or sublessee, and (z) all required consents from the Mortgagee, the DOH and/or the Commissioner (if required), have been obtained by Tenant. Notwithstanding the foregoing and any other provision contained herein to the contrary, no transfer or series of transfers of legal, economic, beneficial or equitable (direct or indirect) interest in the Lease or in Tenant's membership interest that requires DOH's consent shall occur without the prior written consent of Landlord and DOH. Tenant shall enter into such subordination agreements or subordination, non-disturbance agreements ("SNDAs") as Mortgagee may request from time to time.

Section 15.2 Assignment and Related Matters. Any sublease shall be expressly subject and subordinate to all applicable terms and conditions of this Lease and provide that upon the expiration or earlier termination of this Lease, Landlord, at its option and without any

obligation to do so, may require any subtenant to whom Landlord, its successors and assigns, in which event Landlord shall undertake the obligations of Tenant, under such sublease from the time of the exercise of such option to the termination of such sublease; provided, however, that in such case Landlord shall not be liable for any prepaid rents, fees or other charges or for any prepaid security deposits paid by such subtenant to Tenant or for any other prior defaults of Tenant under such sublease. In the event that Landlord shall not require such attachment with respect to any sublease, then such sublease shall automatically terminate upon the expiration or earlier termination of this Lease, including any early termination by mutual agreement of Landlord and Tenant. In addition, any such sublease shall provide that in the event that the subtenant or other transferee receives a written notice from Landlord stating that a Lease Default has occurred or that an event or circumstance has occurred which with notice and/or passage of time would constitute a Lease Default, such subtenant or other transferee thereafter shall without further consent or instruction of Tenant pay all rentals accruing under such sublease directly to Landlord or as Landlord may direct; provided, however, that (a) as and to the extent that the amounts so paid to Landlord, together with other amounts paid to or received by Landlord on account of this Lease, exceed the amounts then due Landlord from Tenant under this Lease, the excess shall be promptly remitted to Tenant, and (b) at such time as the Lease Default has been cured and this Lease reinsured (if ever), Landlord shall notify and direct the subtenant(s) in writing to resume making payments of rentals under their sublease(s) directly to Tenant, or as Tenant may direct. Any such rentals collected from such subtenant or other transferee by Landlord shall be credited against the amounts owing by Tenant under this Lease in such order of priority as Landlord shall reasonably determine. Furthermore, any sublease or other agreement regarding a transfer shall expressly provide that the subtenant, assignee, manager or other transferee shall furnish Landlord, its lender, the Mortgagee, if applicable, the HUD Mortgagee, and/or the Commissioner, and /or DOH, if applicable, with such financial, operational and other information about the Facility and subtenant, etc., as Landlord may request from time to time.

Section 15.3 Assignment of Subleases. To secure the prompt and full payment by Tenant of the Rent and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to the conditions hereinafter set forth and any required consent(s) from DOH, all of Tenant's right, title and interest in and to all permitted subleases, assignments, licenses and occupancy agreements, to the extent permitted by law, involving the Facility, as set forth on Schedule 15.3 attached hereto (the "Sublease", and the subtenant under a Sublease herein referred to as a "Subtenant") and hereby confers upon Landlord, its agents and representatives, a right of entry (subject to prior notice) in, and sufficient possession of, the Leased Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Sublease, and further agrees that the exercise of said right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Leased Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever; provided, however, that such assignment shall become operative and effective only if (a) a Lease Default shall occur and be continuing or (b) this Lease and the Term shall be canceled or terminated pursuant to the terms, covenants and conditions hereof or (c) there occurs a repossession under a dispossessory warrant

or other re-entry or repossession by Landlord under the provisions hereof or (d) a receiver for all or a portion of the Leased Premises is appointed, and then only as to such of the Subleases that Landlord may elect to take over and assume. At any time and from time to time within ten (10) days after Landlord's written demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants, with a photostatic copy of each of the Subleases. Upon request of Landlord, Tenant shall permit Landlord and its agents and representatives, and Mortgagee, its agents and representatives, to inspect all Subleases affecting the Leased Premises. Tenant covenants that each Sublease shall provide that the Subtenant thereunder shall be required from time to time, upon request of Landlord or Tenant, to execute, acknowledge and deliver, to and for the benefit of Landlord, an estoppel certificate confirming with respect to such Sublease the information set forth in Section 20.11 hereof.

Section 15.4 Additional Sublease Requirements. Tenant covenants and agrees that all Subleases hereafter entered into affecting the Leased Premises shall provide that (a) they are subject to this Lease and that the principals of the Subtenant acknowledge that they have read this Lease and accept the terms hereof, (b) the term hereof shall not end less than one (1) day prior to the Expiration Date hereof, unless Landlord shall consent otherwise, which consent may be withheld in Landlord's sole and absolute discretion, (c) the Subtenants will not do, authorize or execute any act, deed or thing whatsoever or fail to take any such action which will or may cause Tenant to be in violation of any of its obligations under this Lease, (d) the Subtenants will not pay rent or other sums under the Subleases with Tenant for more than one (1) month in advance, (e) the Subtenants shall give to Landlord at the address and otherwise in the manner specified in Section 13.1 hereof, a copy of any notice of default by Tenant as the landlord under the Subleases at the same time as, and wherever, any such notice of default shall be given by the Subtenants to Tenant; and (f) all of the representations, warranties and covenants given by Tenant to Landlord in this Lease, including but not limited to all reporting requirements and covenants set forth in Section 7.4 above, shall be made and given by each Subtenant for the benefit of Landlord, Mortgagee, and their respective successors and assigns.

Section 15.5 Transfers in Bankruptcy. (a) In the event of a transfer pursuant to the provisions of Title 11 of the United States Code or any statute of similar purpose or nature (the "Bankruptcy Code"), all consideration payable or otherwise to be delivered in connection with such transfer shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any consideration constituting Landlord's property pursuant to the immediately preceding sentence and not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. For purposes of this Section 15.5, the term "consideration" shall mean and include money, services, property and any other thing of value such as payment of costs, cancellation or forgiveness of indebtedness, discounts, rebates, barter and the like. If any such consideration is in a form other than cash (such as in kind, equity interests, indebtedness pay-outs, or other deferred payments, consulting or management fees, etc.), Landlord shall be entitled to receive in cash the then present fair market value of such consideration. If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment shall be given to Landlord by Tenant no later than fifteen (15) days after receipt of such offer by Tenant, but in any event no

later than ten (10) days prior to the date that Tenant shall file any application or motion with a court of competent jurisdiction for authority and approval to enter into such assumption and assignment. Such notice shall set forth (a) the name and address of the assignee, (b) all of the terms and conditions of such offer, and (c) the proposal for providing adequate assurance of future performance by such person under the Lease, including, without limitation, the assurance referred to in Section 365 of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease from and after the date of such assignment. Any such assignee shall execute and deliver to Landlord upon demand an instrument confirming such assumption.

(b) The term "adequate assurance of future performance" as used in this Lease shall mean (in addition to the assurances called for in Bankruptcy Code Section 365(4)) that any proposed assignee shall, among other things, (i) deposit with Landlord on the assumption of this Lease an amount equal to the greater of (x) two (2) times the then monthly Fixed Rent and Additional Rent or (y) such other amount deemed by the Bankruptcy Court to be reasonably necessary for the adequate protection of Landlord under the circumstances, as security for the faithful performance and observance by such assignee of the terms and obligations of this Lease, (ii) furnish Landlord with financial statements of such assignee for the prior three (3) calendar years, as finally determined after an audit and certified as correct by a certified public accountant, which financial statements shall show a net worth at least equal to the amount of the deposit referenced in (i) above, (iii) if determined by the Bankruptcy Court to be appropriate under the circumstances, grant to Landlord a security interest in such property of the proposed assignee as Landlord shall deem necessary to secure such assignee's future performance under this Lease, and (iv) provide such other information or take such action as Landlord, in its reasonable judgment, shall determine is necessary to provide adequate assurance of the performance by such assignee of its obligations under the Lease.

(c) If, at any time after Tenant may have assigned Tenant's interest in this Lease in a proceeding of the type described in Section 16.1 (iv) through (vii), this Lease shall be disaffirmed or rejected in any proceeding of the types described in Section 16.1 (iv) through (vii) hereof, or in any similar proceeding, or in the event of termination of this Lease by reason of any such proceeding or by reason of lapse of time following notice of termination given pursuant to Article XVI based upon any of the Lease Defaults set forth in said Section 16.1 (iv) through (vii) Tenant, upon request of Landlord given within thirty (30) days next following any such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord); shall (a) pay to Landlord all Rent due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant", enter into a new lease with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the expiration date of the term, unless sooner terminated as in such lease provided, at the same Fixed Rent and Additional Rent upon the then executory terms, covenants and conditions as are contained in this Lease, except that (i) Tenant's rights under the new lease shall be subject to the possessory rights, if any, of the assignee under this Lease and the possessory rights of any person claiming through or under such assignee or by virtue of any applicable Law, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant with due diligence, and (iii) such new lease shall require Tenant to

pay all Rent reserved in this Lease which, had this Lease not been so disaffirmed, rejected or terminated, would have accrued under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant shall default in its obligation to enter into said new lease for a period of ten (10) days next following Landlord's request therefor, then in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant as if Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 15.6 Management Agreement. Tenant agrees and acknowledges that it will not enter into any management agreements during the Term with regard to the Facility except with an entity (i) owned wholly by a an individual principal of Tenant which entity has been received establishment approval from the New York State Department of Health Public Health and Health Planning Council in compliance with 10 NYCRR 600.9(c)(1) and (ii) approved by HUD if the Facility is, or is about to be financed by a HUD program, and/or Mortgagee. Any such management agreement shall be subordinate to Landlord's rights hereunder, to the rights of Mortgagee and to the rights of the Commissioner. Tenant shall cause such manager to execute such documents as are required by Landlord or Mortgagee or by the Commissioner to effect such subordination.

Section 15.7 Memorandum of Lease. This Lease shall not be recorded, but either party may record a memorandum of lease in which shall describe the parties to this Lease, a description of the Leased Premises and a recitation of the Term. The party requesting that the memorandum of lease be recorded shall prepare and pay all costs of recording the memorandum of lease, and the other party agrees to execute at any and all times such instruments as may be reasonably required for such recording. Upon the expiration or earlier termination of this Lease, Landlord may release the memorandum of lease. For this purpose Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to execute a release of such memoranda in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. To the extent any transfer tax, conveyance tax, excise tax, or similar tax is imposed by any Governmental Authority as a result of the recording of such Memorandum of Lease, or is otherwise due and payable as to Tenant's leasehold interest granted pursuant to this Lease, Tenant shall pay same to the applicable Governmental Authority.

ARTICLE XVI

DEFAULT

Section 16.1 Default by Tenant and Remedies of Landlord. (A) Tenant shall be in default under this Lease upon the occurrence of any of the following events referred to herein individually or collectively as a "Lease Default" (any reference to such event occurring or involving Tenant shall be deemed to include any such event occurring or involving any of Tenant's Subtenants):



(i) if Tenant fails to pay any installment of Rent within five (5) days after the date when due;

(ii) if Tenant defaults in the prompt and full performance of any other of Tenant's covenants, obligations or agreements hereunder which are not specifically enumerated herein as a Lease Default and fails to correct such failure within thirty (30) days of receipt of written notice from Landlord of such default (unless such default cannot reasonably be cured within thirty (30) days, in which event such period shall be extended, provided Tenant shall have commenced in good faith to cure such default within the first such thirty (30) day period and shall proceed with all due diligence to correct such default thereafter but in no event more than ninety (90) days of receipt of such written notice);

(iii) if the leasehold interest of Tenant shall be levied upon under execution or be fined or attached and such levy, lien or attachment is not removed within sixty (60) days of the date Tenant receives notice of it;

(iv) in the event of a filing by or against Tenant of a petition under federal or state law pertaining to bankruptcy or insolvency or for a reorganization or other relief;

(v) if Tenant shall admit in writing its inability to pay its debts generally as they become due;

(vi) if Tenant is adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, with or without the consent of Tenant, a receiver or trustee of Tenant or of the whole or substantially all of its property;

(vii) if Tenant makes any general assignment for the benefit of creditors;

(A) if Tenant abandons the Leased Premises or if, except as a result of damage, destruction or a partial or complete condemnation, Tenant ceases operations of the Facility, or Tenant closes any portion of the Facility;

(viii) if Tenant receives a state or federal notice of termination of license or de-certification and such notice has not been suspended, extended, withdrawn or terminated prior to 30 days before the effective date of such termination or de-certification by any Governmental Authority;

(ix) if Tenant fails to maintain its qualifications for licensure as required by this Lease if failure to do so would result in an inability to operate the Facility or would result in the appointment of a receiver with respect to the Facility;

(x) if any transfer or assignment of this Lease or Tenant's direct or indirect interest therein or a transfer of Tenant's direct or indirect equity ownership interests occurs in violation of this Lease;

(xi) if any malpractice award or judgment exceeding any applicable malpractice insurance coverage and any applicable umbrella coverage by more than One Million

Dollars (\$1,000,000.00) shall be rendered against Tenant or any subtenant, and either (A) enforcement proceedings shall have been commenced by any creditor upon such award or judgment or (B) such award or judgment shall continue unsatisfied and in effect for a period of sixty (60) consecutive days without an insurance company reasonably satisfactory to Landlord having agreed to fund such award or judgment in a manner reasonably satisfactory to Landlord, or (C) such award or judgment has been appealed and without a bond having been posted to cover such amount that cancels any insurance coverage, and in any case such award or judgment shall, in the reasonable opinion of Landlord, have a material adverse effect on the ability of Tenant or any subtenant to operate the Facility.

(xii) upon the denial, refusal to issue, or loss of any licenses, certifications, certificates, approvals, permits, variances, waivers, provider agreements and other authorizations necessary or required for Tenant to operate the Facility in accordance with the requirements of this Lease;

(xiii) if any of the representations or warranties made by Tenant under this Lease or any subtenant under its Sublease or otherwise proves to be untrue when made in any material respect;

(xiv) if any Governmental Authority having jurisdiction over the operation of the Facility removes ten percent (10%) or more of the patients or residents who reside in the Facility for violations of standards of care;

(xv) Tenant fails to give Landlord and Mortgagee timely notice or timely deliver copies of documents within the times required under Section 7.4 (e) through (i);

(xvi) Tenant's receipt of notice of an allegation or determination of "immediate jeopardy" (as such term is customarily used) or equivalent notice from any Governmental Authority or officer, acting on behalf thereof relating to the Facility;

(xvii) Tenant's receipt of notice of the freeze on admissions or the imposition of a denial of payment for new admissions or equivalent notice from any Governmental Authority or officer acting on behalf thereof relating to the Facility;

(xviii) Tenant's breach of its obligations under Section 7.5 including Tenant's failure to execute and deliver to Landlord within seven days of its request therefore any and all documents, certificate or agreement required or reasonably requested by Landlord, a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender or the Commissioner, including confirming the subordination required hereunder;

(xix) Tenant's breach of its obligations under Section 7.6 Management Agreement;

(xx) Tenant's breach of its obligations under Section 7.6 Security Agreement;



(xxi) Tenant fails to notify Landlord within twenty-four (24) hours after receipt of any notice from any Governmental Authority, terminating or suspending or threatening termination or suspension of any material license or certification relating to the Facility;

(xxii) a default beyond any applicable notice and cure periods under any Sublease, operating agreement, management agreement or any other material agreement relating to the Leased Premises or to which Landlord and Tenant are a party;

(xxiii) the creation of any indebtedness relating to the Leased Premises (other than trade payables which are not more than 30 days past due, not evidenced by a note and not in excess of One Million Dollars \$1,000,000.00);

(xxiv) the amendment, modification, restatement, termination or cancellation of any material contract relating to the Leased Premises, including but not limited to any Sublease, without Landlord's prior written consent, which consent shall not be unreasonably withheld;

(xxv) default or breach by Guarantor under the Guaranty beyond the expiration of any applicable cure period contained therein;

(xxvi) failure by Tenant to deposit all or any portion of the Security Deposit or Letter of Credit or to replace any portion of the Security Deposit or Letter of Credit utilized by Landlord;

(xxvii) a default or breach of any of the provisions set forth in Article XIX;

(xxviii) Tenant violates any term, covenant or condition of Tenant's Regulatory Agreement (with respect to a HUD financing) which violation is not cured within thirty (30) days of written notice to Tenant;

(xxix) a default or breach of the provisions set forth in Section 7.4(b) or a report required by Section 7.4 proves to be untrue in any material respect;

(xxx) any act or omission by Tenant or any Subtenant referenced in Section 7.4 that constitutes a default by Landlord under its loan documents with Mortgagee;

(xxxi) Tenant's failure to meet the covenants provided in Section 7.4 (q)

(xxxii) the sale or transfer or attempted sale or transfer of all or any portion of any certificate of need, bid or unit right or other similar authorization relating to any portion of the Facility or the Leased Premises, assignment or subletting in violation of the provisions of Section 15.2;

(xxxiii) the use of any portion of the Premises other than for the Intended Use;

(xxxiv) the Facility appears on the Special Focus Facility List, or similar list established by CMS;

(xxxv) Tenant fails to procure the insurance coverage, or loss of the insurance coverage, required by this Lease;

(xxxvi) Tenant enters into any corporate integrity agreement, settlement or consent decree, or deferred prosecution agreement with any Governmental Authority;

(xxxvii) Any Governmental Authority assesses a fine or penalty against, or with, Tenant that imposes a payment or fine upon Tenant in excess of \$75,000;

(xxxviii) The conviction of, or plea of no contest or nolo contendere by, Tenant or any member or beneficial owner of Tenant with respect to (1) any felony or (2) any misdemeanor that involves any act of fraud, embezzlement, theft or misappropriation;

(xxxix) Tenant fails to comply with its obligations in Section 18.1(i) within 10 days after written notice from Landlord; or

(xl) Tenant or any Subtenant fails or refuses to execute estoppel certificate required pursuant to Section 20.1, or otherwise complying with the requirements of Section 23 within ten (10) days after Tenant's receipt thereof.

Upon the occurrence of a Lease Default, Landlord, may, if Landlord so elects, upon five (5) days written notice of such election, forthwith terminate this Lease and Tenant's right to possession of the Leased Premises and, at Landlord's sole and absolute discretion, accelerate the payment of all Rent for the balance of the Term and declare the same presently due and payable in full provided, however, that with respect to a Lease Default under Section 16.1(b)(v), this Lease shall automatically terminate. In the event of such Lease termination, Tenant shall immediately pay Landlord the then present value of all such accelerated Rent. Landlord, in addition to all other remedies given to Landlord at law or in equity, may by written notice to Tenant, without terminating this Lease, cause Tenant to apply to the DOH to install a manager and/or management consultant and/or a receiver having the necessary approvals from Governmental Authorities, of Landlord's choice, at Tenant's sole cost and expense or to the extent permitted by applicable law, reenter the Leased Premises by summary proceedings or otherwise. In any event, upon a Lease Default, Landlord may require Tenant to consent to a so-called "Change of Ownership" and Landlord may dispossess Tenant upon approval of the Change of Ownership or Certificate of Need by DOH, it being the understanding that under no circumstances is this Lease to be an asset for Tenant's creditors by operation of law or otherwise. In the event of such reentry, Landlord may relet the Leased Premises without being obligated to do so, and in the event of a reletting may apply the Rent therefrom first to the payment of Landlord's cost and expenses, including consultant and/or expert and attorneys' fees and expenses incurred by reason of such Lease Default, and the cost and expense of reletting including, but not limited to, repairs, renovation, or alteration of the Leased Premises and then to the amount of Rent and all other sums due from or payable by Tenant hereunder, Tenant remaining liable for all other sums due from or payable by Tenant hereunder and for any deficiency. Tenant shall also be liable for and indemnify Landlord against all amounts owed to

Medicare, Medicaid, all applicable third-party payer programs, third party payors, or residents, including, but not limited to, any overpayments received by Tenant, relating to the Term. Any and all such deficiencies shall constitute Additional Rent hereunder and shall be payable by Tenant monthly on the date herein provided for the payment of Rent. In addition to the foregoing remedies, Landlord shall immediately be entitled to retain the Security Deposit and draw on; and retain proceeds of the Letter of Credit, and thereafter Tenant shall have no further claim, right, title or interest therein to the extent of Landlord's claims only.

Landlord acknowledges that its rights of reentry onto the Leased Premises set forth in this Lease do not confer on Landlord the authority to operate a nursing facility as defined in Article 28 of the Public Health Law on the Leased Premises and agrees that except in the event of a Lease Default Landlord will give the DOH, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of its intent to reenter the Leased Premises or to initiate dispossession proceedings or that the Lease is due to expire at least thirty (30) days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least sixty (60) days before expiration of the Lease.

Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossession proceedings and sixty (60) days prior to the expiration of the Lease, Tenant shall immediately notify by certified mail the DOH, Tower Building, Empire State Plaza, Albany, NY 12237 (or its then current address), of the receipt of such notice or service of such process or that the Lease is about to expire.

(b) Except as provided in this Lease to the contrary, Rent and other sums not paid when due (unless paid within any applicable grace period) shall bear interest from the date when the same are first payable under the terms of this Lease until the same shall be paid at an annual rate of interest equal to the Overdue Rate.

(c) Upon the filing of a petition by or against Tenant pursuant to the Bankruptcy Code, Tenant, as debtor and as debtor-in-possession, and any trustee who may be appointed shall: (i) timely perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (ii) pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Leased Premises an amount equal to the Rent and other charges otherwise due pursuant to this Lease; and (iii) reject or assume this Lease within one hundred twenty (120) days after the filing of such petition under the Bankruptcy Code or within such time period as the Bankruptcy Code may allow. Tenant, as debtor and as debtor-in-possession and any trustee shall be deemed to have rejected this Lease in the event of the failure to comply with any of the above. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor, in the event of assumption and/or assignment is the prior written consent of any mortgagee to which this Lease has been assigned as collateral security.

(d) In the event of termination of this Lease by reason of any Lease Default by Tenant, or upon the expiration of the Term, then, and in any of such events, Tenant, upon Landlord's written request, shall to the greatest extent permitted by law, transfer to Landlord or its designees or assigns, or cause its Subtenants and/or Affiliates, to transfer to Landlord or its designees or assigns, the following: (i) all federal, state or municipal licenses,

certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements (including non-governmental) and other authorizations which relate to the operation of the Facility; and (ii) the name of the Facility as then commonly known to the general public. Tenant shall also prepare and file all notices required by applicable law in connection with such termination and shall also prepare and timely file all final Medicare and Medicaid cost reports. In the event Tenant fails or refuses to transfer any such licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, other authorization or trade name, then this provision shall constitute an act of assignment by Tenant to Landlord or its assigns without the necessity of any further written instrument. For this purpose, Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to complete or undertake such replacements in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

(c) Landlord shall have the option of taking over the operation of the Facility, or having the operation of the Facility taken over by a designee, in the event of a termination of this Lease for any reason, without Landlord or designee assuming any of Tenant's liabilities or obligations, including Tenant's liabilities and obligations with respect to employees, such as vacation, sick leave, health insurance and pension liabilities and Tenant's obligations under applicable law to offer and provide group health continuation coverage. Landlord shall give Tenant written notice of Landlord's intent to exercise the right set forth above, in which event, upon the approval of the DOH of the Change of Ownership, Tenant shall and shall cause the Subtenant to immediately turn over possession and control of the Facility without any further action having to be taken on the part of Landlord. At the request of Landlord, Tenant shall and shall cause the Subtenant to turn over any or all of inventories, personal property (including computer and telecommunications equipment but excluding any leased equipment) vehicles, and material contracts (including hospital, transfer, vendor, and managed care contracts).

(f) No failure of Landlord to enforce any rights or remedies upon default of Tenant shall prejudice or affect the rights of Landlord upon any subsequent or similar default.

(g) In the event of a Lease Default by Tenant of any of the terms, covenants, conditions or provisions of this Lease, which Lease Default is not cured within any applicable grace or cure period, Landlord shall have the right to invoke any remedy permitted to Landlord at law, in equity or otherwise. All remedies available to Landlord are declared to be cumulative and concurrent and the exercise of one shall not preclude or waive the right to exercise any other. No termination of this Lease and no taking or recovering of possession of the Leased Premises shall deprive Landlord of any of its remedies or actions against Tenant and Tenant shall remain liable for all past or future Rent, including all taxes, insurance premiums and all other charges and Rent payable by Tenant under this Lease, during and for the balance of the Term hereof. The bringing of any action for Rent or other default shall not be construed as a waiver of the right to obtain possession of the Premises.

(h) If suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent, or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and breach shall be established, Tenant shall pay to Landlord all expenses,

including reasonable attorney fees, incurred therefor. (This subsection shall survive termination of this Lease.

**Section 16.2 Facility Operating Deficiencies.** On written notice of a request therefor by Landlord to Tenant, upon a Lease Default and for a period of time necessary to fully remedy the Lease Default, Tenant shall engage the services of a consultant, unaffiliated with Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to review the management of the facility for the purpose of making recommendations to remedy the Lease Default. Subject to applicable legal requirements governing confidentiality of patient records, the consultant shall have complete access to the Facility, its records, offices and facilities, in order that it may carry out its duties. Tenant shall cause such consultant to prepare and deliver to Landlord and Tenant a written report of its recommendations within ten (10) days after its engagement. If Tenant shall fail to designate a consultant approved by Landlord as provided above within five (5) days after Tenant's receipt of Landlord's notice, Landlord may designate such consultant by further notice to Tenant. Tenant shall be responsible for payment of all fees and expenses reasonably charged and incurred by the consultant in carrying out its duties. Tenant shall promptly implement any and all reasonable recommendations made by such consultant in order to promptly correct or cure the Lease Default; provided, however, that in no event shall Tenant implement any such recommendations if the same would constitute a violation of applicable legal requirements, violate any rule or regulation of the DOH, or would otherwise cause a Lease Default hereunder (e.g., a transfer or change in use of the Leased Premises), unless Landlord consents in writing to such Lease Default, which consent may be given or withheld in Landlord's sole and absolute discretion. Nothing herein shall impose any liability or obligation on Landlord to (a) request the appointment of a consultant or (b) otherwise remedy the Facility Operating Deficiency(ies) nor shall it deem Landlord an operator of the Facility.

**Section 16.3 Receivership.**

Tenant acknowledges that one of the rights and remedies available under applicable law for nursing facilities which fail to comply with the conditions of participation for Medicaid or Medicaid is to apply to a court of competent jurisdiction for the appointment of a receiver to take possession of the Facility, to collect the rents, issues, profits and income of the Facility and to manage the operation of the Facility. Tenant further acknowledges that the revocation, suspension or material limitation of the certification of the Facility for provider status under Medicare or Medicaid (or successor programs) and/or the revocation, suspension or material limitation of a license relating to the operation of the Facility for its intended use under the laws of the State of New York will materially and irreparably impair the value of Landlord's investment in the Facility. Therefore, in the event of a Lease Default, and in addition to any other right or remedy of Landlord under this Lease, at the request of Landlord, Tenant shall request DOH to, or to the extent permissible under law, Tenant shall, petition any appropriate court, for the appointment of a receiver to take possession of the Facility, to manage the operation of the Facility under Tenant's licenses and certifications, to collect and disburse all rents, issues, profits and income generated thereby and to preserve or replace to the extent possible any such license and provider certification for the Facility or to otherwise substitute the licensee or provider thereof. The receiver shall be entitled to a reasonable fee for its services as a receiver. All such fees and other expenses of the receivership estate shall be added to the

monthly Rent due to Landlord under this Lease as Additional Rent. Tenant hereby irrevocably stipulates to the voluntary appointment of a receiver under such circumstances and for such purposes and agrees not to contest such appointment.

Section 16.4 Tenant's Waiver, Mitigation. In connection with the exercise by Landlord of any of its remedies under this Section 16, including the termination of this Lease, in whole or in part, Tenant waives, to the maximum extent permitted by applicable Laws, (1) any right of redemption, re-entry or repossession, (2) the benefit of any moratorium laws or any laws now or hereafter in force exempting property from liability for rent or for debt, (3) any duty on the part of Landlord to mitigate the damages recoverable from Tenant on account of any Lease Default by Tenant, except that, notwithstanding the foregoing or anything in this Lease to the contrary, Landlord agrees to comply with any duty to mitigate damages where applicable Laws do not allow Tenant to waive such right, (4) the right to interpose any counterclaim (other than compulsory counterclaims) in any summary proceeding instituted by Landlord against Tenant in any court or in any action instituted by Landlord in any court for unpaid Rent under this Lease, and (5) any other right provided to Tenant under applicable Laws relating to a breach of or Lease Default under this Lease, including any rights to cure such breach or Lease Default.

ARTICLE XVII

ENTRY AND REIMBURSEMENT RIGHTS OF LANDLORD

Section 17.1 Entry and Reimbursement Rights of Landlord. In addition to those rights set forth in Section 7.2 of this Lease, Landlord reserves the right at all reasonable times during business hours and upon at least twenty-four (24) hours' advance oral notice to go upon and inspect the Facility and every part thereof (subject to applicable Laws pertaining to patient confidentiality and privacy and the confidentiality of medical records). If Landlord shall make any payments or perform any repairs on behalf of Tenant which are Tenant's obligation and which Tenant has failed to make after applicable notice from Landlord, then any reasonable amounts so paid by Landlord are agreed and declared to be Additional Rent, and shall be due and payable to Landlord by Tenant upon submission to Tenant of an invoice, bill, or statement therefor, together with interest charged at the Overdue Rate commencing on the date of such invoice, bill, or statement. Nothing in this Section 17.1 shall impose any liability or obligation upon Landlord.

ARTICLE XVIII

REPRESENTATIONS AND WARRANTIES

Section 18.1 Tenant's Representations, Warranties and Additional Covenants. Tenant represents, warrants and covenants to Landlord and agrees (all of which shall survive the delivery and execution of this Lease) as follows (all of Tenant's representations, warranties, and covenants shall be deemed to include, in addition to that specified herein, the identical warranties, representations, and covenants of all Subtenants, which Tenant agrees to set forth in any Sublease and which are hereby incorporated herein by reference as if set forth in full herein):

(a) Corporate. Tenant is a limited liability company duly formed and validly existing and in good standing under the laws of the State of New York, and has the limited liability company power and authority to own its property and assets and to carry on its business as now being conducted or as will be conducted on and after the Commencement Date.

(b) No Breach of Statute or Contract. The execution, delivery and performance of this Lease by Tenant and any Sublease by a subtenant will not breach any statute or regulation of any Governmental Authority, and will not as of the Commencement Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of Tenant's articles of organization, operating agreement, other material agreements, or any order, writ, injunction, decree, agreement or instrument to which Tenant is a party, or by which it or its property may be bound.

(c) Authorization of Lease. The execution, delivery and performance of this Lease, and all Subleases, has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Tenant and this Lease constitutes the valid and binding obligation of Tenant, fully enforceable in accordance with its terms.

(d) No Litigation or Adverse Events. Except as set forth on Schedule 18.1(d) attached hereto and incorporated herein, there is no suit, claim, action or legal, administrative, arbitration, or other proceeding, or governmental investigation pending or threatened, by or against Tenant, and there exists no event or condition of any character, which could prevent the consummation of the transactions contemplated by this Lease or materially adversely affect Tenant's performance of the terms and conditions hereunder.

(e) Conduct of Business. Subject to the express provisions herein, at all times after the Effective Date, Tenant shall, and cause its subtenants to (i) operate the Leased Premises (after the Commencement Date) and otherwise conduct its/their business in the ordinary course, and in compliance with all statutory and regulatory requirements of any federal, state or local authority, (ii) continue to operate the Leased Premises after the Commencement Date and maintain it in substantially its condition as of the Commencement Date, reasonable wear and tear excepted, including but not limited to repairs and replacements permitted or required under this Lease, and in a lawful manner, (iii) not encumber all or any portion of its assets or properties or the Leased Premises, including without limitation, certificates of need, bed rights, or provider agreements, (iv) preserve the goodwill of the Facility, (v) not take any action from an accounting perspective which would materially adversely affect the reimbursement formula or tax benefits with respect to the Leased Premises or any portion thereof, (vi) utilize the Leased Facility only for the Intended Purpose, (vii) not relinquish or attempt to transfer the location of or sell the skilled nursing facility license, certificate of need approval, Medicare or Medicaid certification or any other licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements or other authorizations, (viii) not refuse to admit patients without 30 days' written notice of intent to, and prior written consent of, Landlord, (ix) not dissolve, merge or consolidate with or into any other person or entity, or otherwise change its identity or company or capital structure, or (x) not change its name or its business address.

(f) Continued Existence. At all times on and after the Effective Date, Tenant shall cause to be done all things needed to preserve its rights and franchises and comply with all Laws applicable to it, and to continue to conduct its business in the ordinary course.

(g) Payment of Obligations. At all times on and after the Effective Date, Tenant shall timely pay, and cause its subtenants to timely pay, all of their obligations, indebtedness, taxes, charges and impositions, whether or not relating to the Leased Premises or this Lease, as they become due unless contested in good faith and diligently pursued only if permitted under and subject to the terms and conditions of this Lease.

(h) Notice of Default. At all times on and after the Effective Date, Tenant shall promptly notify Lessor of (i) any material default by Tenant relating to any indebtedness or obligation of Tenant, whether or not relating to the Leased Premises or this Lease, and (ii) any material violations by the Facility of any applicable Law.

(i) Compliance with Law. At all times on and after the Effective Date, Tenant shall comply in all respects, and cause its subtenants to comply in all respects, with all applicable Laws, including Medicare and Medicaid conditions of participation, to which it is subject or which are applicable to the Leased Premises and to Tenant's operation of the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility.

(j) Beds and CON. Tenant has been awarded a CON for construction and operation of 160 skilled nursing facility beds for use at the Lease Premises by DOH and such CON may be used in connection with this Lease.

(k) Tenant, on behalf of itself and its Subtenants, makes the Health Care warranties and representations set forth in Schedule 1A(k) attached hereto and incorporated herein, to Lessor, its successors and assigns, which warranties and representations shall be true and correct as of Commencement Date and at all times during the Term.

(l) Except for the Subleases of the Leased Premises to the Operators, there are no subleases or sub-subleases or occupancy agreements (other than residence agreements with patients or residents) for any portion of the Leased Premises.

(m) Tenant shall maintain and comply at all times with all O&M Plans (Operation and Maintenance Plans covering the handling, treatment or maintenance of asbestos or Hazardous Materials) relating to the Leased Premises, or that shall be required in the future by Mortgagee or any HUD mortgagee or, where applicable, the Commissioner.

(n) Obligations prior to Commencement Date. In addition to all of Tenant's obligations provided in this Lease, Tenant shall:

(i) as soon as practical after the Effective Date, apply for all and vigorously pursue until obtained all Health Care Licenses;

(ii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain from DOH the maximum total project cost for the Facility approvable by DOH;

(ii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain the highest possible reimbursement rate with respect to the Medicare and Medicaid programs;

(iv) as soon as practical after the Effective Date, apply for and vigorously pursue until obtained provider agreements with third party payors providing reimbursement for skilled nursing facility services in the geographic area of the Facility;

(v) after the Effective Date take all actions requested by Landlord in order for Landlord to finance and complete Landlord's Work;

(vi) as soon as practical prior to the Commencement Date, hire, employ and train a staff adequate to provide services to the residents of the Facility immediately after the Commencement Date;

(vii) as soon as practical prior to the Commencement Date, purchase a sufficient inventory of food, medicines and other perishable items necessary to provide services to the residents of the Facility immediately after the Commencement Date;

(ix) as soon as practical prior to the Commencement Date, purchase and deliver to the Facility all small wares necessary provide services to the residents of the Facility immediately after the Commencement Date;

(x) six months after the Effective Date and thereafter every six months until the Commencement Date, deliver to Landlord a detailed projected statement of income and expenses and cash flow for a three year period.

Section 18.2 Representations and Warranties. Landlord hereby represents and warrants to Tenant, all of which shall survive the delivery and execution of this Lease, and agrees, as follows:

(a) No Breach of Statute or Contract. The execution, delivery, and performance of this Lease will not violate any provision of law, any order of any court or other agency of federal or state government or any provision of any indenture, agreement, or other instrument to which Landlord is a party or by which it or any of its properties or assets are bound; conflict with, result in a breach of, or constitute (with passage of time or delivery of notice, or both), a default under any such indenture, agreements or other instrument, or result in the creation or imposition of any lien or other encumbrance of any nature whatsoever upon any of the properties or assets of Landlord.

(b) Authorization of Lease. This Lease has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Landlord and this Lease constitutes the valid and binding obligation of Landlord, fully enforceable in accordance with its terms.

(c) No Litigation or Adverse Events. There is no action, suit, examination, review, or proceeding by or before any governmental instrumentality or agency now pending or, to the knowledge of Landlord, threatened against Landlord, which, if adversely determined,



would materially impair the right of Landlord to carry on the business as contemplated under this Lease.

(d) No Default. Landlord is not in default in the performance, observation, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which it is a party relating to the Lease Premises and which default would have a material adverse affect on the Lease Premises; and

(e) Corporation. Landlord is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of New York and is qualified to do business in the State of New York, and has the limited liability company power and authority to own its properties and assets and to carry on its business as now being conducted.

ARTICLE XIV

OPERATION, MERGER AND CONSOLIDATION RESTRICTIONS

Section 19.1 Intentionally Omitted

Section 19.2 SPE Provisions. At all times during the term of this Lease, Tenant represents, warrants and covenants that Tenant and each Subtenant, and all successors and assigns of Tenant and Subtenants, is, shall be and shall continue to be a "Special Purpose Entity" as defined in Schedule 19.2. The Operating Agreement of Tenant and each subtenant shall include the Special Purpose Entity provisions set forth in Schedule 19.2.

Section 19.3 Injunctive Relief. Notwithstanding anything to the contrary set forth in this Lease, the Parties hereto understand and agree that: (a) each term of Article XIX of this Lease is fully required to protect Landlord's interests, and that no such term confers a benefit on Landlord that is disproportionate to the detriment imposed on Tenant, if any; (b) the remedy at law for any breach by Tenant of Article XIX would be inadequate; (c) the damages flowing from such breach are not readily susceptible to measurement in monetary terms; and (d) Landlord shall be entitled to immediate injunctive relief restraining any breach thereof. Nothing in this Agreement shall be deemed to limit Landlord's remedies at law or in equity for any such breach by Tenant of any term or provision of Article XIX of this Lease.

Section 19.4 Equity interests. In the event that Tenant or any constituent entity under this Lease is ever a form of entity other than a limited liability company, the term "membership interest" as used in Articles XIX and XX hereof shall be deemed to mean the analogous form of equity ownership interest in such other type of entity, such as capital stock, partnership interest, beneficial interest or the like.

Section 19.5 No Merger or Consolidation. Except as expressly provided elsewhere in this Lease, Tenant shall not sell, or offer for sale, its assets or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity other than selling non-material assets in the ordinary course of business, to any other entity, business or activity involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and

representatives. Except as expressly provided elsewhere in this Lease, Tenant, Subtenants, Contractor(s) and their Affiliates, shall not sell or offer to sell, assign, transfer, convey, pledge, or encumber its/their membership interests to, or otherwise attempt to merge with or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity, business or activity, whether involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns and their respective successors, assigns, agents and representatives, or otherwise.

ARTICLE XX

MISCELLANEOUS

Section 20.1 GOVERNING LAW. (a) ALL MATTERS PERTAINING TO THIS LEASE OR THE LEASED PREMISES SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS LEASE, AND THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LANDLORD OR TENANT ARISING OUT OF OR RELATING TO THIS LEASE MAY AT LANDLORD'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF WHITE PLAINS, COUNTY OF WESTCHESTER, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND TENANT WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TENANT HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. TENANT DOES HEREBY DESIGNATE AND APPOINT:

Lizer Josefoyle  
HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, New York 10520

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO TENANT IN THE MANNER PROVIDED IN ARTICLE XIII OF THIS LEASE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON TENANT IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE

STATE OF NEW YORK. TENANT (A) SHALL GIVE PROMPT WRITTEN NOTICE TO LANDLORD OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE, IN THE FORM OF A WRITTEN NOTICE TO LANDLORD, A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN WHITE PLAINS, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR AND NOTIFY LANDLORD IN WRITING OF SUCH SUBSTITUTION.

Section 20.2 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Lease shall not operate as, or be construed to be a waiver of, any subsequent breach of the same or other provision hereof. No waiver shall be effective unless set forth in writing and signed by the party against whom such waiver is asserted.

Section 20.3 Delay Not a Waiver. Neither any failure nor any delay on the part of any party hereto in insisting upon strict performance of any terms, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or any other document or instrument entered into or delivered in connection herewith or pursuant hereto, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. A waiver of one default with respect to any Person shall not be construed to be a waiver of any subsequent default with respect to such Person or any other Person or to impair any remedy, right or power consequent thereon.

Section 20.4 Force Majeure. Neither party shall be liable nor deemed to be in default (other than monetary defaults) for any delay or failure in performance under this Lease or other interruption of service or employment deemed resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Parties' employees, or any similar or dissimilar cause beyond the reasonable control of either party ("Force Majeure").

Section 20.5 Severability. In the event any provision of this Lease is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Lease so long as the intent of the parties under this Lease can still be effected, which shall remain in full force and effect and enforceable in accordance with its terms.

Section 20.6 Entire Agreement; Amendments. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such Parties are merged into and expressed in this instrument, and any and all prior agreements between such Parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Landlord and Tenant.

Section 20.7 Counterpart Reception; Electronic Execution. This Lease may be executed in any number of counterparts with the same effect as if the Parties hereto had signed the same document. All counterparts will be construed together and shall constitute one lease. Signatures transmitted by email or PDF's shall have the same effect as original signatures.

Section 20.8 Survival of Representations and Warranties. Except as specifically provided otherwise in this Lease, all representations and warranties of Landlord and Tenant shall survive the Term of this Lease.

Section 20.9 Use of Brokers. Landlord and Tenant each represent and warrant to the other that no broker, finder or other person has been involved in regard to this Lease. Landlord and Tenant hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind (including the injured party's reasonable attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of a party to this Lease in connection with the transactions contemplated herein. The provisions of this Section 20.9 shall survive the expiration and termination of the Lease.

Section 20.10 Owner for Federal Tax Purposes. It is hereby agreed between Landlord and Tenant that for federal, state and local income tax purposes Landlord will be the owner of the Leased Premises and Tenant will be the lessee thereof, and each party hereto agrees to characterize this Lease as a lease for federal, state and local income tax purposes and to file all tax returns consistent therewith.

Section 20.11 Estoppel Certificates. Tenant shall, without charge, at any time and from time to time, within ten (10) days after written request by Landlord or Mortgagee, deliver a written instrument to Landlord or any other person specified by Landlord, duly executed and acknowledged, certifying the following and such other matters as may be reasonably required by Landlord, including without limitation, current financial information relating to Tenant:

- (a) That Tenant has accepted and is in possession of the Leased Premises;
- (b) That this Lease is unmodified and in full force and effect or, if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (c) Whether or not there are then existing any setoffs or defenses in favor of Tenant against the enforcement of any of the terms, covenants, and conditions of this Lease by Landlord and, if so, specifying the same, and also whether or not Landlord has observed and performed all of the terms, covenants, and conditions on the part of Landlord to be observed and performed and, if not, specifying same;
- (d) That no Lease Defaults exist or are continuing; and
- (e) The dates to which Rent and all other charges hereunder have been paid.



Section 20.12 Confidentiality. (a) Landlord and Tenant agree to keep all aspects of (but not the existence of) this Lease confidential, and shall not disclose to any person other than the members, managers, owners, directors, officers, employees, agents, advisors, affiliates, brokers, lenders, attorneys or accountants (collectively the "Representatives") of the Parties hereto on a need-to-know basis, or to any Governmental Authority pursuant to regulatory authority, any confidential or proprietary information, knowledge or data concerning the business, affairs, operations, secrets, dealings or finances of the other party furnished directly or indirectly by such other party (collectively referred to as the "Confidential Information"). As used in this Lease, the term "Confidential Information" does not include any information which: (i) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by either party or their Representatives); (ii) was available to either party on a non-confidential basis from a source other than a party to this Lease or its Representatives, provided that such source is not and was not bound by a confidentiality agreement with the party hereto; (iii) has been independently acquired or developed by either party or their Representatives without violating any of the obligations hereunder; (iv) is required by law to be disclosed; or (v) relates to the tax structure, tax strategy or tax planning of this transaction.

(f) In the event that either party or any of the Representatives receives notice of a legal request for disclosure of any of the Confidential Information (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), the party receiving such notice ("Receiving Party") shall promptly notify the other party ("Notified Party") so that the Notified Party may seek a protective order or other appropriate remedy if it chooses to do so. Failure by the Notified Party to take action to seek a protective order or other remedy and to notify the Receiving Party of such action prior to the required disclosure date, shall be deemed a waiver of the provisions of this section. In the event that a protective order or other remedy is not obtained or that the Notified Party waives compliance with the provisions hereof, the Receiving Party shall exercise its best efforts to obtain a confidentiality agreement or protective order concerning the Confidential Information, and in the absence thereof, shall disclose only that portion of the Confidential Information which it is advised by written opinion of counsel is legally required to be disclosed, or which is compelled by court order.

(g) In the event of any breach or threatened breach hereof, Landlord or Tenant shall be entitled to equitable relief, including a temporary preliminary and permanent injunction and specific performance, in addition to all other remedies available to them at law or in equity.

(h) Notwithstanding anything herein to the contrary, Landlord (and each employee, agent, or other Representative of Landlord) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of this Lease, related documents and all materials of any kind (including opinions or other tax analyses) that are provided to Landlord relating to such tax treatment and tax structure. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income tax treatment of the transaction and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of the transaction.

Section 20.13 Holdover. If, at the expiration of the Term, or earlier termination of the Lease, Tenant continues to occupy the Leased Premises except during a Reimbursement Period, with Landlord's consent, such holding over shall not constitute a renewal of this Lease, but Tenant shall be a Tenant from month-to-month at 300% of the most recent Rent payable by Tenant hereunder, at Landlord's sufferance, and under the same terms and conditions as were in force and effect at the expiration of the Term (except only as to the Term), and except that in the event Tenant shall continue to occupy the Leased Premises after the expiration of the Term, without a duly executed extension agreement in writing having been entered into by and between Landlord and Tenant, then if Landlord shall suffer any damage, loss, cost or expense as a result of such holdover, then Tenant, in addition to such increased Rent, shall pay the amount thereof to Landlord immediately on demand. The provisions of this Section shall be deemed to be "an agreement expressly provided" otherwise as provided in Section 232-C of the Real Property Law of the State of New York, Holding Over. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the Expiration Date or earlier termination of this Lease, nor shall anything contained herein be deemed to limit Landlord's remedies.

Section 20.14 Tenant's Waiver of Claim for Physical Injury. Landlord and Landlord's Indemnities shall not be liable for, and Tenant waives and indemnifies Landlord and Landlord's Indemnities against all claims for, damage or injury to person or property sustained by Tenant or any person claiming through Tenant, or otherwise, resulting from any accident or occurrence in, about, or upon the Leased Premises, whether occurring as a result of Landlord's active or passive negligence, or otherwise.

(a) Such waiver shall include, but not be limited to, claims for damage resulting from: (i) any equipment or appliances becoming out of repair or any other capital improvement, replacement, repair or maintenance; (ii) injury done or occasioned by wind; (iii) any defect in or failure of plumbing, heating, or air conditioning equipment, electric wiring, gas, water and steam pipes, stairs, rail or walks; (iv) broken glass; (v) the backing up of any sewer pipe or washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Leased Premises; (vi) the escape of steam or hot water; (vii) water, snow or ice being upon, falling from or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Leased Premises; (viii) the falling of any fixture, plaster, drywall or stucco; and (ix) any act, omission or negligence of trespassers.

Section 20.15 Binding Effect. This Lease does not constitute an offer to lease and shall not bind Landlord or Tenant unless and until each such party elects to be bound hereby by executing and delivering to the other party an executed original counterpart hereof.

Section 20.16 Default by Landlord. Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within sixty (60) days of when they are due to be performed, except in cases when documents are required or consents needed in less than sixty (60) days in which case failure to render timely shall be deemed to be approval or consent of Landlord (or such additional time as is reasonably required to correct any such default) except for Landlord's default in making timely payment of taxes and interest, in which case Landlord shall be in default when such payments are delinquent or past due. Tenant agrees to give to the

holder of record of any mortgage covering the Leased Premises notice simultaneously with any notice given to Landlord to correct any default of Landlord as hereinabove provided and agrees that the holder of record of any mortgage shall have the right, after receipt of notice of such default, within sixty (60) days after the expiration of Tenant's applicable cure period with respect thereto, to correct or remedy such default before Tenant may take any action under this Lease by reason of such default. Landlord shall also give to the holder of any mortgage copies of any notices of default which it may give or send to Tenant.

Section 20.17 Liens. Tenant shall not do or suffer anything to be done whereby the Leased Premises, or any portion thereof, or any interest therein, may be encumbered by any liens of mechanics, laborers, or materialmen, chattel mortgages or any other liens. Tenant shall, whenever and as often as any such liens are filed against the Leased Premises, or any portion thereof, purporting to be for labor or material furnished or to be furnished to Tenant, discharge the same of record within thirty (30) days after the date of filing by payment, bonding or otherwise, as provided by law. In the event of the default of Tenant in procuring the discharge, as aforesaid, of any such lien, Landlord may, with five (5) days prior notice, procure such discharge and the expenses incurred by Landlord in obtaining such discharge shall be paid by Tenant as Additional Rent within ten (10) days after notice from Landlord of the amount thereof.

Section 20.18 Publicity. All news releases, publicity or advertising by Tenant or their Affiliates through any media intended to reach the general public which refers to Landlord, or its Affiliates, this Lease or the purchase of the Real Property shall be subject to the prior written approval of Landlord.

Section 20.19 Trial by Jury. TENANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS LEASE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TENANT.

Section 20.20 Construction and Interpretation. The Parties have each negotiated the terms and conditions hereof and reviewed this Lease carefully. It is the intent of the Parties that each word, phrase, sentence and other part hereof shall be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part hereof against the draftsman, by virtue of being the draftsman, shall not apply.

Section 20.21 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than shall be due hereunder, shall be deemed to be other than a payment on account nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be given any effect or be deemed an accord and

satisfaction, and Landlord may accept such checks without prejudice to any other rights or remedies which Landlord may have.

**Section 20.22 Captions and Headings.** The captions and headings set forth in this Lease are included for convenience and reference only, and the words obtained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of, or the scope or intent of, this Lease, or any parts hereof or thereof.

**Section 20.23 Time is of the Essence.** Time is of the essence of each and every term, condition, covenant and warranty set forth herein or in any of the other Lease Documents.

**Section 20.24 Successors and Assigns.** This Lease and the other Lease Documents shall (a) be binding upon Tenant and Tenant's legal representatives and permitted successors and permitted assigns, and (b) inure to the benefit of Landlord and any other person or entity who may now or hereafter hold the interest of Landlord under this Lease and their respective successors and assigns.

**Section 20.25 No Third Party Beneficiaries.** This Lease is solely for the benefit of Landlord, its successors and assigns, and Tenant, and nothing contained herein shall confer upon any person other than Tenant or Landlord or their respective successors and assigns, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein, except only as may be otherwise specifically provided for in this Lease. All conditions to the obligations of Landlord to advance or make available proceeds of insurance or condemnation are imposed solely and exclusively for the benefit of Landlord, its successors and assigns. No other person or entity shall have standing to require satisfaction of such conditions in accordance with their terms, and no other person or entity shall, under any circumstances, be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Landlord at any time, if in Landlord's sole and absolute discretion, Landlord deems it advisable or desirable to do so.

**Section 20.26 Non-Competition and Non-Solicitation.**

Tenant agrees to the following restrictive covenants and agreements which covenants are not severable from this Lease and which are included to protect the value of the Leased Premises. Accordingly, Tenant agrees that it and their Affiliates will not, during the Term of this Lease at any time for a period of two (2) years after the expiration or early termination of this Lease, directly or indirectly, together or alone or in conjunction with any others, engage in the following:

- (i) compete with the business conducted at the Facility, and for those purposes will not own, manage, operate, join, control or participate in, or be connected as an officer, employee, partner, director, trustee or otherwise in any manner with a company which owns or operates (or provides consulting and/or management services to any skilled nursing facility located within the Primary Market of the Facility or (ii) any company providing hospice services in the Commonwealth of Massachusetts, or, otherwise lend credits to a person, firm or entity of a type which they prohibited from owning.

- (ii) solicit or hire any then current or former (having provided services during the period commencing one year prior to such date of solicitation or hire) employees of the Facility (except for employment at the Facility);
- (iii) solicit or cause any then current resident of the Facility to move to another nursing facility unless, except during the Term of this Lease the Facility can no longer provide adequate care for such resident.

Tenant acknowledges and agrees that the remedy at law for any breach or threat of breach of the foregoing agreements will be inadequate and that Landlord shall be entitled to injunctive relief in addition to any rights or remedies available to it for any breach or threat of breach hereof. The foregoing covenants shall be deemed to be severable and if the same be held invalid by reason of length of time or area covered, or both, the Tenant agrees that such length of time or area covered, or either of them, shall be reduced to the extent necessary to cure such invalidity and the provisions hereof shall be enforceable to the fullest extent permitted by law.

**Section 20.27 Subdivision.** If the Leased Premises are in excess of that which is required to operate the Facility in accordance with the Intended Use, Landlord may subdivide the Leased Premises and amend this Lease to include only so much of the Leased Premises as is necessary to operate the Facility in accordance with the Primary Intended Use. If Landlord subdivides the Leased Premises there shall be no change in the Rent payable hereunder. After any such subdivision, Tenant shall have no rights to any land which is no longer part of the Leased Premises and Landlord may sell, lease or develop any land which is no longer part of the Leased Premises. If Landlord elects to subdivide the Leased Premises Tenant shall cooperate with Landlord and take all actions reasonably requested by Landlord to effect such subdivision.

**Section 20.28 Landlord Not in Control; No Partnership.** None of the covenants or other provisions contained in this Lease shall, or shall be deemed to, give Landlord the right or power to exercise control over the affairs or management of Tenant, the power of Landlord being limited to the rights to exercise the remedies referred to in this Lease. The relationship between Tenant, on the one hand, and Landlord, on the other hand, is, and at all times shall remain, solely that of landlord and tenant. No covenant or provision of this Lease is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand. Landlord undertakes or assumes no responsibility or duty to Tenant or to any other person with respect to the Facility or this Lease, except as expressly provided in this Lease; and notwithstanding any other provision of this Lease (a) Landlord shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Tenant or its stockholders, members, or partners and Landlord never intends to ever assume such status; (b) Landlord shall not in any event be liable for any debts, expenses or losses incurred or sustained by Tenant; and (c) Landlord shall not be deemed responsible for or a participant in any acts, omissions or decisions of Tenant or their stockholders, members, or partners. Landlord, on the one hand, and Tenant, on the other hand, disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand, or any sharing of liabilities, losses, costs or expenses.

Section 20.29 Tenant Cooperating. Tenant agrees to cooperate with Landlord in providing, and upon request by Landlord or its lender, Tenant shall provide or cause its subtenants to provide, such documents, information, financial reports, and such other items as may be required by Mortgagee in connection with Landlord's loan or loans to acquire the Leased Premises. Tenant agrees to cause its outside counsel to provide updated healthcare opinions required by Mortgagee in connection with the healthcare operations by Tenant or its subtenants at the Facility, and if required by Mortgagee, an opinion of counsel as to the due formation of Tenant and its subtenants and due execution by said parties, and Tenant Affiliates, of the Lease, all subleases, all guarantees of the Lease, and any other documents executed by such parties in connection with the loan(s) from Mortgagee to Landlord. Tenant agrees to execute, and cause the subtenants to execute, SNDAs in form and substance required by Mortgagee and by its prospective lender who will be making HUD-insured loans to Landlords. Tenant further agrees to cooperate with Landlord and with its lenders who are processing and will be making HUD Loans to Landlords.

Section 20.30 Capitalized Terms. To the extent capitalized terms used herein are not defined, they shall have the same meaning as capitalized terms in the Loan Documents.

Section 20.31 Affiliate. The term "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

ARTICLE XXI

REMEDIES CUMULATIVE

Section 21.1 The rights and remedies set forth under this Lease are in addition to all other rights and remedies afforded to Landlord under any of the other documents contemplated under this Lease ("Lease Documents") or at law or in equity, all of which are hereby reserved by Landlord, and this Lease is made and accepted without prejudice to any such rights and remedies. All of the rights and remedies of Landlord under each of the Lease Documents shall be separate and cumulative and may be exercised concurrently or successively in Landlord's sole and absolute discretion.

ARTICLE XXII

LIMITATION OF LIABILITY

Section 22.1 Liability. No member, manager, officer, shareholder, employee or agent of Landlord or its respective affiliates shall be held to any personal liability, jointly, or severally, for any obligations of, or claim against Landlord under this Lease. All persons dealing with Landlord, in any way, shall look only to the assets of Landlord for the payment of any sums or the performance of any obligations.



Section 22.2 Consequential Damages. Under no circumstances shall Landlord be liable to Tenant or any subtenant or Affiliate of Tenant for any consequential, specified, exemplary or permitted damages.

Section 22.3 Liability Limited to Interest in Premises. Tenant shall look solely to Landlord's interest in the Leased Premises owned by Landlord to satisfy any liability arising under this Lease. It is specifically agreed that no constituent partner in Landlord or officer, director, member, manager or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. Except as otherwise expressly provided herein, in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause.

ARTICLE XXIII

REGULATORY ACTIONS

Section 23.1 Notice of Litigation. (a) Promptly after receipt by Tenant or its Affiliates of notice of the commencement thereof, Tenant shall provide Landlord with notice of all actions, suits, and proceedings before any Governmental Authority affecting Tenant, or its Affiliates or its Subtenants, which, if determined adversely to Tenant, its Affiliates or its Subtenants, could result in a judgment equal to or greater than Fifty Thousand Dollars (\$50,000.00).

(b) Notice of Regulatory Actions. Promptly after receipt by Tenant or its Affiliates of the notice of commencement thereof, Tenant shall provide Landlord with notice of (i) any audit, investigation, claim (excluding adjustments, complaints, and corrective activity in the ordinary course of business), proceeding, settlement, judgment, consent order, or corporate integrity agreement by or imposed by any Governmental Authority, (ii) any suspension, debarment or disqualification of Tenant, its officers and members, or its Affiliates from being a health care provider, government contractor, holder of any health care license or recipient of reimbursement from any third party payor, (iii) any suspension, termination, or revocation of any health care license of Tenant or any or any of Tenant's Affiliates or (iv) any self or voluntary disclosure of any overpayment to a third party payor by Tenant or any of Tenant's Affiliates.

(c) Notice of Settlement Negotiations. Tenant shall provide Landlord with reasonable notice of any and all settlement discussions and/or negotiations (excluding adjustments, complaints and corrective activity in the ordinary course of business) between representatives of Tenant and/or its Subtenants and any Governmental Authority, including without limitation negotiations with respect to any claim, settlement agreement, consent order or corporate integrity agreement between Tenant and its Affiliates and any Governmental Authority ("Settlement Discussions"). In connection with Settlement Discussions, (i) Tenant shall timely provide Landlord with copies of any and all documents that Tenant and/or its Subtenants intends to submit, or that Tenant and/or its Subtenants receives, in connection with any Settlement Discussions, and (ii) Tenant shall advise Landlord as to the status of the Settlement Discussions.

No receipt of any such notice under subsections (a), (b) and (c) shall impose any obligation on Landlord to take any action or to enforce its rights hereunder or otherwise remedy the circumstances leading to such notice.

ARTICLE XXIV

ANTI-TERRORISM AND ANTI-MONEY LAUNDERING COMPLIANCE

Section 24.1 Compliance with Anti-Terrorism Law Tenant represents and warrants to Landlord that it is not, and, after making due inquiry, that no person who owns a controlling interest in or otherwise controls Tenant is, (i) listed on the Specially Designated Nationals and Blocked persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (ii) a person (a "Designated Person") either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "Anti-Terrorism Laws". Tenant represents and warrants that it requires, and has taken reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Tenant is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section 24.1 shall not apply to any person to the extent that such person's interest in Tenant is through a U.S. Publicly-Traded Entity. As used in this Lease, "U.S. Publicly-Traded Entity" means a person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person.

Section 24.2 Funds Invested in Tenant. Tenant represents and warrants that it has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in Tenant, to assure that funds invested by such holders in Tenant are derived from legal sources ("Anti-Money Laundering Measures"). The Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq. ("BSA"), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, "Anti-Money Laundering Laws").

Section 24.3 No Violation of Anti-Money Laundering Laws. Tenant represents and warrants to Landlord, to its actual knowledge after making due inquiry, that neither Tenant nor any holder of a direct or indirect interest in Tenant (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties

under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

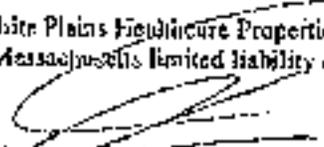
Section 24.4 Tenant Compliance with Anti-Money Laundering Laws. Tenant represents and warrants to Landlord that it has taken reasonable measures appropriate to the circumstances (in any event as required by law), to ensure that Tenant is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking.

[SEE ATTACHED SIGNATURE PAGES]

IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

White Plains Healthcare Properties I, LLC,  
a Massachusetts limited liability company

By:   
\_\_\_\_\_  
Manager

**TENANT:**

HBL SNF, LLC,  
a New York limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_





**SCHEDULE 18(k)**

**Health Care Representations**

Health Care Representations. Tenant, for itself, and for the Subtenants, do hereby represent and warrant to Landlord, its successors and assigns, as of the date of the Lease, that:

(a) All Medicare and Medicaid provider agreements, certificates of need, if applicable, certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by Health Care Authorities (as defined in the Lease) for the legal use, occupancy and operation of the Facility (collectively, the "Health Care Licenses") for the Facility have been obtained by the party required to hold such Health Care Licenses and are in full force and effect, including approved provider status in any approved third-party payor program. Each Subtenant (hereinafter "Operator") owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all such Health Care Licenses and will operate or cause the Facility to be operated in such a manner that the Health Care Licenses shall remain in full force and effect;

(b) The Facility is duly licensed as a skilled nursing facility as required under the applicable laws of the State of New York. The licensed bed capacity of the Facility and the actual bed count operated at the Facility is 160. The Tenant has not applied to reduce the number of licensed or certified beds of the Facility or to move or transfer the right to any and all of the licensed or certified beds of the Facility to any other location or to amend or otherwise change the Facility and/or the number of beds approved by the DOH or other applicable state licensing agency, and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility;

(c) The Health Care License with respect to the Facility (i) has not been and will not be (A) transferred to any location other than the Facility or (B) pledged as collateral security (other than any pledge as collateral security to Tenant's accounts receivable lender approved by Landlord which pledge is subject to the interests of (x) Landlord under the Lease and (y) Mortgagee, including the less and security interests of the Loan Documents), (ii) is and will continue to be held free from restrictions or known conflicts that would materially impair the use or operation of the Facility as intended, and (iii) is not provisional, probationary, or restricted in any way, except in instances where a Governmental Authority or Health Care Authority has issued a provisional, probationary or restricted license, permit or certification in the ordinary course pending issuance of a final license, permit or certification;

(d) Tenant has or will take any action to rescind, withdraw, revoke, amend, modify, supplement or otherwise alter the nature, tenor or scope of any Health Care

License or applicable provider payment program participation other than non-material alterations effected in the ordinary course of business;

(e) Tenant and the operation of the Facility are in material compliance with the applicable provisions of the Law and all orders, standards, policies, restrictions or rules of any Health Care Authority having jurisdiction over the ownership, use, occupancy or operation of the Facility, including (i) staffing requirements, (ii) health and fire safety codes including quality and safety standards, (iii) accepted professional standards and principles that apply to the Operator's provision of services at the Facility, (iv) federal, state or local laws, rules, regulations or published interpretations or policies relating to the prevention of fraud and abuse, (v) insurance, reimbursement and cost reporting requirements, government payment program requirements and disclosure of ownership and related information requirements, (vi) requirements of applicable Health Care Authorities, including those relating to the Facility's physical structure and environment, licensing, quality and adequacy of nursing facility care, distributions of pharmaceuticals, rate setting, equipment, personnel, operating policies, and conditions of Facility and services, and (vii) any other applicable laws, regulations or agreements for reimbursement for the type of care or services provided by Tenant and/ with respect to the Facility. As used herein, "material compliance" means a level of compliance that would keep Tenant and/ (and the operation of the Facility) free from any final orders or sanctions by any Governmental Authority or Health Care Authority having jurisdiction over the operation of the Facility and would not adversely affect Tenant's and/'s operations, including, but not limited to, its right to receive reimbursement or insurance payments;

(f) Tenant and the Facility are each in material compliance with the requirements for participation in the Medicare and Medicaid programs with respect to the Facility that currently participates in such programs and has a current provider agreement under Title XVIII and/or XIX of the Social Security Act which is in full force and effect. Facility has not had any deficiencies on its most recent survey (standard or complaint) that would result in a denial of payment for new admissions with no opportunity to correct prior to termination. The Facility had not any deficiencies at "level G" or above on its most recent survey (standard or complaint), nor has Tenant been cited with any substantial quality of care deficiencies (as that term is defined in Part 488 of 42 C.F.R.) for the past two consecutive surveys. The Facility has not been designated as a Special Focus Facility (as such term is defined by the Centers for Medicare and Medicaid Services Special Focus Facility Program);

(g) Neither Tenant nor the Facility is a target of, participant in, or subject to any action, proceeding, suit, audit, investigation or sanction by any Health Care Authority or any other administrative or investigative body or entity or any other third party payor or any patient or resident (including, without limitation, whistleblower suits, or suits brought pursuant to federal or state False Claims Act, and Medicaid/Medicare/State fraud/abuse laws, but excluding medical malpractice claims and other civil liability lawsuits for which the Facility is maintaining insurance coverage in the ordinary course of business) which may result, directly or indirectly or with the passage of time, in the imposition of a fine, penalty, alternative, interim or final sanction, a lower rate

certification, recoupment, recovery, suspension or discontinuance of all or part of reimbursement from any Health Care Authority, third-party payor, insurance carrier or private payor, a lower reimbursement rate for services rendered to eligible patients, or any other civil or criminal remedy, or which could reasonably be expected to have a material adverse effect on Landlord, Tenant, or the operation of the Facility, including the Facility's ability to accept or retain residents, or which could result in the appointment of a receiver or manager, or in the modification, limitation, annulment, revocation, transfer, surrender, suspension or other impairment of a Health Care License, or effect Tenant's participation in the Medicare, Medicaid, or third-party payor program, as applicable, or any successor program thereto, at current rate certification, nor has any such action, proceeding, suit, investigation or audit been threatened;

(b) There are no agreements with residents of the Facility or with any other persons or organizations that deviate in any material adverse respect from or that conflict with, any statutory or regulatory requirements. All resident records at the Facility, including patient and/or resident accounts records, are true, complete, and correct in all material respects;

(j) Other than the Medicare, Medicaid, and Veteran Administration programs, Tenant is not a participant in any federal, state or local program whereby any federal, state or local government or quasi-governmental body, or any intermediary, agency, board or other authority or entity may have the right to recover funds with respect to any Individual Property by reason of the advance of federal, state or local funds, including, without limitation, those authorized under the Hill-Burton Act (42 U.S.C. 291, et seq.). Tenant has received no notice, and is not aware of any violation of applicable anti-trust laws;

(i) Tenant's private payor, Medicaid, Medicare, and/or managed care company, insurance company or other third-party insurance accounts receivable with respect to the Facility are free of any liens and Tenant has not pledged any of its receivables as collateral security for any loan or indebtedness;

(k) Tenant is not a party to any collective bargaining agreement or other labor contract applicable to persons employed by it at the Facility and there are no threatened or pending labor disputes at the Facility;

(l) Tenant has instituted, and the Facility is operated in material compliance with, a compliance plan which follows applicable guidelines established by Health Care Authorities;

(m) Tenant is in compliance with the Health Care Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder;

(n) There is no threatened or pending revocation, suspension, termination, probation, restriction, limitation, or non-renewal affecting Tenant and/or the Facility or provider agreement with any third-party payor, Medicare or Medicaid;

(o) All Medicare, Medicaid, and private insurance cost reports and financial reports submitted by or on behalf of the Facility are and will continue to be materially accurate and complete and have not been and will not be misleading in any material respects;

(p) The Facility and the use thereof complies in all material respects with all applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements and no waivers of such physical plant standards exist at the Facility;

(q) Any existing agreement relating to the management or operation of the Facility is in full force and effect and is not in default by any party. In the event any management or operating agreement is terminated or in the event of foreclosure or other acquisition, the subsequent operator need not obtain a certificate of need prior to applying for and receiving a license to operate the Facility or prior to receiving Medicare or Medicaid payments, as applicable;

(r) There are no actions, suits, or proceedings at law or in equity by any person or entity, including any Governmental Authority or any Health Care Authority or other agency now pending or threatened against or affecting Tenant and/or the Facility, which actions, suits or proceedings, individually or collectively, if determined against Tenant and/or the Facility, might materially adversely affect the condition (financial or otherwise) or business of Tenant and/or the condition, ownership or operation of the Facility.



SCHEDULE 19.2

"Special Purpose Entity" shall mean a corporation, limited partnership or limited liability company (such entity sometimes referred to herein as the "Company") which at all times on and after the date hereof:

(d) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Leased Premises, entering into this Lease with Landlord, subleasing the Leased Premises to affiliated subtenants; and (ii) transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(e) is not engaged and will not engage, directly or indirectly, in any business unrelated to those activities required or permitted to be performed under the Lease, including pursuant to this definition of "Special Purpose Entity" and Subsection (a) above, as applicable;

(f) does not have and will not have any assets other than those (i) related to the Leased Premises or its partnership interest in the limited partnership or the member interest in the limited liability company that operates the Leased Premises or acts as the general partner or managing member thereof, as applicable, and (ii) incidental personal property necessary for the conduct of its business, as applicable;

(g) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(h) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(i) has not failed and will not fail to correct any known misunderstanding regarding its separate identity;

(j) has maintained and will maintain its accounts, books and records separate from those of any other person, individual or entity (a "Person") and maintain its bank accounts separate from those of any other Person. To the extent required by law to file a tax return, will file its own tax returns, except to the extent it is required to file consolidated tax returns by law;

(k) has maintained and will maintain its own records, books, resolutions and agreements;

(l) has not commingled and will not commingle its funds or assets with those of any other Person and has not participated and will not participate in any cash management system with any other Person other than pursuant to its *insert any credit facilities or accounts receivable financings*;

(m) has held and will hold its assets in its own name;

(n) has conducted and will conduct its business in its name;

(o) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(p) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees, if any, in light of its contemplated business operations and in accordance with all Laws;

(q) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(r) has and will have no indebtedness other than (i) liabilities under this Lease or any Sublease (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Leased Premises and the routine administration of Tenant, and (iii) such other liabilities that are permitted under this Lease;

(s) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Lease;

(t) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(u) has allocated and will allocate fairly, reasonably and in accordance with all Laws, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(v) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Tenant or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity;

(w) has not pledged and will not pledge its assets for the benefit of any other Person;

(x) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(y) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(z) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity;

(aa) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(bb) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (A) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are in compliance with all Laws and no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party and (B) in connection with this Lease;

(cc) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Rent payable under this Lease and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Rent is insufficient to pay such obligation;

(dd) It shall consider the interests of its creditors in connection with all limited liability company actions.

(ee) does not and will not have any of its obligations guaranteed by any Affiliate except obligations under this Lease;

(ff) if such entity is a limited liability company, it shall have its own board of directors or board of managers, and shall cause such board to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other corporate formalities;

(gg) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts recited in its organizational documents are true and correct and will remain true and correct;

(hh) has not and will not permit any other Person independent access to its bank accounts;



(i) has caused and will cause all representatives of Tenant to act at all times with respect to Tenant consistently and in furtherance of the foregoing; and

(j) has not and will not form, acquire, or hold any subsidiary or own any equity interest in any other entity.

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# Exhibit 2 to Verified Complaint

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by **Liter Jozefovic** ("Guarantor"), to **WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**, a Massachusetts limited liability company ("Landlord").

**RECITALS**

- A. Landlord has been requested by **HBL SNF, LLC** a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").
- B. Tenant is owned by Guarantor, and Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.
- C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.
- D. Guarantor hereby acknowledges receipt of a copy of the Lease.

**NOW, THEREFORE**, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS**. Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

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2. **COVENANTS OF GUARANTOR**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recovery against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

3.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

**3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.**

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease, (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)

an unconditional Letter of Credit, in accordance with the Section 7.1(a)(i) of the Lease in the amount of \$3,700,000, or (b) \$3,700,000 in cash to secure the full and timely payment and performance of Tenant's obligations under the Lease, (i) an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached as Exhibit 7.1(a) of the Lease or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 18 months, and (ii) and released to Landlord all funds in the controlled account number [REDACTED] in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held as an additional Security Deposit by Landlord. After the Guaranty Termination Date, Guarantor shall continue to remain personally liable pursuant to the terms of this Guaranty for (i) all obligations of Tenant under the Lease which arose or accrued on or prior to the Guaranty Termination Date and (ii) any liability of Tenant arising out of a breach of any warranty or representation of Tenant under Lease, and all documents executed by Tenant in connection therewith, (iii) and any liability of Guarantor arising out of a breach of any warranty or representation hereunder.

**4. WAIVERS OF GUARANTOR**

4.1 Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protect, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

4.2 GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEDS OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM, THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defenses of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

5. SUBORDINATION; SURRENDER.

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR. Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. NOTICES. Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

If to Landlord:

White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

IF to Guarantor:

HBL SNP, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

8. CONSENT TO JURISDICTION. Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. CERTAIN ADDITIONAL COVENANTS.

9.1 Financial Deliveries. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. MISCELLANEOUS.

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:

  
Linda G. Zeffo

:

1504018-017057-9

# Exhibit 3 to Verified Complaint

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Mark Newman ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

**RECITALS**

A. Landlord has been requested by HBI SNE, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restored Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recovery against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantors, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease; (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceedings; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)



GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by cutoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon, or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action, by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantees, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

If to Landlord:

White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blackstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

IBL SNP, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Mark Neuman

With a copy to:

Mitchelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

8. CONSENT TO JURISDICTION. Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. CERTAIN ADDITIONAL COVENANTS.

9.1 Financial Deliveries. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 1.8% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. MISCELLANEOUS.

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

in the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom, or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

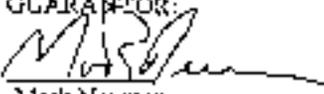
10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:  
  
Mark Neuman

# Exhibit 4 to Verified Complaint

**IBI-SNF, LLC**  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

November 20, 2019

White Plains Healthcare Properties, I, LLC  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William Nicholson

**Re: Letter of Intent**  
**Premises: 116-120 Church Street**  
**White Plains, New York**

Dear Mr. Nicholson

This Letter of Intent ("LOI") outlines our proposal for White Plains Health Care Properties, I, LLC (the "Contributor") to transfer the premises known as 116-120 Church Street, White Plains New York (the "Premises") to a Delaware Statutory Trust where we would jointly hold the beneficial interests in the Trust on the terms and conditions set forth below. The Building a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Facility") had been constructed pursuant to a Development Agreement dated November 19<sup>th</sup>, 2015 and for which we had simultaneously entered into that certain operating lease by and between you as Landlord and us as Tenant/Operator (the "Lease").

- 1) **Basic Transaction:** (the "Transaction"): Contributor shall contribute premises 116-120 Church Street White Plains, New York to a newly formed Delaware Statutory Trust (the "Trust") formed by the parties. This transaction shall be memorialized by a contribution agreement in substantially the form annexed hereto as Exhibit A. The Contribution shall be governed by IRC Sec. 721. The agreed upon cost and fair market basis shall be \$67,345,348.00
  - a) Lizer Jozefovic and Mark Neuman will acquire from the Trust by a Purchase Agreement 77.50 Percent of the Beneficial Interests in the Trust and redemption of a portion of the B Beneficiaries' interest for a purchase price of \$52,200,000.00 paid as follows:
    - i) By a down payment (the "Down Payment") not to be held in escrow, but to be made upon the execution and delivery of this LOI of \$2,200,000.00 by wire transfer to the account of White Plains Healthcare Properties I, LLC according to the wire instructions annexed hereto.
    - ii) By the Trust obtaining a new first mortgage of \$51,000,000.00 to pay the balance of the Purchase Price and cover closing costs to be used as follows;

- (1) To pay the first Mortgage held by Security Benefit Life Insurance in the approximate amount of \$39,226,253 plus accrued interest and fees.
  - (2) To pay the loan encumbering the membership interests of the Contributors by Bradford Allen in the approximate amount of \$9,770,963 plus accrued interest and fees;
  - (3) By the Trust making a non-refundable down payment of \$2,200,000.00
  - (4) To pay the costs of the financing.
- b) Lizer Jozefovic and Mark Neuman shall be the A Beneficiaries of the trust holding a 77.50% Beneficial interest, and the present members of the Contributor or their designees shall be the B Beneficiary with a 22.5% equity position.
  - c) The A Beneficiaries shall be the personal guarantors of the new financing in the amount of Fifty-One Million (\$51,000,000.00) Dollars. The Transaction is to close thirty (30) days after Buyer has received approval for the Financing set forth in paragraph 1)a) ii). The Contribution Agreement shall call for a purchase price equal to Transferees cash basis in the property and shall not result in a taxable event for Contributor;
  - d) The Financing shall be an obligation of the Trust secured by a first mortgage loan on the Facility and the Premises.
  - e) Lizer Jozefovic and Mark Neuman shall act as the Personal Guarantors and shall be obligated if necessary, to secure additional personal guarantors to ensure that none of the B beneficiaries shall have any obligation to guarantee the Financing. Any additional guarantors on the Financing shall also execute and deliver a personal guaranty of Tenant's obligations to Landlord on the Lease. All guaranties on the Lease shall be full unlimited personal guaranties.
  - f) The Financing shall bear interest at a constant rate of no more than 7% per annum with Principal and Interest paid on an amortization schedule of 35 years and shall be subject to the reasonable approval of the Contributor, which consent shall not be unreasonably withheld or delivered without cost to the Tenant Borrower.
  - g) Formal Contracts: The Parties intend that additional agreements including the Contribution Agreement, Redemption Agreement and Trust Agreement (the Formal Contracts") shall be complete as of November 22nd, 2019, and absent execution of Formal Contracts this LOI shall govern provided the Down Payment is received in good funds by Contributor upon execution of this LOI, and in no event later than the end of business November 22, 2019. In the event Tenant defaults in the payment of rent on the Lease and such default continues for five (5) days, Contributor shall have the right to terminate this LOI and all Formal Contracts.
  - h) Closing: The Closing of the Transaction ("Closing") will occur at the offices of the First Mortgagee Bank's counsel or such other location within the State of New York as may be agreed upon by the Parties thirty (30) days after receipt by the Trust of approval for

the Financing but no later than April 1st, 2020. If the Tenant has a commitment letter on April 1<sup>st</sup>, 2020 that is in the process of closing or if the closing is delayed by a title issue, the closing date shall be automatically extended for another Ninety-Days. If the closing does not occur by such date, time being of the essence, this LOI and the Formal Contracts shall be terminated and no party shall have any rights with respect thereto. The parties shall remain as Landlord and Tenant pursuant to the existing Lease until such time as the Transaction closes. The Lease may be amended as provided herein but only if and when such amendments are approved by Contributor's existing Lender.

- 2) **Structure of the Trust:** The Contributor and Tenant have agreed to create a Trust as a "statutory trust" in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. 3801 and enter into a Trust Agreement which shall constitute the "governing instrument" of the Trust. Each party will become a Beneficiary and will transfer certain sums of money and/or property to the Trust in exchange for a beneficial interest in the Trust as set forth above;
- a) The Trust shall be a special purpose entity which is being formed solely for the purpose of acquiring the Trust Property from the Contributor and maintaining, improving, building upon, and leasing the Trust Property for use as a skilled nursing facility and all and such other activities incident or appropriate to the preceding
  - b) Simultaneously upon the closing of the transaction, the existing lease shall be modified only as set forth herein.
  - c) The trust shall be permitted to have only the following liens on the Trust Property and no other:
    - i) A Mortgage in the amount of Fifty-One Million (\$51,000,000.00) Dollars (the "First Mortgage") the terms of which shall be acceptable to the Department of Health and the Contributor.
    - ii) The Trust will designate Howard Fensterman and William Nicholson as the Administrative Trustees of the B interests.
      - (1) The Trust Agreement shall provide that Howard Fensterman and William Nicholson as the B beneficiaries Administrative Trustees shall have the sole authority to all issues governing administering and enforcing the terms of the Lease including the collection and distribution of rent.
      - (2) Lizer Jozefovic shall be responsible as the overall Administrative Trustee for all other matters concerning the building including but not limited to repairs, maintenance, and operation of the building. Any Trustee may be removed for cause including misconduct, bad faith, fraud or gross negligence.
      - (3) Except as otherwise provided in a Trust Agreement to be executed and notwithstanding any provision of the Act that otherwise so empowers the Trust, neither the Beneficiaries nor any Trustees nor any other Person shall be authorized or empowered, nor shall they permit the Trust, to take any of the following actions

without the prior unanimous written consent of all of the Beneficiaries:

- (a) Make any arrangements to reduce, modify, or forebear on the payment of rent by the Tenant;
- (b) Guarantee any obligation of any Person, including any Affiliate;
- (c) engage, directly or indirectly, in any business other than the actions required or permitted to be performed hereunder;
- (d) incur, create or assume any indebtedness;
- (e) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person;
- (f) To the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of their interests subject to obtaining any approvals required under this Trust Agreement other than a sale of the interests to qualified purchasers under a syndicated offering of the B interests. The cost of such syndication shall not be charged to the B Beneficiaries and all monies derived therefrom and due hereunder shall be net of the costs of the syndication.
- (g) allow any business to be conducted on the Property other than the operation of a skilled nursing facility and ancillary uses;
- (h) own any other property or engage in any business other than owning and leasing the Trust Property for use as a skilled nursing facility;
- (i) take any action to consolidate or merge the Trust with or into any Person;
- (j) sell all or any portion of or any interest in the Trust Property;
- (k) grant an option to lease all or any portion of the Trust Property for a term (with all extension periods) ending on or after the 45th Anniversary Date;
- (l) amend, terminate or waive any material provisions of any lease for all or any portion of the Trust Property;
- (m) enter into any agreement with any Person giving any Person any rights with respect to the Trust Property that extend beyond the 45th Anniversary Date or which are not terminable without penalty on less than 90 days' notice;
- (n) encumber the Trust Property with any mortgages or another lien, easement, covenant or restriction other than the First Mortgage, or a HUD Mortgage to refinance the debt contemplated by this Agreement, at such time as HUD regulations shall allow;
- (o) modify the Trust Agreement or the Trust's certificate of trust in any manner, issue additional interests in the Trust to any Person, or modify the rights and privileges of the Interest owners;
- (p) institute proceedings to have the Trust be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Trust or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrate (or other similar official) of the Trust or a substantial part of its property;
- (q) make any assignment for the benefit of creditors of the Trust;

- (r) admit in writing the Trust's inability to pay its debts generally as they become due;
  - (s) take action in furtherance of any of the foregoing actions; or dissolve or liquidate the Trust.
- iii) The 22.5% of the Trust Owned by the B Beneficiaries interest shall be subject to a Redemption Agreement where the B interests shall be sold to the A interests or their designees, assigns or transferees, over five years for a total price of \$19,800,000.00 in four tranches each representing interests of 5.625% each
- (1) Tranche one on or before August 1, 2020 in the amount of \$3,786,250.00
  - (2) Tranche two on or before August 1, 2021 in the amount of \$3,786,250.00
  - (3) Tranche three on or before August 1, 2022 in the amount of \$3,786,250.00
  - (4) Final Tranche by August 1, 2023 in the amount of \$8,441,250
- iv) Any purchase of the membership interests shall be a purchase of Beneficial Interests from the B Beneficiaries and shall reduce the Priority Return proportionate to the payments as a percentage of the total remaining price of \$19,800,000, which is the balance after payment of the non-refundable Down Payment.
- v) The A Beneficiaries shall prepare at their sole cost and expense of the A Beneficiaries a Private Placement Memorandum for the Sale of Membership interests in the Trust by a Broker Dealer who specializes in sales of marginal interests in Delaware Statutory Trusts to individuals and other entities who have to designate property as target property in connection with 1031 Exchanges of Property. The A Beneficiaries shall have the right to designate a portion of their membership interests as C interests for the purpose of selling them as part of the same syndication, provided that (1) there is no change in control of the A Beneficiaries or the Tenant entity.
- vi) The B Beneficiaries will be entitled to a priority return (the "Priority Return") equal to all available rental and other income over and above the payment of the P&I on the New First Mortgage which shall in no event be less than \$2,000,000 per year (as adjusted by periodic redemptions) and shall be paid to the B Beneficiaries as a Priority Return until such time as they have been fully redeemed pursuant to the Redemption Agreement.
- vii) The Trustee shall deposit all rents and other funds collected from the operation of the Real Estate in the bank designated by the first mortgagee (the "Operating Account") which shall be subject to both a Deposit Account Control Agreement and Deposit Account Instruction Agreement. The Trust shall maintain books and records of the funds from the Real Estate deposited in such account, interest earned thereon, and withdrawals therefrom. The Trustee shall pay from the Operating Account the operating expenses of the Real Estate (other than those paid by a tenant of the Real Estate as set forth in its lease) and any other payments relative to the Real Estate as required by this the Trust Agreement.

viii) The Trustee shall be responsible for receiving all cash from the Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust Agreement. The Trustees shall furnish quarterly and annual reports to each of the Beneficiaries as to the amounts of rent received from the Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficiaries.

ix) To the extent permitted by the Internal Revenue Code depreciation, which shall be calculated on a straight-line depreciation method shall be allocated as follows: a) first to the B Beneficiary to the extent necessary to shelter the Priority return from taxes and b) second to the beneficiaries, pro rata, in accordance with the ownership interests.

3) Condition of Property and Title: Contributor shall give, and the Trust and the Trust shall accept, a good and marketable title which any National Title Insurance Company (the "Title Company"), will approve and insure at standard rates, free and clear of all liens, hypothecations, mortgages, easements, and encumbrances, except for the Permitted Exceptions.

i) The Premises is being contributed subject to the following exceptions to the title (the "Permitted Exceptions"):

- (1) Zoning and building regulations, restrictions and ordinances now or hereafter adopted or imposed by any governmental or quasi-governmental body having or asserting jurisdiction over the Premises or any part thereof;
- (2) Future Real Estate taxes, assessments, water charges, sewer rents or other charges not yet due and payable (subject to apportionment as provided herein) and certified, confirmed or ratified assessment liens and pending assessments, if any;
- (3) The state of facts shown on an updated as built survey prepared originally prepared and revised to be an as built survey, (the "Survey") and such additional state of facts which said survey would show or reveal provided such additional state of facts do not render title unmarketable;
- (4) Any state of facts a physical inspection of the Premises would reveal;
- (5) Exceptions permitted by the Title Company (as defined herein) (the "Title Exceptions");

4) All payments made to purchase any portion of the B Beneficiaries 22.5% interest shall also act to proportionally reduce the amount of Priority Return paid to the B beneficiaries under the Trust and the proportionate difference shall be paid to the A Beneficiaries or whoever purchases the B Beneficiaries interests as the case may be.

a) Distributions: Provided that all required payments set forth herein have been made by the Tenant, During the interim period prior to the purchase of the premises Tenant may pay Management Fees so long as (i) the amount of such Management Fees paid in any twelve-month period shall not exceed five percent (5%) of Tenant's gross revenues for such period

and (ii) there shall not then exist, and/or the paying of such Management Fees shall not cause there to exist, a Default or Event of Default under the Lease the first mortgage on the property or the Tenant's Working Capital Loans, (iii) the Initial Payment, the payment of Rent, and all other payments set forth herein have been made by the Buyer/Tenant. Upon the occurrence of an Event of Default, Tenant shall not pay Management Fees. The Tenant will make no distributions to its shareholders, officers, affiliates, or any related party unless the Down Payment, the payment of Rent is current, and.

- 5) **Confidentiality and Disclosure:** Tenant and Contributor shall each maintain the confidentiality of all confidential and non-public information supplied by the other. If this Transaction is not consummated, each party shall return all documents obtained to the other. Except as required by law, without the prior written consent of the other party, neither Tenant nor Contributor will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this Letter of Intent. If a party is required by law to make any such disclosure, the parties shall consult with each other and seek to agree upon appropriate language for such disclosure. The Tenant acknowledges that Contributor will be unable to furnish any patient health information, unless such disclosure complies specifically and completely with all terms, conditions, regulations, and guidelines in HIPAA.
- 6) **Interim Operation:** Subject to the approval in writing of Contributor's existing Leader, the parties will enter into an amendment of the Lease as follows to allow for the operation of the facility before the closing.
  - a) **Commencement Date:** The Commencement Date according to the Lease shall be September 30, 2019.
  - b) **Rent:** An initial rent payment of \$509,000.00 has been paid receipt of which is on account toward the rental period from September 30, 2019 to October 31, 2019 (the "October 2019 Rent") leaving a balance of \$13,735 for October 2019 Rent. November 1, 2019, to November 30, 2019 (the "November 2019 Rent") shall be postponed until November 18, 2019 and shall be paid by Tenant on that date. The next rental payment shall be the December monthly rent amount outlined in the Lease - \$506,097 which shall be paid on December 5, 2019. Also, the Tenant will reimburse the Landlord for their municipal maintenance escrow and utility deposits of \$5,500 and \$60,356, respectively. Such reimbursement payment shall be made on or before December 5<sup>th</sup>, 2019. Upon receipt of the \$60,356 for the utility deposits from the Tenant, Landlord will direct any refund from the Utility companies to the Tenant, or otherwise pay such refund over to the Tenant forthwith provided Landlord has previously received those funds from the Tenant.
  - i) The following amounts are in dispute, and neither party will be obligated to waive their rights and positions by the signing of this agreement. The landlord has demanded the following sums due to their Lender.

- (1) Late and Default Interest costs of \$201,997.34 for September 2019 and October 2019,
  - (2) \$19,000 of Late Fees for November 2019,
  - (3) \$5,061 per day for Default Interest premium during November 2019.
- ii) The A Beneficiaries and the B Beneficiaries shall jointly negotiate with the Contributor's current Lenders to effectuate the best possible settlement of these late costs (the "Late Costs"). The amounts if any remaining after such joint negotiation will be paid by the 77.5% by the Buyer and 22.5% by the Contributor (provided the Initial Payment, the payment of Rent and all other payments set forth herein are made timely) from Financing proceeds. If not available from the Financing proceeds the Tenant shall pay all Late Costs.
- c) Security Deposit/ Guaranty: Section 7.1(a)(i) the Lease shall be amended to provide that Tenant shall enter into a Deposit Account Control Agreement with Metropolitan National Bank which can only be revoked with the consent of both parties, which shall provide that each month, the Tenant's Lender shall draw on the loan amount first to pay rent to the Landlord, notwithstanding the adequacy of any accounts receivable borrowing base calculations. This Document shall be part of the Closing Documents on the Tenant's first initial Term Loan and shall be delivered in full effect by December 1, 2019.
- d) Section 7.1(a)(ii) of the Lease shall be amended to provide that the obligation for the Security Deposit shall initially be reduced to 2,000,000 dollars.
- i) The sum shall be paid by Tenant as follows: (a) Provided that the Contributor has obtained a permanent Certificate of Occupancy the Tenant shall draw the initial \$1,000,00.00 from its credit line on or no later than December 1, 2019. (b) Landlord shall obtain a release of the lien of its Lender on the FF&E, upon delivery of free and clear title to the FF&E the Tenant will enter into a reverse lease and obtain at least \$1,000,000.00 which shall be paid on account of the Security Deposit no later than April 1, 2020.
  - ii) Also, Tenant shall pay the sum of \$40,000 per month commencing January 1, 2020 to be treated as additional rent until there is a total \$3,700,000 posted as Security Deposit under 7.1(a)(i).
- e) Section 7.1(a)(iii) of the Lease shall be amended to provide that instead of delivering the sum of \$1,600,000 in cash, the parties shall enter into a blocked account agreement wherein and whereby account number [REDACTED] in JP Morgan Chase Bank NA prohibiting any liquidation of that account until the Second Payment is paid. Such account shall be not be posted as collateral security to Landlord's Lender provided the Initial Payment has been made in full, and all payments of Rent are current and the Tenant is not otherwise in Default, except that the Landlord shall have a security interest in such account under a DAISA, which allows the Landlord to demand the liquidation of such account to pay any defaults under the lease.

- f) Working Capital: Section 7.7 of the Lease shall be amended to suspend the requirement for providing the working capital account. The Tenant shall be obtaining a single working capital line for \$8,000,000.00 no later than December 1, 2019.
- g) Right of First Refusal and Option to Purchase: The Tenant's rights with respect to the right of first refusal and option to purchase under Sections 3.7 and 3.7 of the Lease will be suspended pending payment in full of the Security Deposits required by Section 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) of the Lease as amended, the payment of the Initial Payment, the working capital required by Section 7.7 of the Lease and Tenant being in full compliance with the Lease.
- h) Insurance: Tenant shall obtain property insurance, effective as of September 30, 2019, and (2) provide the property insurance, and all other insurances required by the Lease by November 19, 2019, effective retroactively back to September 30, 2019.
- i) Real Estate Taxes: Real estate taxes shall be prorated as of September 30, 2019 and the Tenant's portion shall be paid to the Landlord no later than December 1, 2019, plus any late charges which the City of White Plains may impose.
- j) Utilities: Tenant shall pay actual costs of utilities incurred at the property covering the rental period from September 30, 2019 (pro-rated as the utility company billing periods may require) forthwith upon presentation of invoices for the same from the Landlord, no later than December 1, 2019.
- k) Punchlist: The punch list and all other developer obligations are deemed complete except for:
  - i) The White Plains Outstanding Punchlist November 5, 2019 (the Remaining Punchlist), the value of which is has been determined by the Architect and agreed herein to be \$3,800.
  - ii) The Electric Blinds in rooms (the "Suspended Work") the value of which is agreed herein to be \$35,000.
  - iii) Provided the Initial Payment is made by November 15, 2019 and provided there are no other Defaults by the Tenant, Landlord shall complete the Remaining Punchlist and the Suspended Work to the approval of the Architect, within 45 days from the date of the Contributor's receipt of the Initial Payment. Should Landlord not do so, then the Tenant may credit the agreed values of any uncompleted Punchlist or Suspended Work from the February, 2020 Rent payment, and the Landlord's Work under the Lease and Development Agreement shall be deemed complete.

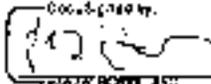
Security: Tenant shall assume all property security obligations as of November 11, 2019.

Upon the closing of the purchase of the premises by the Trust, the Trust shall take an assignment of the lease as amended above.

- 7) **Exclusivity:** In consideration of (1) the Initial Payment, (2) the payment of Rent as set forth herein, and (3) Tenant's efforts in pursuing the Transaction, Contributor agrees that (1) until the termination of this Letter of Intent or execution of the Formal Contracts and (2) provided the payment of the Initial Payment and the payment of Rent as set forth herein is made, and (3) all other obligations of the Tenant set forth herein, Contributor will not permit any of its affiliates to, and will not authorize or permit any officer, director, employee, counsel, agent, investment banker, accountant, or other representative of any of them, directly or indirectly, to: (a) initiate contact with any person in an effort to solicit any proposal (other than that contemplated by this Letter of Intent for the acquisition (directly or indirectly, by sale of stock or assets, or by merger or consolidation or otherwise) of the operation of the Real Estate, or any of the Assets, or any other business combination or financing transaction involving such business (a "Proposal"); (b) cooperate with, or furnish or cause to be furnished any non-public information concerning the operation of the Real Estate, to, any person in connection with any Proposal; (c) negotiate or enter into discussions with any person with respect to any Proposal; or (d) enter into any agreements or understanding with the intent to effect a Proposal. Contributor will immediately give written notice to Tenant of the details of any Proposal of which Contributor becomes aware. Contributor will, and will cause its officers, directors, affiliates, agents, and representative to, terminate all discussions regarding a Proposal, other than those with Tenant and its representatives concerning the Transaction, and represents that neither it nor any of its officers, directors, affiliates, agents, or representatives have entered into any executory agreements or accepted any commitments concerning any Proposal other than the Transaction provided that (1) this LOI or successor Formal Contracts has not terminated, and (2) the payment of the Initial Payment, the payment of Rent as set forth herein have all been paid and are current, and (3) all other obligations of the Tenant set forth herein are not in Default and are current.
  
- 8) **Waiver of Claims:** Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the Lease, (3) any claims related to the Cust Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.
  
- 9) **Expenses:** Tenant and Contributor shall each be responsible for their respective accounting, legal, advisory, and other costs and expenses in connection with the Transaction. Tenant shall reimburse Contributor for its legal, advisory and other costs and expenses in connection with the Transaction and the Termination of the Lease. Reimbursement for such legal and transaction fees shall not to exceed \$125,000 and may be made from the proceeds of the Closing, provided the Closing occurs and the Contributor's existing 1<sup>st</sup> Mortgage Loan and Mezzanine Loan are paid off from the proceeds of the Financing by March 31, 2020, and (2) the Initial Payment is made as set forth herein above, and (3) the Tenant is not in default under this LOI or the successor Formal Contracts. Otherwise the \$125,000 cap shall expire and the Tenant shall pay the Contributor all such costs incurred after September 30, 2019.

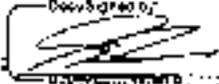
- 10) **Letter of Intent:** This LOI represents a statement of all of the terms, conditions, representations, warranties, indemnities, covenants, and other provisions that would be contained in the definitive documentation for the proposed transactions. This LOI shall constitute a binding agreement upon payment of the or any of their respective affiliates will have any legal obligation under this LOI unless and until one or more subsequent definitive written agreements are mutually executed and delivered by each of Contributor and Buyer. No past, present, or future action, course of conduct, or failure to act relating to the transactions referenced in this LOI or relating to the negotiation of the terms of such transactions will give rise to or serve as the basis for any obligation or other liability on the part of Contributor or Buyer or any of their respective affiliates. [ These changes should be rejected]
- 11) **Governing Law:** This Agreement shall be governed by and construed by the internal laws of the State of New York, Venue shall be in Westchester County without application of its conflicts of law rules. If you agree with the preceding, please sign and return one copy of this Letter of Intent

HBL-SNF, LLC

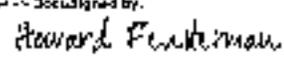
DocuSigned by:  
  
 Lizer Jozetovic

**ACKNOWLEDGED AND AGREED**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

By:   
 Name: William A. Nicholson  
 Title: Manager

Accepted and Agreed

DocuSigned by:  
  
 HOWARD FENSTERMAN

# Exhibit 5 to Verified Complaint

**DELBELLO DONNELLAN WEINGARTEN**

**WISE & WIEDERKEHR, LLP**

Alfred J. Donnellan  
Partner  
ad@ddw-ny.com

COUNSELLORS AT LAW  
THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601  
(914) 831-0200  
FACSIMILE (914) 654-0288

Statutory Office  
111 SPINNEY STREET  
STAMFORD, CT 06905  
(203) 398-6000

January 7, 2020

BY EMAIL [lizerj@watersedgeusa.com](mailto:lizerj@watersedgeusa.com)  
BY FEDERAL EXPRESS

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**NOTICE OF DEFAULT  
AND LANDLORD'S ELECTION TO TERMINATE LEASE AND  
ACCELERATE ALL RENTS DUE FOR THE BALANCE OF THE LEASE TERM**

**PREMISES: 116-120 Church Street, White Plains, New York ("the Leased Premises")**

Mr. Josefovic:

We are attorneys for your Landlord, White Plains Health Care Properties I, LLC.

**PLEASE TAKE NOTICE**, that HBL SNF, LLC ("HBL") is in material violation of the provisions of its November 19, 2015 Lease, for the above referenced premises ("the Lease"), and the November 20, 2019 Letter of Intent (the "LOI"), the terms of which are in full force and effect (the "LOI"), and is in **DEFAULT** thereof, as follows:

1. Lease Section 3.2, and LOI Para 6) d) ii) - Payment of Rent: HBL has failed or refused to pay the following Rent:
  - a. Rent due for Sept. 30, 2019 - Dec. 31, 2019, totaling \$10,831.79.
  - b. Additional Rent due for Jan. 01 - 31, 2020, due Jan. 1, 2020, totaling \$40,000.00.
2. Lease Section 4.2, and LOI Para 6) b) - Payment of Real Estate Taxes: HBL has failed to pay the following Real Estate Tax payments:
  - a. Real Estate Taxes for the period 07/01/19 - 12/31/19, specifically the Tenant's prorated portion thereof, (exclusive of late fees, costs, penalties and interest per municipal regulations and per the Lease), totaling \$61,456.39.
  - b. Real Estate Taxes for the period Jan. 01, 2020 - June 30, 2020 totaling \$121,587.12

Att: Lizer Josefovic  
January 7, 2020  
Page 2

3. LOI Para 6) b), and Lease Section 5.2 – Payment of Utility Deposits and Municipal Maintenance Escrows: HBL has failed to pay the following Utility Deposits and Municipal Maintenance Escrows:
  - a. Utility Deposits totaling \$60,356.10
  - b. Municipal Maintenance Escrows totaling \$5,500.00
  
4. Lease Section 4.1, LOI Section 6) j) - Utility Charges: HBL has failed to pay the following Utility Charges:
  - a. ConEdison invoice paid by the Landlord to avoid power shutoff, in the amount of \$2,972.84.
  
5. Lease Article VI, including Section 6.2; LOI Para 6) h) - Delivery of Insurance Certificates:
  - a. HBL has failed to deliver certificates of insurance to Landlord in accordance with Article VI and Section 6.2 of the Lease.
  
6. Lease Section 7.4 (g) and (j) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility.
  - b. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider updated reimbursement rate sheets for the Facility.
  
7. Lease Section 7.4 (a) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required financial reporting required under the Lease.
  
8. Lease Section 7.4 (B) (vi) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required written reports providing an operational overview of significant events and circumstances at the Facility during each prior month of the Term of the Lease.
  
9. Lease Section 7.1(a)(ii), as amended by LOI Para 6) d) i) – Security Deposit:
  - a. HBL has failed or refused to deliver to the Landlord by December 1, 2019 the security deposit of \$1,000,000.00, to secure full and timely payment and performance of Tenant's obligations under the Lease.
  
10. Lease Section 7.1(a)(iii), as amended by LOI Para 6) e) – Additional Security Deposit:
  - a. HBL has failed to deliver the blocked account agreement prohibiting any liquidation of the of \$1,600,000.00 held by JPMorgan Chase Bank, N.A. in the controlled account number [REDACTED]
  
11. Lease Section 4.1, 3.2 (c), and 9.1 (b) – Payment of Late Fees and Costs
  - a. HBL has failed to pay late fees and costs related to the above failures to pay its obligations under the Lease and the LOI in the timeframes required thereunder, as set forth in the attached accounting, totaling \$23,425.09

HBL SNF, LLC  
Attn: Lizer Josefovic  
January 7, 2020  
Page 3

Part 3 Pg 42 of 83

A true and accurate accounting of the amounts due and owing under the Lease and the LOI is attached herewith.

By reason of the aforementioned material Defaults under the Lease and the LOI, the Landlord, hereby exercises its right under Section 16.1 of the Lease to terminate the Lease as well as Tenant's right of possession of the Leased Premises, effective January 13, 2020 at 5.00 PM NYC time.

**PLEASE TAKE FURTHER NOTICE**, that, in accordance with Section 16.1 of the Lease, all rent for the balance of the term of the Lease is accelerated, and pursuant to said lease provision, HBL is obligated to pay the Landlord \$84,073,989.91, being the present value of such accelerated rent, discounted at the rate of 6% *per annum*.

Landlord reserves all other rights and remedies at law or in equity as against the Tenant, all guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.

Landlord further reserves all rights arising from the Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 ("the Pledge"), including but not limited to all rights to enforce the Pledge through a private or public sale of the assignor's interest in Waterview Acquisition I, LLC or through a judicial foreclosure of the assignee's security interest therein.

Very truly yours,  
  
ALFRED E. DONNELLAN

**AUTHORIZED AND APPROVED:**

White Plains Health Care Properties I, LLC

  
Joshua Roccapriera  
Authorized Representative

cc: By Email (lizerj@watersedgeusa.com) & Federal Express  
Lizer Josefovic, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

HBL SNF, LLC

Part 3 Pg 43 of 83

Attn: Lizer Josefovic

January 7, 2020

Page 4

By Email (markn@cpymgt.com) & Federal Express

Mark Neuman, Guarantor, Individually

22 Lyncrest Drive

Monsey, NY 10952

By Email (mzafrin@mullp.com) & Federal Express

Michelman & Robinson

800 Third Avenue, 24<sup>th</sup> Floor

New York, NY 10022

Attn: Mark Zafrin, Esq.

By Federal Express

Gerald Neuman, individually

c/o HBL SNF, LLC

1280 Albany Post Road

Croton-on-Hudson, NY 10520

WHITE PLAINS HEALTH CARE PROPERTIES I, LLC  
 c/o THE CONGRESS COMPANIES  
 General Construction, Construction Managers, Property Managers, Development Services  
 205709  
 One Peabody Executive Center  
 3 Deane Street  
 Peabody, MA 01960  
 Phone: 978-535-6000  
 Fax: 978-531-5701

7-Jan-19

**NOTICE OF AMOUNTS AND DELIVERABLES DUE UNDER LEASE & LOI of 11/20/19**

Gentlemen: Pursuant to the Lease and the LOI dated November 20, 2019, the following are due:

	<u>AMOUNTS PAYABLE</u>	<u>Due Date</u>	<u>Amt Due</u>	<u>Amounts Paid</u>	<u>Amt Past Due</u>
1	Rent January, 2020 (See Note 1 Below)	01/01/20	\$ 546,096.50	\$ 506,096.50	\$ 40,000.00
2	Rent 12/01/19 - 1/31/20	12/01/19	\$ 10,831.79	\$ -	\$ 10,831.79
	<b>SUBTOTAL RENT AND ADDITIONAL RENT:</b>		<b>\$ 556,928.29</b>	<b>\$ 506,096.50</b>	<b>\$ 50,831.79</b>
3	RE Taxes 7/1/19-12/31/19, Tenant portion: 09/30/19-12/31/19	12/31/19	\$ 61,456.59	\$ -	\$ 61,456.59
4	RE Taxes for the period 1/1/20 - 6/30/20	12/31/19	\$ 121,587.12	\$ -	\$ 121,587.12
	<b>SUBTOTAL REAL ESTATE TAXES</b>		<b>\$ 183,043.51</b>	<b>\$ -</b>	<b>\$ 183,043.51</b>
5	Utility Deposits	12/01/19	\$ 60,355.10	\$ -	\$ 60,355.10
6	Municipal Deposits	12/01/19	\$ 5,500.00	\$ -	\$ 5,500.00
7	Con Edison Electric Invoice	12/17/19	\$ 2,972.84	\$ -	\$ 2,972.84
	<b>Subtotal</b>		<b>\$ 68,828.94</b>	<b>\$ -</b>	<b>\$ 68,828.94</b>
	<b>TOTAL RENT, RE TAXES, &amp; OTHER</b>		<b>\$ 808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 302,704.24</b>
8	Security Deposit 1st payment	12/01/19	\$ 1,000,000.00	\$ -	\$ 1,000,000.00
	<b>TOTAL AMTS DUE EXCLUDING LATE FEES &amp; COSTS</b>		<b>\$ 1,808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 1,302,704.24</b>
9	Interest on past due real estate taxes on a per-diem basis;	12/15/19	\$ 3,039.58	\$ -	\$ 3,039.58
10	Late Fees of 5% on Items 1,2,3,5,6,7	12/15/19	\$ 9,055.96	\$ -	\$ 9,055.96
11	Interest on Items 1,2,3,5 & 6 at the Overdue Rate (Prime+5%)	12/15/19	\$ 11,329.55	\$ -	\$ 11,329.55
	<b>TOTAL LATE FEES AND COSTS</b>		<b>\$ 23,425.09</b>	<b>\$ -</b>	<b>\$ 23,425.09</b>
	<b>TOTAL AMOUNTS DUE</b>		<b>\$ 1,832,225.83</b>	<b>\$ 506,096.50</b>	<b>\$ 1,326,129.33</b>

**ADDITIONAL NOTICE OF ITEMS DUE:** As required per the Lease and LOI, please provide the following:

- 1 Notice is hereby made to that Jan. 2020 & all subsequent Rent shall be due in the amount of: \$546,096.50, calculated as: \$506,096.50 rent plus \$40,000.00 additional rent 2nd Notice
- 2 Notice is hereby made to provide all Medicare and Medicaid provider Agreements and rates. 2nd Notice
- 3 Notice is hereby made to provide Annual Budget, Capital Expenditures, Operating Budget, Annual Financial Reporting, monthly financial reporting Financial Reporting, Variance Reporting, Unaudited Financial Reports
- 4 Notice is hereby made to provide per a written report of significant events at the facility including: Copies of all documents, reports, licenses and certificates from NY DOH pertaining to the Operations of the Facility 2nd Notice
- 5 Notice is hereby made to provide Evidence of insurance, including all required coverages under the lease, and all additional insureds. 2nd Notice

ORIGIN INDONESIA (PH) 681-0200  
MURSA WARSUMAY  
DELELLIO DOMINELLAN WEINGARTEN WISE  
100 LINDINGTON AVE  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 07JAN20  
ACTIVITY: 0.19 LB  
CRD: 114875706RWS033400  
BILL SENDER

TO  
RECIPIENT  
MR. MARK NEUMAN  
MR. MARK NEUMAN  
22 LYNCREST DR

MONSEY NY 10952

(PH) 681-0200 REF: D181020001 WWHFRZ000

557 2075805142

COPY



WED - 08 JAN 8:00P

STANDARD OVERNIGHT

TRK# 7794 9844 8443

RES

10952

EH PSBA

NY-US SWF



NYSCEF DOC. NO. 6

**Marisa Warsaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 1:37 PM  
**To:** Marisa Warsaw  
**Subject:** FedEx Shipment 779498448443 Delivered

# Your package has been delivered

Tracking # 779498448443

Ship date: Tue, 1/7/2020	Delivery date: Wed, 1/8/2020 1:34 pm
Marisa Warsaw Colbello Donnellan Wolgast Wisn White Plains, NY 10601 US	<input checked="" type="checkbox"/> Delivered Mr. Mark Neuman Mr. Mark Neuman 22 LYNCREST DR MONSEY, NY 10952 US

## Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number: 779498448443

Status: Delivered, 01/08/2020 1:34  
PM Signed for By: Signature not required

Reference: 0181980-001 MW 1/7/2020

Signed for by: Signature not required

Delivery location: MONSEY, NY

Delivered to: Residence

Service type: FedEx Standard Overnight®

Packaging type: FedEx® Envelope

Number of pieces: 1

Weight: 0.50 lb.

Special handling/Services: Deliver Weekday  
Residential Delivery

Standard transit: 1/8/2020 by 8:00 am

COSEN IDONESIA (Pw) 6814286  
KARISA WARSHAW  
20 BELLE DONNELLAN WEN GARTEN WISE  
20 LEXINGTON AVE  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 07 JAN 20  
ACT WGT: 8.16 LB  
CAD: 1 MARCIT 06/26/2004

BILL SENDER

TO: MR. LIZER JOSEFOVIC, GUARANTOR, IND  
MR. LIZER JOSEFOVIC, GUARANTOR, IND  
53 MARINER WAY

557 27082005X

MONSEY NY 10952

(914) 581-0200 REC. 0181953-001 www.fedex.com  
FAX: 487  
TO: 487



WED - 08 JAN 8:00P

STANDARD OVERNIGHT

TRAK 7794 9836 3223  
0201

RES

EH PSBA

10952

NY-US SWF



NYSCEF DOC. NO. 6

COPY

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 10:37 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498363223 Delivered

# Your package has been delivered

Tracking # 779498363223

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 10:35 am
<b>Merisa Warshaw</b> De'Beilo Donnell: Wilmington Vtso White Plains, NY 10601 US	<b>Mr. Lizer Josefovic,</b> Guarantor, Ind Mr. Lizer Josefovic, Guarantor, Ind 63 Marlner Way MONSEY, NY 10952 JS

## Shipment Facts

Our records indicate that the following package has been delivered.

<b>Tracking number:</b>	<u>779498363223</u>
<b>Status:</b>	Delivered: 01/08/2020 10:35 AM Signed for by: Signature not required
<b>Reference:</b>	0181960-001 MW 1/7/2020
<b>Signed for by:</b>	Signature not required
<b>Delivery location:</b>	Monsey, NY
<b>Delivered to:</b>	Residence
<b>Service type:</b>	FedEx Standard Overnight®
<b>Packaging type:</b>	FedEx® Envelope
<b>Number of pieces:</b>	1
<b>Weight:</b>	0.50 lb.
<b>Special handling/Services:</b>	Deliver Weekday Residential Delivery
<b>Standard transit:</b>	1/8/2020 by 8:00 pm

FROM: CROTON ON HUDSON (NY) 601-8208  
MARTIN WEINSTEIN  
SHELBY L. DONNELLAN WEINGARTEN WISE  
14 LEONINGTON AVE

SHIP DATE: 07JAN20  
ACT WT: 0.19 LB  
CND: 114675706WCS33408

WHITE PLAINS, NY 10601  
UNITED STATES US

BILL SENDER

TO: MR. LIZER JOSEFOVIC  
HBL SNF, LLC  
1280 ALBANY POST RD

21-22623-0542

CROTON ON HUDSON NY 10520

NY 601-8208 REF: 0191960-001 MAIL 1/7/2020  
NY  
NY  
NY DEPT



WED - 08 JAN 3:00P

STANDARD OVERNIGHT

TRK# 7794 9823 5404  
0201

10520



NYSCEF DOC. NO. 6

COPY

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:33 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498235404 Delivered

**Your package has been delivered**

Tracking # 779498235404

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 9:27 am
Marisa Warshaw DoBallo Donnellan Weingarten Wise White Plains, NY 10601 US	Mr. Lizer Josefovic HBL SNF, LLC 1280 ALBANY POST RD CROTON ON HUDSON, NY 10520 JS



Delivered

**Shipment Facts**

Our records indicate that the following package has been delivered.

**Tracking number:** 779498235404

**Status:** Delivered: 01/08/2020 09:27 AM  
Signed for by: Signature Release on file

**Reference:** 0181980-001 WY 1/7/2020

**Signed for by:** Signature Release on file

**Delivery location:** CROTON ON HUDSON, NY

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 3:00 pm

Please do not respond to this message. This email was sent from an unmonitored mailbox. This report was generated at approximately 8:32 AM CST on 01/08/2020.

All weights are estimated.



**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498627521 Delivered

# Your package has been delivered

Tracking # 779498627521

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 9:27 am
Marisa Warshaw	Mr. Gerald Neuman
De'Bevo Connellan Weingarten Wise White Plains, NY 10601 US	Delivered C/O HBL SNF, LLC 1260 ALBANY POST RD CROTON ON HUDSON, NY 10520 US

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498627521

**Status:** Delivered: 01/08/2020 09:27 AM  
Signed for By: Signature Release on file

**Reference:** 3181660-001 INV 1/7/2020

**Signed for by:** Signature Release on file

**Delivery location:** CROTON ON HUDSON, NY

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 3:00 pm

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 8:32 AM CST on 01/08/2020.

All weights are estimated.

ORIGIN ID: NEBA (PH) 661-0700  
MARISA VONSPONOW  
DELBELLO, DONNELLAN WEINGARTEN WASE  
14 LEONGTON AVE  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 07 JAN 20  
ACT WT: 0.10 LB  
CAD: 114475788WAS03400

BILL SENDER

TO: MARK ZAFRIN, ESQ.  
MICHELMAN & ROBINSON  
800 3RD AVE  
24TH FLOOR  
NEW YORK NY 10022

(PH) 661-0700 REF: 0181960-001 MAIL 1/7/2020  
NY  
PC

502 21138005 12

COPY



WED - 08 JAN 3:00P  
STANDARD OVERNIGHT

TRK# 7794 9853 9658  
C201

E3 JRBA

10022  
NY-US EWR



**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498539658 Delivered

**Your package has been delivered**

Tracking # 779498539658

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 9:27 am
Marisa Warshaw	Mark Zeffin, Esq.
DeSello Connellan Walngarten	Michelman & Robinson
Wise	24th Floor
White Plains, NY 10601	600 3RD AVE
US	NEW YORK, NY 10022
	US



Delivered

**Shipment Facts**

Our records indicate that the following package has been delivered.

**Tracking number:** 779498539658

**Status:** Delivered: 01/08/2020 09:27 AM  
Signed for By: E.ELAINE

**Reference:** 0161080-001 MW 1/7/2020

**Signed for by:** E.ELAINE

**Delivery location:** NEW YORK, NY

**Delivered to:** Receptionist/Front Desk

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 3:00 pm

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 9:32 AM GST on 01/08/2020

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

-----x  
WHITE PLAINS HEALTHCARE  
PROPERTIES I, L.L.C.

Plaintiff/Petitioner,

- against -

Index No. 60278/2020

HBL SNF, LLC, ET AL

Defendant/Respondent.  
-----x

**NOTICE OF ELECTRONIC FILING  
(Consensual Case)  
(Uniform Rule § 202.5-b)**

**You have received this Notice because:**

- 1) The Plaintiff/Petitioner, whose name is listed above, has filed this case using the New York State Courts E-filing system ("NYSCEF"), and
- 2) You are a Defendant/Respondent (a party) in this case.

● **If you are represented by an attorney:**

Give this Notice to your attorney. (Attorneys: see "Information for Attorneys" pg. 2).

● **If you are not represented by an attorney:**

You will be served with all documents in paper and you must serve and file your documents in paper, unless you choose to participate in e-filing.

**If you choose to participate in e-filing, you must have access to a computer and a scanner or other device to convert documents into electronic format, a connection to the internet, and an e-mail address to receive service of documents.**

**The benefits of participating in e-filing include:**

- serving and filing your documents electronically
- free access to view and print your e-filed documents
- limiting your number of trips to the courthouse
- paying any court fees on-line (credit card needed)

**To register for e-filing or for more information about how e-filing works:**

- visit: [www.nycourts.gov/efile-unrepresented](http://www.nycourts.gov/efile-unrepresented) or
- contact the Clerk's Office or Help Center at the court where the case was filed. Court contact information can be found at [www.nycourts.gov](http://www.nycourts.gov)

To find legal information to help you represent yourself visit [www.nycourthelp.gov](http://www.nycourthelp.gov)

**Information for Attorneys**

An attorney representing a party who is served with this notice must either consent or decline consent to electronic filing and service through NYSCEF for this case.

Attorneys registered with NYSCEF may record their consent electronically in the manner provided at the NYSCEF site. Attorneys not registered with NYSCEF but intending to participate in e-filing must first create a NYSCEF account and obtain a user ID and password prior to recording their consent by going to [www.nycourts.gov/efile](http://www.nycourts.gov/efile)

Attorneys declining to consent must file with the court and serve on all parties of record a declination of consent.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov)).

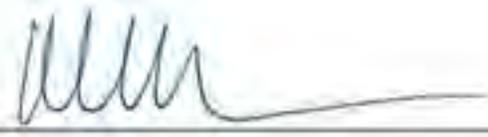
Dated: 9/18/2020

WILLIAM V. COLEMAN

Name

ABREMS, FENSTERMAN

Firm Name



81 MAIN STREET, WHITE PLAINS NY

Address

914-607-7010

Phone

BCOLEMAN@ABRAMSLAW.COM

E-Mail

To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2/24/21

# Exhibit 2 to Donnellan Aff.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES LLC,

Plaintiff(s),

Index No 60278/2020

-against-

AFFIDAVIT OF SERVICE

HBL SNF, LLC, et al.,

Defendant(s),

-----X  
STATE OF NEW YORK )  
S.S.  
COUNTY OF NEW YORK )

DEBORAH LaPORTE, being duly sworn, deposes and says that she is over the age of eighteen years, is employed by the attorney service, DLS, INC. and is not a party to this action.

That on the 22<sup>nd</sup> day of September, 2020, at approximately the time of 2:45P.M. at the office of the Secretary of State, of the State of New York in the City of Albany, deponent served SUMMONS AND VERIFIED COMPLAINT WITH EXHIBITS 1-5 AND NOTICE OF ELECTRONIC FILING upon HBL SNF, LLC, in this action, by delivering to and leaving with SUE ZOURY an agent of the Secretary of State, of the State of New York, two (2) true copies thereof and at that time of making such service deponent paid said Secretary of State a fee of forty dollars. That said service was made pursuant to Section, 303 of the Limited Liability Company Law.

Deponent further says that she knew the person so served as aforesaid to be the individual in the Office of the Secretary of State of New York, duly authorized to accept such service on behalf of said defendant.

SUE ZOURY is a white female, approximately 60 years of age, stands approximately 5 feet 0 inches tall, weighs approximately 100 pounds with brown hair.

  
DEBORAH LaPORTE

This notarization was made pursuant to Executive Order 207.7.

Sworn to before me this 25<sup>th</sup> day of September, 2020

JONATHAN RIEPS  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01810013  
Qualified Office West County  
My Commission Expires May 13, 2024

NOT A PUBLIC

DLS, Inc.  
1 State Street  
.220  
Albany, NY 12207  
6449 5411  
ny.dls@dnr.com

# Exhibit 3 to Donnellan Aff.



# NYSCEF - Westchester County Supreme Court Confirmation Notice

The NYSCEF website has received an electronic filing on 09/18/2020 01:11 PM. Please keep this notice as a confirmation of this filing.

**60278/2020**

**White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
**Assigned Judge: None Recorded**

### Documents Received on 09/18/2020 01:11 PM

Doc #	Document Type
1	SUMMONS + COMPLAINT
2	EXHIBIT(S) 1 (Redacted per 202.5(e) or 206.5(e)) Operating Lease
3	EXHIBIT(S) 2 (Redacted per 202.5(e) or 206.5(e)) Guaranty of Lease
4	EXHIBIT(S) 3 (Redacted per 202.5(e) or 206.5(e)) Guaranty of Lease
5	EXHIBIT(S) 4 (Redacted per 202.5(e) or 206.5(e)) Letter of Intent

### Filing User

Alfred E. Donnellan | [aed@ddw-law.com](mailto:aed@ddw-law.com)  
1 N Lexington Ave, White Plains, NY 10601

### E-mail Notifications

An email regarding this filing has been sent to the following on 09/18/2020 01:11 PM:

**ALFRED E. DONNELLAN - [aed@ddw-law.com](mailto:aed@ddw-law.com)**

---

Timothy C. Idol - <http://www.westchesterclerk.com>  
Email: [c.fc@westchestergov.com](mailto:c.fc@westchestergov.com)

---

**NYSCEF Resource Center, [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov)**  
Phone: (646) 386-3033 | Fax: (212) 401-9146 | Website: [www.nycourts.gov/efile](http://www.nycourts.gov/efile)



# NYSCEF - Westchester County Supreme Court Confirmation Notice

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60278/2020

White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al

Assigned Judge: None Recorded

## Email Notifications NOT Sent

Role	Party	Attorney
Respondent	HBL SNF, LLC	No consent on record.
Respondent	Lizer Jozefovic	No consent on record.
Respondent	Mark Neuman	No consent on record.

\* Court rules require hard copy service upon non-participating parties and attorneys who have opted-out or declined consent.

---

Timothy C. Itoni - <http://www.westchesterclerk.com>

Email: [e-file@westchestergov.com](mailto:e-file@westchestergov.com)

---

NYSCEF Resource Center, [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov)

Phone: (646) 386-3033 | Fax: (212) 401-9146 | Website: [www.nycourts.gov/efile](http://www.nycourts.gov/efile)



# NYSCEF - Westchester County Supreme Court Confirmation Notice

The NYSCEF website has received an electronic filing on 09/28/2020 10:51 AM. Please keep this notice as a confirmation of this filing.

**60278/2020**

**White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
**Assigned Judge: None Recorded**

## Documents Received on 09/28/2020 10:51 AM

Doc #	Document Type
7	AFFIRMATION/AFFIDAVIT OF SERVICE affidavit of service upon defendant, HBL SNF, Inc.

## Filing User

William V Coleman | [bcoleman@abramslaw.com](mailto:bcoleman@abramslaw.com) | 914-607-7010  
81 Main Street, Suite 306, White Plains, NY 10601

## E-mail Notifications

An email regarding this filing has been sent to the following on 09/28/2020 10:51 AM:

**WILLIAM V. COLEMAN** - [bcoleman@abramslaw.com](mailto:bcoleman@abramslaw.com)  
**ALFRED E. DONNELLAN** - [aed@ddw-law.com](mailto:aed@ddw-law.com)

## Email Notifications NOT Sent

Role	Party	Attorney
Respondent	HBL SNF, LLC	No consent on record.
Respondent	Lizer Jozefovic	No consent on record.
Respondent	Mark Neuman	No consent on record.

\* Court rules require hard copy service upon non-participating parties and attorneys who have opted-out or declined consent.

Timothy C. Iden - <http://www.westchesterclerk.com>  
Email: [e-ffe@westchestergov.com](mailto:e-ffe@westchestergov.com)

**NYSCEF Resource Center, [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov)**  
Phone: (646) 386-3033 | Fax: (212) 401-9146 | Website: [www.nycourts.gov/efile](http://www.nycourts.gov/efile)



# NYSCEF - Westchester County Supreme Court Confirmation Notice

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**60278/2020**

**White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

**Assigned Judge: None Recorded**

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Timothy C. Iodoni - <http://www.westchesterclerk.com>

Email: [e-file@westchestergov.com](mailto:e-file@westchestergov.com)

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**NYSCEF Resource Center, [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov)**

Phone: (646) 386-3033 | Fax: (212) 401-9146 | Website: [www.nycourts.gov/efile](http://www.nycourts.gov/efile)

# Exhibit 4 to Donnellan Aff.

# ABRAMS FENSTERMAN

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carade, LLP

Attorneys at Law

81 Main Street, Suite 306  
White Plains, New York 10601  
Telephone: (914) 607-7010  
[www.abramslaw.com](http://www.abramslaw.com)

September 18, 2020

Via Federal Express  
HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, New York 10520

Via Federal Express  
HBL SNF, LLC  
532 Route 22  
Purdys, New York 10578

Via Federal Express  
HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn.: Lizer Jozefovic

Via Federal Express  
Lizer Jozefovic  
53 Mariner Way  
Monsey, New York 10952

Via Federal Express  
HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn.: Mark Neuman

Via Federal Express  
Mark Neuman  
22 Lyncrest Drive  
Monsey, New York 10952

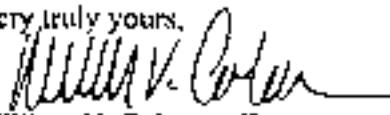
September 18, 2020  
Page 2  
HBL SNF, LLC et al

Re: *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al*  
Index No. 60278/2020 (Supreme Court, Westchester County)

Dear Sirs:

This firm is co-counsel for plaintiff, White Plains Healthcare Properties I, LLC in the above action. Enclosed herewith are copies of the Summons and Complaint and Notice of Electronic Filing with respect to the above referenced action filed in Supreme Court, Westchester County on September 18, 2020.

Very truly yours,



William V. Coleman Esq.

cc: (with enclosure)  
Via Federal Express  
Michelman & Robinson  
800 Third Avenue, 24th floor  
New York, New York 10022  
Attn: Mark Zafrin, Esq.

Alfred E. Donnellan, Esq. (via e-mail, without enclosure)  
Robert A. Spolzino, Esq. (via e-mail, without enclosure)

Part 35 - Reg 67 of 83

ORIGINATOR: 0749 807 7910  
CIBEL 9561 BELVITA  
ARROCHA FERRER/AMIA  
R/ LINDA GRIFFET  
BLITE 305  
WHITE PLAINS, NY 10601  
UNITED STATES

SHIP DATE: 10/28/20  
ACTIVITY: 1251E  
CDL: 014482806214200  
BILL SENDER

1280 ALBANY POST ROAD

CROTON ON HUDSON NY 10520

0749 807 7910  
NY: 10520  
FEED



TRK 7715 7044 7126

SATURDAY 10:30A  
FIRST OVERNIGHT

XO ANIA

NY49 SWF 10520



990615456796

After printing this label:

1. Use the "Print" button on this page to print your label to your laser or dot-matrix printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivered or misrouting, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

11/18/2020

Part 4 of 68 of 88 Print Your Label(s)

ORIGIN/DENVER (914) 807-7098  
C/O ELISA REYES  
MERRILL FENSTERMAK  
37 LEON STREET  
SUITE 200  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 8/28/20  
SHIPWGT: 0.25 LB  
CND: 01440000000000000000  
BILL SENDER

TO: HEL SNF, LLC

537 ROUTES 22

PURDYS NY 10578

(914) 807-7098

888-230-4000

NY

USPT



TRAK  
7715 7138 5885

SATURDAY 12:00P  
PRIORITY OVERNIGHT

XO WODA

NY US 10578  
SWF



82578548276

After printing this label:

1. Use the "Print" button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
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9/18/2020

Part 3 Pg 69 of 83

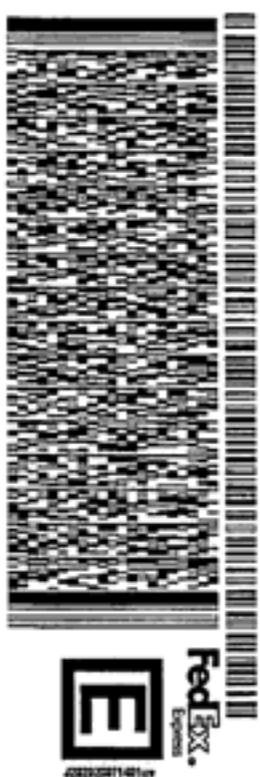
ORIGIN ID: AUSA (914) 607-7010  
CHELSEA REL YEA  
ABRAMS FENSTERMAN  
81 MAIN STREET  
SUITE 305  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 18SEP20  
ACTWGT: 0.25 LB  
CMD: 101418928ANET4280  
BILL SENDER

TO  
ATTN.: MARK ZAFRIN, ESQ.  
MICHELMAN & ROBINSON  
800 THIRD AVENUE, 24TH FLOOR

NEW YORK CITY NY 10022  
(914) 607-7010  
PO. NY. NY. 220420001

DEPT.



TRK# 0201 7715 7081 5794

SATURDAY 12:00P  
PRIORITY OVERNIGHT

06 JRBA 10022  
NY-US EWR



568J615456766

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

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ORIGIN: DANBURY 0749 007-7010  
CHIEF: REX MEL YEA  
ADDRESS: HENKESBACH  
61 MAIN STREET  
SUITE 200  
DANBURY PLAZA NY 10501  
UNITED STATES US  
SHIP DATE: 10/28/20  
ACCOUNT # 25118  
C/O: 1841000000000000  
BILL NUMBER

TO ATTN: MARK NEUMAN  
HBL SWF, LLC  
537 ROUTES 22

PURDYS NY 10578  
0749 007-7010 REP: ZANGLICH  
0087



7715 7126 4759  
SATURDAY 12:00P  
PRIORITY OVERNIGHT

XO WODA  
10578  
SWF



After printing this label:

- 1. Use the "Print" button on this page to print your label to your laser or inkjet printer.
- 2. Fold the printed page along the horizontal line.
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Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number. Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misrouting or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

ORIGINATOR: (PH) 907-7810  
CAGLE, BEA RE, YEA  
ROSLAND, FERSTERMAN  
81-1000 STREET  
SUITE 300  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 10/28/20  
ACTWT: 0.25 LB  
CNC: 10149820N014000  
BILL SENDER

TO  
ATTN: LZER JOZEFOWIC  
HBL SNF, LLC  
537 ROUTES 22  
PURDYS NY 10578  
REF: 20020001  
PH: 917-7810  
PO: 08371

588.6715458765

7715 7135 6867  
X0WODA  
NY-US  
10578 SWF

SATURDAY 12:00P  
PRIORITY OVERNIGHT



**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
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01/18/2020

Part 3 of 2 of 88 (Print Your Label)

ORIGIN/DIVERSA (044) 607-7010  
CHESTER COUNTY  
ADMINISTRATIVE  
67 HANCOCK ST  
SUITE 200  
WHITE PLAINS, NY 10601  
UNITED STATES

SHIP DATE: 10/28/20  
ACTIVITY: 1251B  
CIC: 10418209614290  
BILL NUMBER

TO LIZER JOZEFONC

53 MARINER WAY

MONSEY NY 10852

(044) 607-7010 REF: 20020001



TRK 7715 7071 1513

SATURDAY 10:00A  
FIRST OVERNIGHT

X0 PSBA

NY-US 10952  
SWF



585/1645966

After printing this label:

1. Use the "Print" button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
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ORIGIN INDONESIA (914) 607-7010  
CHEI SEA REL YEA  
AGRIANS FENSTERMAN  
81 MAIN STREET  
SUITE 308  
WHITE PLAINS, NY 10601  
UNITED STATES US

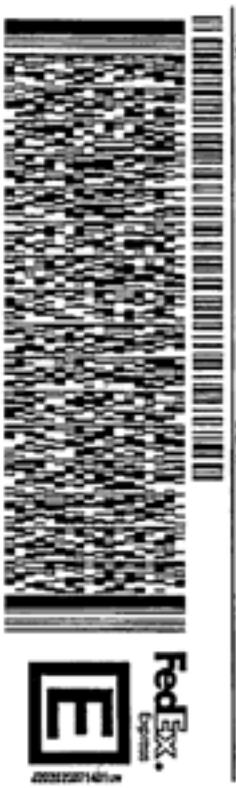
SHIP DATE: 18SEP20  
ACTWGHT: 0.25 LB  
CND: 101416928NET4280  
BILL SENDER

TO **MARK NEUMAN**

22 LYNCREST DRIVE

MONSEY NY 10952

(914) 607-7010 REF: 20042-0001  
NY, NY DEPT



TRK# 0201 7715 7075 6677  
SATURDAY 12:00P  
PRIORITY OVERNIGHT

X0 PSBA  
10952  
NY-US SWF



**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

- against -

HBL SNF, LLC, LIZER JOZEOVIC AKA LIZER  
JOZEOVIC and MARK NEUMAN,

Defendants.

Index No. 60278/2020

**DEFAULT JUDGMENT**

Defendant's Address:

HBL SNF, LLC  
537 Route 22  
Purdys, New York 10578

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, New York 10520

The summons and verified complaint in this action having been served upon defendant, HBL SNF, LLC, pursuant to New York Limited Liability Company Law § 303 on September 22, 2020; and the time for said defendant, HBL SNF, LLC, to appear, answer or raise an objection to the complaint having expired, and defendant, HBL SNF, LLC, not having appeared or answered in a timely manner, and defendant, HBL SNF, LLC, not having raised an objection to the complaint;

NOW, upon the summons and verified complaint and proof of service thereof, the Affirmation of Default of Alfred E. Donnellan, dated October 28, 2020 and the exhibits annexed

thereto, and upon motion of plaintiff, WHITE PLAINS HEALTHCARE PROPERTIES I, L.L.C., it is

ADJUDGED, that plaintiff, WHITE PLAINS HEALTHCARE PROPERTIES I, L.L.C., with its offices located at 2 Bourbon Street, Suite 200, Peabody, Massachusetts, does recover of defendant, HBL SNF, LLC with an address at 537 Route 22 Purlys, New York 10578 and an address at 1280 Albany Post Road, Croton-on-Hudson, New York 10520, under the First Cause of Action in the complaint, the sum of \$113,832,987.54 together with interest thereon from August 25, 2020 through October 25, 2020 totaling \$1,684,104.47, said interest continuing to accrue at the statutory rate; together with costs and disbursements as taxed in the sum of \$475.00, making in all the sum of \$115,517,567.01, and that the plaintiff, WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, have execution therefor.

Dated:

\_\_\_\_\_  
Clerk

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, L.L.C.  
 Plaintiff,  
 - against  
 HBL SNF, LLC, LIZER JOZEOFVIC A/K/A LIZER  
 JOZEOFVIC and MARK NEUMAN,  
 Defendants.

Index No. 60278/2020

**BILL OF COSTS**

Costs by statute	\$200.00	
Costs after Notice of Trial	\$	
Trial of issue	\$	
Total Costs .....	\$200.00	
	Fee for Index Number	\$ 210.00
	Prospective Execution Fee	\$ 25.00
	Service of Summons & Complaint	\$ 40.00
	RJI	\$
	Motion Fee	\$
	Military Affidavit	\$
Total Disbursements .....	\$275.00	
<b>TOTAL COSTS &amp; DISBURSEMENTS .....</b>	<b>\$475.00</b>	

The undersigned, an attorney admitted to practice in the courts of this state, affirms: am a member of the law firm of DeBello Donnellan Weingarten Wise & Wiederkehr, LLP, the attorneys for plaintiff in the above captioned action; that the foregoing disbursements have been or will necessarily be made or incurred in this action and are reasonable in amount.

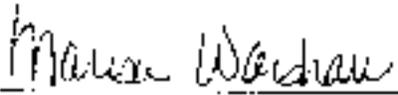
The undersigned affirms the foregoing under the penalty of perjury.

Dated: White Plains, New York  
 October 28, 2020

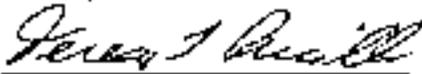
  
 Alfred E. Donnellan



Mark Neuman  
22 Lyncrest Drive  
Monsey, New York 10952

  
MARISA WARSHAW

Sworn to before me this  
28<sup>th</sup> day of October, 2020

  
NOTARY PUBLIC

TERESA L. PICELLO  
Notary Public, State of New York  
No. 4846925  
Qualified in Westchester County  
Commission Expires February 18, 2022



REQUEST FOR JUDICIAL INTERVENTION

UCS-840 Rev. 07/25/2019

SUPREME COURT, COUNTY OF WESTCHESTER

Index No. 60278/2020 Date Index Issued: 09/18/2020

For Court Use Only

CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,
against
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFVIC and MARK NEUMAN,
Defendant(s)/Respondent(s)

IAS Entry Date
Judge Assigned
Re Filed Date

NATURE OF ACTION OR PROCEEDING Check only one box and specify where indicated.

COMMERCIAL
Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
Contract
Insurance (where insurance company is a party, except arbitration)
UCC (includes sales and negotiable instruments)
Other Commercial (specify):
NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.25(d), complete and attach the COMMERCIAL DIVISION RUL ADDENDUM (UCS-840C)

REAL PROPERTY Specify how many properties the application includes:
Condemnation
Mortgage Foreclosure (specify): Residential Commercial
Property Address:
NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the FORECLOSURE RUL ADDENDUM (UCS-840F)
Tax Certiorari
Tax Foreclosure
Other Real Property (specify):

OTHER MATTERS
Certificate of Incorporation/Dissolution (see NOTE in COMMERCIAL section)
Emergency Medical Treatment
Habeas Corpus
Local Court Appeal
Mechanic's Lien
Name Change
Postal Permit Revocation Hearing
Sale or Finance of Religious/Not-for-Profit Property
Other (specify):

MATRIMONIAL
Contested
NOTE: If there are children under the age of 18, complete and attach the MATRIMONIAL RUL ADDENDUM (UCS-840M)
For Uncontested Matrimonial actions, use the Uncontested Divorce Rul (UD-13)

TORTS
Asbestos
Child Victims Act
Environmental (specify):
Medical, Dental or Podiatric Malpractice
Motor Vehicle
Products Liability (specify):
Other Negligence (specify):
Other Professional Malpractice (specify):
Other Tort (specify):

SPECIAL PROCEEDINGS
CPLR Article 75 (Arbitration) (see NOTE in COMMERCIAL section)
CPLR Article 78 (Body or Office)
Cession Law
Extreme Risk Protection Order
MPL Article 9-60 (Knox's Law)
MPL Article 10 (Sex Offender Confinement-Initial)
MPL Article 10 (Sex Offender Confinement-Renewal)
MPL Article 82 (Guardianship)
Other Mental Hygiene (specify)
Other Special Proceeding (specify):

STATUS OF ACTION OR PROCEEDING Answer YES or NO for every question and enter additional information where indicated.

Has a summons and complaint or summons with notice been filed? YES NO
Has a summons and complaint or summons with notice been served? YES NO
Is this action/proceeding being filed post-judgment? YES NO

NATURE OF JUDICIAL INTERVENTION Check one box only and enter additional information where indicated.

Infant's Compromise
Extreme Risk Protection Order Application
Notice of Issue/Certificate of Readiness
Notice of Medical, Dental or Podiatric Malpractice Date Issue Joined:
Notice of Motion Relief Requested: Default Judgment Return Date: 11/12/2020
Notice of Petition Relief Requested: Return Date:
Order to Show Cause Relief Requested: Return Date:
Other Ex Parte Application Relief Requested: Return Date:
Poor Person Application
Request for Preliminary Conference
Residential Mortgage Foreclosure Settlement Conference
Writ of Habeas Corpus
Other (specify):

**RELATED CASES** List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the RUI ADDENDUM (UCS-840A)

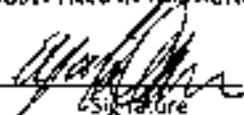
Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case
	655549/2020	NY County Supreme Court	Nancy Bannon	Attorney between same parties relating to separate action for divorce and child support

**PARTIES** For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the RUI ADDENDUM (UCS-840A)

Un-Rep	Parties (List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 <sup>rd</sup> party plaintiff, etc.)	Attorneys and Unrepresented litigants (For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	Issue Joined (For each defendant, indicate if issue has been joined)	Insurance Carriers (For each defendant, indicate insurance carrier, if applicable)
<input type="checkbox"/>	Name: Whole Family Restorative Products, LLC Role(s): Plaintiff	None	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input checked="" type="checkbox"/>	Name: HBL SNE, LLC Role(s): Defendant	537 Route 22, Purdys, New York 10578	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input checked="" type="checkbox"/>	Name: User Joseph J. Valente Jr. Jansford Role(s): Defendant	53 Mariner Way, Monsey, New York 10952	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input checked="" type="checkbox"/>	Name: Mark Hejman Role(s): Defendant	22 Lyncrest Drive, Monsey, New York 10952	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="radio"/> YES <input type="radio"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated 10/28/2020

  
Signature

1776236  
Attorney Registration Number

Alfred E. Donnellan  
Print Name

SUPREME COURT OF THE STATE OF NEW YORK

UCR-61C  
12816

COUNTY OF Westchester

Index No. 60278/2020

White Plains Healthcare Properties I, LLC,

RJI No. (if any) \_\_\_\_\_

-against-

Plaintiff(s)/Petitioner(s)

H&L SNF LLC, Lizer Jozefovic aka Lizer Jozotovic and Mark Neuman

**COMMERCIAL DIVISION**

Defendant(s)/Respondent(s)

**Request for Judicial Intervention Addendum**

COMPLETE WHERE APPLICABLE [add additional pages if needed];

Plaintiff/Petitioner's cause(s) of action [check all that apply]:

- Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g. unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g. sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices)
- Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units)
- Transactions involving commercial real property, including Yellowstone Injunctions and excluding actions for the payment of rent only
- Shareholder derivative actions — without consideration of the monetary threshold
- Commercial class actions — without consideration of the monetary threshold
- Business transactions involving or arising out of dealings with commercial banks and other financial institutions
- Internal affairs of business organizations
- Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters
- Environmental insurance coverage
- Commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage)
- Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures — without consideration of the monetary threshold
- Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues — without consideration of the monetary threshold

Plaintiff/Petitioner's claim for compensatory damages (exclusive of punitive damages, interest, costs and counsel fees claimed):

\$ 115,517,567.01

Plaintiff/Petitioner's claim for equitable or declaratory relief (brief description):

[Empty box for Plaintiff/Petitioner's claim for equitable or declaratory relief]

Defendant/Respondent's counterclaim(s) (brief description, including claim for monetary relief):

[Empty box for Defendant/Respondent's counterclaim(s)]

I REQUEST THAT THIS CASE BE ASSIGNED TO THE COMMERCIAL DIVISION. I CERTIFY THAT THE CASE MEETS THE JURISDICTIONAL REQUIREMENTS OF THE COMMERCIAL DIVISION SET FORTH IN 22 NYCRR § 202.70(a), (b) AND (c).

Dated: 10/28/2020

  
SIGNATURE

Alfred E. Donnellan

PRINT OR TYPE NAME

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
JUDGE WALSH, GRETCHEN**



**White Plains Healthcare Properties I, LLC**  
  
- v. -  
  
**HBL SNF, LLC et al**

**Index No. 60278/2020**

**COURT NOTICE**

Justice of the Supreme Court

COURT NOTICE

Date: 10/29/2020  
Index #: 60278/2020  
Re: WHITE PLAINS HEALTHCARE PROPERTIES I, LLC -VS- HBL SNF, LLC et al

A Preliminary Conference, for counsel only, will be held at 111 Dr. Martin Luther King Jr. Blvd, Courtroom 105, White Plains, New York on NOVEMBER 13, 2020 at 9:30 a.m. - VIA MICROSOFT TEAMS

Copies of all pleadings shall be received by the Court at least one (1) business day prior to the conference in a joint submission by counsel. Additionally, counsel shall submit a joint description of the facts and each parties contentions, not exceeding two pages and a proposed Preliminary Conference Order, which may be found at

[http://www.nycourts.gov/courts/9jd/PartRules/PR\\_GWalsh\\_commDiv.pdf](http://www.nycourts.gov/courts/9jd/PartRules/PR_GWalsh_commDiv.pdf)

<http://www.nycourts.gov/courts/comdiv/PDFs/PreliminaryConferenceOrderCommercialDivisionJudgeWalsh.pdf>

Requests for adjournment of this conference date must be on consent, confirmed by stipulation, subject to the approval of the Court. All such adjournment requests should be emailed to the undersigned by no later than 12 p.m. on the day before the scheduled conference.

**COURT NOTICE**

Regards,  
Antoinetta Slater  
Senior Court Clerk to Hon. Gretchen Walsh, J.S.C.  
Phone: (914) 824-5446

DATED 10/29/2020

FILED By Antoinetta Slater

<< Return to [Search Results](#)

**60278/2020** - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

**Narrow By Options**

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

[Display Document List with Motion Folders](#)

Sort By: Doc #

#	Document	Filed By	Status
1	<a href="#">SUMMONS + COMPLAINT</a>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
2	<a href="#">EXHIBIT(S)</a> - 1 <i>Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
3	<a href="#">EXHIBIT(S)</a> - 2 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
4	<a href="#">EXHIBIT(S)</a> - 3 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
5	<a href="#">EXHIBIT(S)</a> - 4 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
6	<a href="#">EXHIBIT(S)</a> - 5 <i>Notice of Default</i>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
7	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> <i>Affidavit of service upon defendant HBL SNF Inc</i>	<a href="#">Coleman, W.</a> Filed: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>

#	Document	Filed By	Status
8	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> affidavits of service of summons and complaint - all defendants	<a href="#">Coleman, W.</a> Filed: 10/07/2020 Received: 10/07/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
9	<a href="#">NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
10	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #1) Affirmation of Default of Alfred E. Donnellan	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
11	<a href="#">EXHIBIT(S)</a> - 1 (Motion #1) Complaint <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
12	<a href="#">EXHIBIT(S)</a> - 2 (Motion #1) Affidavit of Service	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
13	<a href="#">EXHIBIT(S)</a> - 3 (Motion #1) Confirmation Notices	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
14	<a href="#">EXHIBIT(S)</a> - 4 (Motion #1) Additional Notice	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
15	<a href="#">ORDER ( PROPOSED )</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
16	<a href="#">BILL OF COSTS</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
17	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
18	<a href="#">RJI -RE: NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
19	<a href="#">ADDENDUM - COMMERCIAL DIVISION (840C)</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
20	<a href="#">COURT NOTICE</a>	Court User Filed: 10/29/2020 Received: 10/29/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
21	<a href="#">ANSWER WITH COUNTER-CLAIM(S)</a>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
22	<a href="#">NOTICE OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020	<b>Processed</b>

	Filed: 11/05/2020 Received: 11/05/2020	Processed Confirmation Notice Payment Receipt
23 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed Confirmation Notice
24 <a href="#">EXHIBIT(S)</a> - A (Motion #2) <i>Email Correspondence</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed Confirmation Notice
25 <a href="#">EXHIBIT(S)</a> - B (Motion #2) <i>Proof of November Rent Payment</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed Confirmation Notice
26 <a href="#">EXHIBIT(S)</a> - C (Motion #2) <i>Filed Answer</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed Confirmation Notice
27 <a href="#">MEMORANDUM IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed Confirmation Notice
28 <a href="#">ORDER ( PROPOSED )</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed Confirmation Notice
29 <a href="#">STIPULATION - WITHDRAWING MOTION/ORDER TO SHOW CAUSE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 11/09/2020 Received: 11/09/2020	Processed Confirmation Notice
30 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #1) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	Processed Confirmation Notice
31 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #2) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	Processed Confirmation Notice
32 <a href="#">JOINT ONE PAGE STATEMENT OF FACTS &amp; PARTIES CONTENTIONS</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	Processed Confirmation Notice
33 <a href="#">EXHIBIT(S)</a> - 1 <i>Copy of Pleadings</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	Processed Confirmation Notice
34 <a href="#">PRELIMINARY CONFERENCE ORDER (PROPOSED)</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	*** Pending *** Confirmation Notice
35 <a href="#">EXHIBIT(S)</a> - 1 <i>ADR Attorney Certification for Alfred Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	Processed Confirmation Notice
36 <a href="#">ORDER - PRELIMINARY CONFERENCE</a>	Court User Filed: 11/13/2020 Received: 11/13/2020	Processed Confirmation Notice
37 <a href="#">COMPLAINT (AMENDED)</a>	<a href="#">Donnellan, A.</a>	Processed

	<i>Amended Verified Complaint</i>	Filed: 11/30/2020 Received: 11/30/2020	<a href="#">Confirmation Notice</a>
38	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended and Restated Operating Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
39	<a href="#">EXHIBIT(S)</a> - 2 <i>Jozefovic Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
40	<a href="#">EXHIBIT(S)</a> - 3 <i>Neuman Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
41	<a href="#">EXHIBIT(S)</a> - 4 <i>Jozefovic Security Agreement Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
42	<a href="#">EXHIBIT(S)</a> - 5 <i>Letter of Intent Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
43	<a href="#">EXHIBIT(S)</a> - 6 <i>Notice of Default Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
44	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> <i>Letter to Judge Walsh requesting pre motion conference</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
45	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
46	<a href="#">EXHIBIT(S)</a> - 2 <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
47	<a href="#">EXHIBIT(S)</a> - 3 <i>Compared version of amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
48	<a href="#">ANSWER TO THIRD PARTY COMPLAINT</a> <i>Verified Answer to Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
49	<a href="#">REPLY TO COUNTERCLAIM(S)</a> <i>Verified Reply to Counterclaims</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
50	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 01/11/2021 Received: 01/11/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
51	<a href="#">NOTICE OF MOTION</a> (Motion #3) <i>to file Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
52	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

	<a href="#">MOTION</a> (Motion #3) <i>Affirmation of Alfred E. Donnellan in Support of Motion to file Amended Complaint</i>	Filed: 01/26/2021 Received: 01/26/2021	<a href="#">Confirmation Notice</a>
53	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>Complaint with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
54	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
55	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Amended Compliant with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
56	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Redline version of Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
57	<a href="#">EXHIBIT(S)</a> - E (Motion #3) <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
58	<a href="#">EXHIBIT(S)</a> - F (Motion #3) <i>Security Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
59	<a href="#">EXHIBIT(S)</a> - G (Motion #3) <i>Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
60	<a href="#">EXHIBIT(S)</a> - H (Motion #3) <i>NY County Action Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
61	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
62	<a href="#">NOTICE OF MOTION</a> (Motion #4) *Corrected*	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
63	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #4) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
64	<a href="#">EXHIBIT(S)</a> - A (Motion #4) <i>Complaint</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
65	<a href="#">EXHIBIT(S)</a> - B (Motion #4) <i>Answer</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
66	<a href="#">EXHIBIT(S)</a> - C (Motion #4) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Document

Filed By

Status

- 67 [EXHIBIT\(S\)](#) - D (Motion #4)  
Lease  
**Redacted** per 22 NYCRR §202.5(e)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
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- 68 [EXHIBIT\(S\)](#) - E (Motion #4)  
Temporary Certificate of Occupancy  
[Donnellan, A.](#) **Processed**  
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- 69 [EXHIBIT\(S\)](#) - F (Motion #4)  
AJA Form 0704  
[Donnellan, A.](#) **Processed**  
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- 70 [EXHIBIT\(S\)](#) - G (Motion #4)  
NYSDOH Communication  
[Donnellan, A.](#) **Processed**  
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- 71 [MEMORANDUM OF LAW IN SUPPORT](#) (Motion #4)  
[Donnellan, A.](#) **Processed**  
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- 72 [LETTER / CORRESPONDENCE TO JUDGE](#)  
[Donnellan, A.](#) **Processed**  
Filed: 02/04/2021 [Confirmation Notice](#)  
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- 73 [MEMORANDUM OF LAW IN OPPOSITION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
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- 74 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
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- 75 [EXHIBIT\(S\)](#) - A (Motion #3)  
Collateral Assignment  
[Giardino, J.](#) **Processed**  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES L.L.C.,

Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

VERIFIED ANSWER  
WITH AFFIRMATIVE  
DEFENSES, COUNTER-  
CLAIMS AND THIRD-  
PARTY COMPLAINT

Defendants and  
Third-Party Plaintiff,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.  
-----X

Defendants, HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and  
MARK NEUMAN (collectively, "Defendants"), by and through their counsel Michelman &  
Robinson, LLP, hereby assert the following verified answer with affirmative defenses,  
counterclaims, and third-party complaint and allege upon information and belief as follows:

**ANSWER TO COMPLAINT**

1. Defendants deny the allegations in paragraphs "1," "2," and "3."
2. Defendants admit the allegations in paragraphs "4" through "11."
3. Defendants deny the allegations in paragraphs "12" and "13."
4. In response to the allegations in paragraphs "14" through "20," Defendants assert

that the document speaks for itself.

5. Defendants admit the allegations in paragraphs “21” and “22.”
6. In response to the allegations in paragraph “23,” Defendants assert that the document speaks for itself.
7. Defendants deny the allegations in paragraphs “24,” “25,” and “26.”
8. In response to the allegations in paragraphs “27” through “32,” Defendants assert that the document speaks for itself.
9. Defendants deny the allegations in paragraph “33.”
10. In response to the allegations in paragraphs “34” through “37,” Defendants assert that the document speaks for itself.
11. Defendants deny the allegations in paragraphs “38” through “53.”
12. In response to the allegations in paragraph “54,” Defendants assert that the document speaks for itself.
13. Defendants admit the allegations in paragraph “55.”
14. In response to the allegations in paragraphs “56” through “59,” Defendants assert that the document speaks for itself.
15. Defendants deny the allegations in paragraphs “60,” “61,” and “62.”
16. Defendants lack sufficient information to form a belief regarding the allegations and, on that basis, deny the allegations in paragraphs “63” and “64.”
17. Defendants deny the allegations in paragraph “65.”
18. In response to the allegations in paragraphs “66” and “67,” Defendants assert that the document speaks for itself.
19. Defendants deny the allegations in paragraphs “68” through “75.”

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

- 20. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “75” as if fully set forth herein.
- 21. Defendants deny the allegations in paragraphs “76” and “77.”

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

- 22. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “77” as if fully set forth herein.
- 23. Defendants deny the allegations in paragraphs “78” and “79.”

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

- 24. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “79” as if fully set forth herein.
- 25. Defendants deny the allegations in paragraphs “80” and “81.”

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

- 26. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “81” as if fully set forth herein.
- 27. Defendants deny the allegations in paragraphs “82” and “83.”

**AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses, without admitting that Defendants would bear the burden of proof on any of these or any other affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE  
(Plaintiff's Breach)**

1. Plaintiff's claims for relief are barred, in whole or in part, because plaintiff is in breach of its obligations under the Lease and the integrated development agreements.

**SECOND AFFIRMATIVE DEFENSE  
(Failure to Perform)**

2. Plaintiff failed to perform its obligations under the Lease and integrated Project documents and is not entitled to performance by the Defendants.

**THIRD AFFIRMATIVE DEFENSE  
(Terms Too Indefinite To Enforce)**

3. Certain terms within the Lease which plaintiff seeks to enforce are not clear and not definite and are therefore unenforceable.

**FOURTH AFFIRMATIVE DEFENSE  
(Payment)**

4. Defendants have made various substantial pre-payments of rent which have not been credited to their account.

**FIFTH AFFIRMATIVE DEFENSE  
(Not Entitled to Enforcement)**

5. Plaintiff's failure to deliver the Project in compliance with NYSDOH approvals renders the Lease unenforceable.

**SIXTH AFFIRMATIVE DEFENSE  
(Offsets)**

6. Defendants are entitled to substantial offsets against the rents due under the Lease.

**SEVENTH AFFIRMATIVE DEFENSE  
(Fraud In The Inducement)**

7. Plaintiff induced the Defendants to enter into the Lease and guarantee agreements by making fraudulent representations and failing to disclose material facts.

**EIGHTH AFFIRMATIVE DEFENSE  
(Waiver)**

8. Plaintiff has accepted performance by Defendants and waives any and all right to sue for breach of contract.

**NINTH AFFIRMATIVE DEFENSE  
(Bad Faith/Unclean Hands)**

9. The plaintiff is not entitled to the relief it seeks as it has acted in bad faith and with unclean hands.

**TENTH AFFIRMATIVE DEFENSE  
(Other Affirmative Defenses)**

10. Defendants reserve the right to supplement or amend this Verified Answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this litigation.

**COUNTERCLAIMS AGAINST WHITE PLAINS  
HEALTHCARE PROPERTIES I, LLC  
AND  
THIRD-PARTY CLAIMS AGAINST CCC EQUITIES, LLC,  
PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, AND WILLIAM NICHOLSON**

Now and for their counterclaims against plaintiff and third-party complaint against third-party defendants, Defendants, upon information and belief, allege the following:

1. CCC Equities, LLC is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

2. Project Equity Consulting is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

3. The Congress Companies is a corporation duly organized and existing under the laws of the State of Massachusetts with an address and place of business at 2 Bourbon Street, West Peabody Executive Center, Peabody, Massachusetts 01960 and regularly conducts business within the State of New York.

4. Howard Fensterman is an individual residing at 4 Pond Lane, Sands Point, New York 11050 with a business address and place of business at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

5. Through the period complained of herein, Fensterman acted as both a principal in the transaction and legal counsel to certain parties including the defendant Lizer Jozefovic.

6. William Nicholson is an individual residing at 12 Long Meadow Drive, Ipswich, Massachusetts 01938 with a business address and place of business at 2 Bourbon Street, West Peabody Executive Center, Suite 200, Peabody, Massachusetts 01960.

7. This case involves the development of a new state-of-the-art 160-bed skilled nursing facility on Church Street in White Plains, New York (the "Facility.")

8. The Facility was proposed by the defendant, HBL SNF, LLC, and its principals Lizer Jozefovic and Mark Newman (the “Jozefovic Team”) to the New York State Department of Health (“NYSDOH”) in August 2009.

9. The Facility is dedicated to providing specialized services to “difficult to place patients,” including but not limited to, patients who exhibit psychiatric behaviors, patients who are undocumented, patients with developmental and physical disabilities, and patients who have no means of financial support and require charity care.

10. The Facility was intentionally located in White Plains to service high-density minority and high-density poverty populations as compared to surrounding regions.

11. In order to obtain a Certificate of Need from NYSDOH, the Jozefovic Team acquired skilled nursing bed licenses from other area nursing facilities including Hebrew Hospital Home of Westchester, Bethel Nursing Home, and Taylor Care Center.

12. After full review of the Jozefovic Team’s application, NYSDOH determined that the Jozefovic Team was a successful operator of nursing facilities that are authorized to care for the elderly and individuals with long-term physical care needs and has an established history of achieving high occupancy at the facilities it operated.

13. NYSDOH further determined that the Facility was unique and necessary as it provided care to patients not accepted by other facilities because of their special needs.

14. At the time the Jozefovic Team proposed the Facility, the Plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and the third-party defendants Howard Fensterman (“Fensterman”), William Nicholson (“Nicholson”), and their companies CCC Equities LLC (“CCCE”), Project Equity Construction (“PEC”), and The Congress Companies (“Congress”), approached the Jozefovic Team and proposed that they act as developers for the new Facility.

15. Led by third-party defendant Fensterman, these parties represented that they were capable of performing all aspects of development of the Facility including construction and financing (hereafter “the Project.”)

16. In fact, the Project costs for the Facility presented to NYSDOH by the Jozefovic Team were costs calculated and submitted by Fensterman and Nicholson.

17. Importantly, these costs established a total Project cost of \$56, 631,759.

18. The Project costs for the Facility were itemized by Fensterman and Nicholson as follows:

Land acquisition	\$ 4,528,333
New construction	\$37,282,722
Design Contingency	\$ 1,864,136
Construction Contingency	\$ 1,864,136
Architect/Engineering Fees	\$ 2,982,618
Construction Manager Fees	\$ 745,654
Other Fees (Consultant)	\$ 750,000
Movable Equipment	\$ 1,480,000
Financing Costs	\$ 2,112,000
Interim Interest Expense	\$ 2,710,400
CON Application Fee	\$ 2,000
CON Processing Fee	\$ 309,760
Total Project Cost	\$56,631,759

19. Many of these costs were to be paid to Fensterman and Nicholson directly, as well as Fensterman’s law firm, and other costs to their entities as fees, interest costs, and other Project expenses.

20. In addition, Fensterman and Nicholson represented that they could arrange for 100% of the Project financing.

21. More specifically, Fensterman and Nicholson specifically represented and agreed in writing that they could secure a HUD insured mortgage in the amount of \$42,240,000 with an interest rate of 5.5% and a term of thirty (30) years.

22. A description of this mortgage was included in the projected Medicaid Reimbursement submitted to NYSDOH as part of the Project feasibility forecast.

23. Furthermore, Fensterman represented that he could provide the necessary project equity in the amount of \$9,863,246 through his company CCC Equities, LLC.

24. The Jozefovic Team presented this financing arrangement to NYSDOH in support of its request for approval of the Facility and these costs became part of NYSDOH's Project approval.

25. Given that Fensterman and Nicholson agreed to develop, finance, and own the Project, the Jozefovic Team agreed to enter into a Lease Agreement to occupy and operate the Facility.

26. To accomplish this, Fensterman and Nicholson proposed that their company White Plains Healthcare Properties I, LLC become the landlord for the operating company owned by the Jozefovic Team known as HBL SNF, LLC.

27. The Lease was to be for a twenty (20) year term.

28. The rent was to be calculated as an amount equal to the debt service of the HUD insured mortgage to be obtained by Fensterman and Nicholson plus a return of cash equity to WPHP on the account of the equity contributions through CCCE.

29. The annual rent proposed by Fensterman and Nicholson and presented to NYSDOH equaled \$4,318,000 annually or \$360,000 per month.

30. The amount of annual rent as calculated above was eligible for reimbursement to HBL SNF, LLC through the NYSDOH.

31. The Project as proposed to the NYSDOH was to be completed in approximately twenty (20) months.

32. The NYSDOH gave approval for the Project on the terms described above in October 2012.

33. Throughout the NYSDOH application process, the Jozefovic Team relied upon representations made by Fensterman and Nicholson.

34. However, shortly after receiving approval from NYSDOH, the Jozefovic Team learned that Fensterman and Nicholson did not have the capital necessary to commence or complete the Project as presented.

35. As a result of this lack of capital the Project was delayed for years.

36. In an attempt to overcome this lack of capital, on November 15, 2015, HBL SNF, LLC entered into a Development Agreement with White Plains Healthcare Properties I, LLC (the “Development Agreement.”)

37. On the same date, HBL SNF, LLC entered into a Lease with White Plains Healthcare Properties I, LLC (the “Lease”) for the Facility in order to enable WPHP to obtain its Project financing.

38. The Development Agreement and Lease are essential parts of the same transaction and are constitute integrated agreements.

39. Pursuant to the Development Agreement, the Project was to be “turn-key” meaning that the plaintiff and third-party defendants would deliver a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place in accordance with the approval granted by NYSDOH.

40. However, because Fensterman and Nicholson lacked sufficient capital to complete the Project on a turn-key basis, they induced the Jozefovic Team to withdraw its equity from

another nursing facility which it owned and operated known as Waterview Nursing Home and to contribute that equity to the Project so that the Project could move forward in 2016.

41. In particular, the Jozefovic Team made the following capital contributions to the Project as memorialized in a Term Sheet dated November 20, 2015:

- a) \$2,200,000 paid to WPHP to be used by Congress for pre-development costs;
- b) \$197,072 to CCC Equities, LLC to be used in the discretion of Fensterman;
- c) \$1,595,368.32 into a control account in the name of HBL SNF.

42. Despite repeated requests since 2015, Fensterman, Nicholson, Congress, and CCCE have failed or refused to provide an accounting of the use of the predevelopment and discretionary funds paid to them.

43. In consideration for the \$2,200,000 contribution to WPHP, WPHP agreed that these funds constituted a loan to WPHP to be repaid to HBL SNF, LLC.

44. No provision was made for the payment of interest on the loan notwithstanding that WPHP had the use of such funds since 2015.

45. WPHP agreed to repay the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") in the amount of \$1,500,000 for the Project and by giving HBL SNF, LLC a future credit against Lease payments.

46. When advancing these funds to Fensterman, Nicholson, CCC Equities and Congress, the Jozefovic Team anticipated that the Facility would be delivered in September 2017.

47. The Facility was not delivered until December 2019.

48. Despite repeated requests, WPHP has never provided an accounting for purchases of the required FF&E or any documentation evidencing repayment of \$1,500,000 of the loan amount to HBL SNF, LLC.

49. In the absence of such an accounting, HBL SNF, LLC cannot determine how much of its loan amount, if any, has been repaid and how much of the remaining loan balance should be credited to current Lease payments.

50. In addition, accrued interest on the \$2,200,000 loan must be calculated from November 2015 and either paid to HBL SNF, LLC or credited to payments due under the Lease.

51. The Development Agreement required that the Project be substantially completed within twenty-two (22) months or before September 2017.

52. The plaintiff breached its obligations to HBL SNF, LLC by failing to complete the Project until December 2019.

53. The delay in completing the Project caused HBL SNF, LLC to lose substantial revenue.

54. In addition, by delivering the Project in December 2019, HBL SNF, LLC encountered market conditions during its start-up phase in 2020 caused by the COVID-19 pandemic which adversely affected HBL SNF LLC's operations as it has nursing homes throughout the region.

55. HBL SNF, LLC would not have encountered these adverse financial conditions but not for the delay caused by plaintiff and third-party defendants.

56. In addition to the Project being completed more than two (2) years late, plaintiff and third-party defendants delivered the Project well over budget.

57. The Development Agreement required the plaintiff to enter into a construction contract with Congress and to secure a 100% performance bond to guarantee the performance of the construction contract.

58. However, unbeknownst to HBL SNF, LLC, Congress could not secure a performance bond.

59. Fensterman and Nicholson never disclosed to HBL SNF, LLC or any of its principals that Congress could not obtain a bond.

60. As a result, WPHP entered into a contract without approval or consent from HBL SNF, LLC for a creation of a joint venture agreement with a third-party contractor.

61. The joint venture, among other reasons, added substantial costs to the Project.

62. These substantial additional costs exceeded the capital expenditures approved by NYSDOH and are not reimbursable through NYSDOH.

63. Upon information and belief, Congress's inability to secure the performance bond is related to certain judgments taken against its principal Nicholson arising from claims for diversion of project funds in a skilled nursing project located in Milwaukee, Wisconsin dating back to 2015, the time when the Jozefovic Team advanced monies to Nicholson and Congress.

64. Neither Fensterman nor Nicholson disclosed these adverse proceedings to the Jozefovic Team.

65. In fact, Nicholson was adjudged to have committed conversion and civil theft in the amount of \$1,903,452, and that judgement was affirmed on appeal to the Seventh Circuit Court of Appeals.

66. The Development Agreement required that plaintiff and third-party defendants deliver the Project at the costs approved by NYSDOH.

67. Only in the event of a change order, authorized by HBL SNF, LLC, would HBL SNF, LLC have responsibility for any cost higher than the cost approved by the NYSDOH.

68. There were no approved change orders.

69. The approved Project cost is \$57,000,000.
70. The plaintiff and third-party defendants caused the Project to exceed the approved costs by more than \$5,000,000.
71. The plaintiff and third-party defendants breached their obligations to HBL SNF, LLC under the Development Agreement by causing the Project to be over budget.
72. As a result, HBL SNF, LLC is not eligible for reimbursement of its rent payments as originally intended - a loss of eligibility that will cause substantial harm to HBL SNF, LLC.
73. Given these costs overruns and the loss of eligibility for reimbursement, the Lease is unenforceable.
74. As part of the “turn-key” delivery of the Project, plaintiff was obligated to provide permanent financing for the Project on the terms of the HUD insured loan submitted by plaintiff as part of the Project approved by NYSDOH.
75. The plaintiff and third-party defendants have failed to provide such permanent financing and are in breach of the Development Agreement and the Lease.
76. In connection with the permanent financing, the plaintiff and third-party defendants were required to demonstrate sufficient equity invested in the Project for HUD or any other lender of permanent financing to grant a thirty (30) year loan to the Project.
77. Plaintiff and third-party defendants have failed to demonstrate sufficient equity in the Project.
78. Upon information and belief, Fensterman procured financial contributions from individual third parties who contributed capital to CCCE to meet the equity requirement.
79. Although this capital is required to be and has, in fact, been represented by Fensterman to be in the nature of equity, upon information and belief, these contributions from

individual third-parties are loans at high rates of interest which are overdue as a result of the Project delays.

80. Fensterman, CCCE, and plaintiff have caused additional financial burden to the Project and have attempted to pass along to HBL SNF, LLC and the Jozefovic Team these higher interest costs.

81. The Project cost overruns and the higher finance costs due to the delay in delivering the Project, together with the lack of sufficient equity, have prevented the Project from securing permanent financing.

82. The plaintiff and third-party defendants have advised HBL SNF, LLC that they have initiated this lawsuit because they are in default of their current loan agreements.

83. As of this date, plaintiff and third-party defendants have been unable to provide to the Jozefovic Team an accurate Project accounting of Project expenditures and have refused to provide information concerning the Project financing.

84. As of this date, plaintiff and third-party defendants have been unable to procure the HUD insured financing which they represented they could secure and is required by NYSDOH Project approval.

85. As of this date, the Project does not comply with the approval issued by the NYSDOH.

86. As a result of the failure to deliver the Project on the terms approved by NYSDOH, HBL SNF, LLC cannot be reimbursed for the cost of the Facility as intended by the Development Agreement and the Lease and HBL SNF, LLC and its principals have suffered financial harm as a result.

87. Throughout the development process, WPHP, Fensterman, Nicholson and Congress have made false representations to the Jozefovic Team and have taken adverse actions which have adversely affected the business of HBL SNF, LLC.

**AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST WPHP, CCCE, CONGRESS, AND FENSTERMAN (DEMAND FOR ACCOUNTING)**

88. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “87” with the same force and effect as if fully set forth herein.

89. HBL SNF, LLC, Lizer Jozefovic and Mark Neuman had a trust-based relationship with Fensterman, Nicholson, and WPHP.

90. Given that relationship, HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman advanced monies to WPHP and Fensterman prior to commencement of the Project in order to allow the Project to proceed.

91. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman are entitled to an accounting of the use of the funds advanced for the Project.

**AS AND FOR A SECOND CAUSE OF ACTION AS AGAINST WPHP (PAYMENT OF INTEREST)**

92. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “91” with the same force and effect as if fully set forth herein.

93. HBL SNF, LLC is entitled to imputed interest on the \$2,200,000 made to WPHP loan from November 2015 to present.

**AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST WPHP  
(BREACH OF CONTRACT)**

94. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “93” with the same force and effect as if fully set forth herein.

95. WPHP breached the Development Agreement and the Lease.

96. As a result of such breach, HBL SNF, LLC has been damaged by the loss of reimbursable capital expenditures and has incurred other costs due to the nonperformance of WPHP.

97. In addition, HBL SNF, LLC has lost funds and continues to lose revenues as a result of Project delays.

**AS AND FOR A FOURTH CAUSE OF ACTION  
AS AGAINST FENSTERMAN AND NICHOLSON  
(FRAUD IN THE INDUCEMENT)**

98. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “97” with the same force and effect as if fully set forth herein.

99. Third-party defendants Fensterman and Nicholson fraudulently induced HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman to enter into the Development Agreement, the Lease, and the Guaranty.

100. Fensterman and Nicholson misrepresented the Project costs.

101. Fensterman and Nicholson misrepresented their ability to secure permanent HUD financing.

102. Fensterman and Nicholson misrepresented their ability to complete the Project.

103. Fensterman misrepresented the capital contributions made to CCCE to satisfy the equity requirement for the Project.

104. Fensterman and Nicholson failed to disclose the claimant civil proceeding against Nicholson for civil theft.

105. By reason of such fraud in the inducement, Defendants Lizer Jozefovic and Mark Neuman have no obligations under the guarantees.

106. By reason of such fraud in the inducement, HBL SNF, LLC has suffered financial damages.

**AS AND FOR A FIFTH CAUSE OF ACTION  
AS AGAINST ALL THIRD-PARTY DEFENDANTS  
(BAD FAITH)**

107. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “106” with the same force and effect as if fully set forth herein.

108. As alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.

109. As a result of such bad faith dealings, HBL SNF, LLC has suffered damages in an amount not less than \$15,000,000.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(FRAUD)**

110. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “109” with the same force and effect as if fully set forth herein.

111. The misrepresentations and non-disclosures by Fensterman and Nicholson and third-party defendants constitute fraud.

112. WPHP, Fensterman and Nicholson new such statements were false.

113. WPHP, Fensterman and Nicholson made such statements to deceive HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman.

114. HBL SNF, LLC has been damaged by such fraudulent conduct.

**WHEREFORE**, Defendants and Third-Party Plaintiffs deny generally and specifically that it committed any wrongdoing and demand:

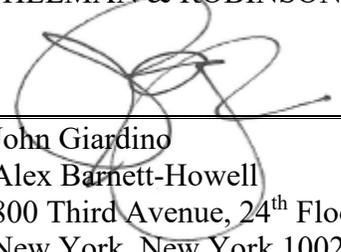
- 1) A determination that the amount of rent payable under the Lease be modified by any sums not reimbursable by the NYSDOH and offset by prior payments and accrued interest;
- 2) The Guaranty Agreements be nullified;
- 3) Monetary damages in an amount to be determined;
- 4) Attorneys' fees, and
- 5) Such other relief as the Court deems appropriate.

Dated: New York, New York

November 5, 2020

MICHELMAN & ROBINSON, LLP

By: \_\_\_\_\_

  
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[abarnett-howell@mrlp.com](mailto:abarnett-howell@mrlp.com)  
*Attorneys for Defendants*

**VERIFICATION BY ATTORNEY**

JOHN GIARDINO, being an attorney duly admitted to practice in the courts of New York, affirms the following under penalties of perjury:

I am an attorney for Defendants HBL-SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARK NEUMAN, in the above entitled action and have read the foregoing Verified Answer and know the contents thereof; that the same is true upon information and belief, and that as to those matters I believe them to be true.

I further state that the grounds of my belief as to all matters in the Verified Answer are based upon the file maintained by my office and conference and telephone conferences with Defendants. This verification is made pursuant to the provisions of RPAPL 741 because Defendants was not available to sign the same at the time the Verified Answer was prepared.

Dated: New York, New York  
November 5, 2020

  
\_\_\_\_\_  
JOHN GIARDINO, ESQ.

FILED: WESTCHESTER COUNTY CLERK 11/05/2020 06:58 PM

INDEX NO. 60278/2020

NYSCEF DOC. NO. 22

RECEIVED NYSCEF: 11/05/2020

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-vs-

HBL SNF, LLC, LIZER JOZEFOVIC A/KIA LIZER  
JOZOFOVIC and MARK NEUMAN,

NOTICE OF CROSS-  
MOTION

ORAL ARGUMENT  
REQUESTED

Defendants,

-----X

*Cross-motion  
withdrawn  
Based on  
Stipulation  
dated Nov. 9, 2020*

*NYSCEF Doc.  
No. 29.*

*Dubhan  
Walsh  
J.S.C.*

PLEASE TAKE NOTICE that upon the annexed Memorandum of Law, dated November 5, 2020, Affirmation of John Giardino, Esq., dated November 5, 2020, and the exhibits annexed thereto, Defendants HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman will move this Court, located at 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, in the Commercial Division, before Judge Walsh, on December 7, 2020, at 9:30 A.M., or as soon thereafter as counsel can be heard, for an Order pursuant to CPLR § 2004 and 3012(d) holding that Defendants' verified answer with affirmative defenses, counterclaims, and third-party complaint, dated November 5, 2020, was timely filed, for sanctions pursuant to 22 NYCRR 130-1.4, and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that opposition papers shall be served upon the undersigned at least seven (7) days prior to the return date of this motion pursuant to CPLR §2214(b)

FILED: WESTCHESTER COUNTY CLERK 11/05/2020 06:58 PM

INDEX NO. 60278/2020

NYSCEF DOC. NO. 22

RECEIVED NYSCEF: 11/05/2020

Dated: New York, New York  
November 5, 2020

MICHELMAN & ROBINSON, LLP

By:   
John Giardino, Esq.  
Alex Barnett-Howell Esq.  
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(212) 730-7700  
jgiardino@mrlp.com  
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*Attorneys for Defendants HBL SNF,  
LLC, Lizer Jozefovic, and Mark Neuman*

To: Alfred E. Domellan, Esq.  
DelBello Domellan Weingarten Wise & Wiederkehr LLP  
One North Lexington Ave., 11<sup>th</sup> Floor  
White Plains, NY 10601  
(914) 681-0200

Robert A. Spolzino, Esq.  
Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP  
81 Main St., Suite 306  
White Plains, NY 10601  
(914) 607-7010

*Attorneys for Plaintiff White Plains Healthcare Properties I, LLC*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-vs-

HBL SNF, LLC, LIZER JOZEFOVIC A/KIA LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants.  
-----X

**AFFIRMATION OF JOHN GIARDINO IN OPPOSITION TO MOTION FOR DEFAULT  
JUDGMENT AND IN SUPPORT OF CROSS-MOTION FOR AN EXTENSION OF  
TIME TO RESPOND AND FOR SANCTIONS**

JOHN GIARDINO, ESQ., an attorney duly admitted to practice law in the State of New York, affirms the following to be true under the penalties of perjury:

1. I am a partner at the law firm of Michelman & Robinson, LLP, attorneys for the Defendants HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman (collectively “Defendants”).

2. I respectfully submit this Affirmation in Opposition to Plaintiff White Plains Healthcare Properties I, LLC’s (“Plaintiff”) Motion for Default Judgment and in Support of Defendants’ Cross-Motion for an Extension of Time to Respond and for Sanctions against Plaintiff.

3. This Affirmation is based upon my personal knowledge and upon files maintained by my firm in relation to this action.

4. I was contacted by Defendants regarding a summons and complaint which was filed by Plaintiff against Defendants in the Supreme Court of the State of New York, County of Westchester, Index No. 60278/2020.

5. On October 6, 2020, I sent several emails to Plaintiff’s counsel, Alfred E. Donnellan, Esq. at DelBello Donnellan Weingarten Wise & Wiederkehr LLP (“Mr. Donnellan”), at [AED@ddw-law.com](mailto:AED@ddw-law.com) to discuss this action.

6. On October 6, 2020, I sent an email to Mr. Donnellan to request a short 10-day extension of time to file a responsive pleading in response to the summons and complaint. In the email I stated: “May this confirm my request to establish Thursday November 5th, 2020 as the date for service of our responsive pleading or papers in the lease termination action. Please confirm.”

7. Before sending my email request, I advised Mr. Donnellan that I needed to be out of the office for major surgery on October 20<sup>th</sup> and would be absent from the office for a period of time.

8. Upon information and belief, service on the defendants was completed on October 1, 2020.

9. Mr. Donnellan replied immediately and stated: “We can agree to November 5 for responsive pleading conditioned on the following

- Base rent paid by November 1 (without prejudice to any claims by any party)
- Consent to jurisdiction and venue
- Extension is for a responsive pleading not a motion to dismiss.”

10. True and correct copies of the emails to and from Mr. Donnellan are attached as Exhibit A.

11. As I had asked Mr. Donnellan “to confirm” whether Plaintiff would agree to an extension to file a responsive pleading until November 5, 2020, and Mr. Donnellan had responded

by stating that “[w]e can agree to November 5,” it was clear that Plaintiff had agreed to extend the deadline to file a responsive pleading until November 5, 2020 so long as I complied with Mr. Donnellan’s conditions, *i.e.*, (1) the “[b]ase rent was paid by November 1”; (2) the responsive pleading did not contest “jurisdiction and venue”; and (3) Defendants filed “a responsive pleading not a motion to dismiss.”

12. On November 1, 2020, I instructed Defendants to pay the rent for November 2020.

13. True and correct copies of the November 2020 rent payment are attached as Exhibit B.

14. In reliance on Mr. Donnellan’s prior statements, I filed a verified answer with affirmative defenses, counterclaims, and third-party complaint on November 5, 2020 (the “Answer”).

15. A true and correct copies of the Answer is attached as Exhibit C.

16. As Mr. Donnellan had requested, the Answer does not challenge “jurisdiction” or “venue.”

17. Furthermore, as Mr. Donnellan had requested, the Answer was not a “motion to dismiss.”

18. I was therefore surprised to receive a motion for default judgment, dated October 28, 2020 (the “Motion”), from Plaintiff.

19. In the Motion, Mr. Donnellan claimed that Plaintiff never consented to an extension and that Defendants, by failing to file a responsive pleading in time, were now in default.

20. There were no grounds for the Motion, as Plaintiff had already granted an extension until November 5, 2020, and Defendants were in the process of complying with Plaintiff’s conditions.

21. Over decades of practice in the State of New York I have regularly coordinated similar extensions with opposing counsel via email correspondence without incident and without the need for certified statements or judicial authorization.

22. To date, I have never participated in another matter where opposing counsel has attempted to withdraw an offered extension after the fact or moved for a default judgment less than thirty days after service of the summons and complaint.

23. If Mr. Donnellan had been uncertain about the timing of the Answer he could have contacted me and I would have reiterated that we had already agreed to extend the time for Defendants to file a responsive pleading until November 5, 2020, and that Defendants were preparing an answer to be filed in accordance with Plaintiff's conditions by that date.

24. At no point prior to the Motion did Mr. Donnellan attempt to contact me.

25. The Motion is a frivolous and a waste of judicial and party resources, as there are no grounds for granting a default judgment.

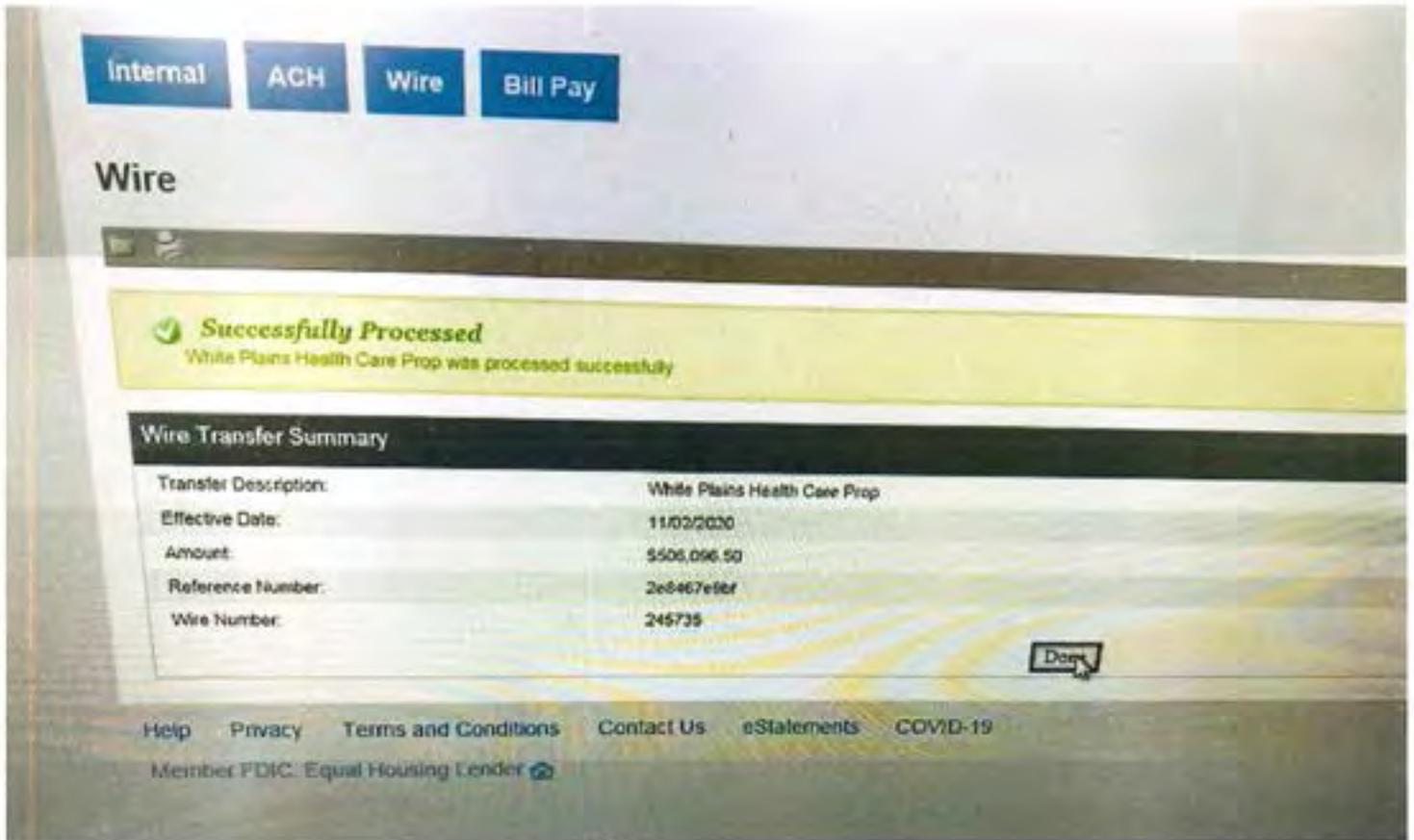
26. Moreover, the Motion contains deliberately false statements and misrepresentations to the Court, as Mr. Donnellan claims that Plaintiff never agreed to extend the time to file a responsive pleading until November 5, 2020.

Dated: New York, New York  
November 5, 2020

By:

  
\_\_\_\_\_  
JOHN GIARDINO, ESQ.





SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES L.L.C.,

Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

VERIFIED ANSWER  
WITH AFFIRMATIVE  
DEFENSES, COUNTER-  
CLAIMS AND THIRD-  
PARTY COMPLAINT

Defendants and  
Third-Party Plaintiff,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

-----X

Defendants, HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and  
MARK NEUMAN (collectively, "Defendants"), by and through their counsel Michelman &  
Robinson, LLP, hereby assert the following verified answer with affirmative defenses,  
counterclaims, and third-party complaint and allege upon information and belief as follows:

**ANSWER TO COMPLAINT**

1. Defendants deny the allegations in paragraphs "1," "2," and "3."
2. Defendants admit the allegations in paragraphs "4" through "11."
3. Defendants deny the allegations in paragraphs "12" and "13."
4. In response to the allegations in paragraphs "14" through "20," Defendants assert

that the document speaks for itself.

5. Defendants admit the allegations in paragraphs “21” and “22.”
6. In response to the allegations in paragraph “23,” Defendants assert that the document speaks for itself.
7. Defendants deny the allegations in paragraphs “24,” “25,” and “26.”
8. In response to the allegations in paragraphs “27” through “32,” Defendants assert that the document speaks for itself.
9. Defendants deny the allegations in paragraph “33.”
10. In response to the allegations in paragraphs “34” through “37,” Defendants assert that the document speaks for itself.
11. Defendants deny the allegations in paragraphs “38” through “53.”
12. In response to the allegations in paragraph “54,” Defendants assert that the document speaks for itself.
13. Defendants admit the allegations in paragraph “55.”
14. In response to the allegations in paragraphs “56” through “59,” Defendants assert that the document speaks for itself.
15. Defendants deny the allegations in paragraphs “60,” “61,” and “62.”
16. Defendants lack sufficient information to form a belief regarding the allegations and, on that basis, deny the allegations in paragraphs “63” and “64.”
17. Defendants deny the allegations in paragraph “65.”
18. In response to the allegations in paragraphs “66” and “67,” Defendants assert that the document speaks for itself.
19. Defendants deny the allegations in paragraphs “68” through “75.”

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

- 20. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “75” as if fully set forth herein.
- 21. Defendants deny the allegations in paragraphs “76” and “77.”

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

- 22. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “77” as if fully set forth herein.
- 23. Defendants deny the allegations in paragraphs “78” and “79.”

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

- 24. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “79” as if fully set forth herein.
- 25. Defendants deny the allegations in paragraphs “80” and “81.”

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

- 26. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “81” as if fully set forth herein.
- 27. Defendants deny the allegations in paragraphs “82” and “83.”

**AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses, without admitting that Defendants would bear the burden of proof on any of these or any other affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE  
(Plaintiff's Breach)**

1. Plaintiff's claims for relief are barred, in whole or in part, because plaintiff is in breach of its obligations under the Lease and the integrated development agreements.

**SECOND AFFIRMATIVE DEFENSE  
(Failure to Perform)**

2. Plaintiff failed to perform its obligations under the Lease and integrated Project documents and is not entitled to performance by the Defendants.

**THIRD AFFIRMATIVE DEFENSE  
(Terms Too Indefinite To Enforce)**

3. Certain terms within the Lease which plaintiff seeks to enforce are not clear and not definite and are therefore unenforceable.

**FOURTH AFFIRMATIVE DEFENSE  
(Payment)**

4. Defendants have made various substantial pre-payments of rent which have not been credited to their account.

**FIFTH AFFIRMATIVE DEFENSE  
(Not Entitled to Enforcement)**

5. Plaintiff's failure to deliver the Project in compliance with NYSDOH approvals renders the Lease unenforceable.

**SIXTH AFFIRMATIVE DEFENSE  
(Offsets)**

6. Defendants are entitled to substantial offsets against the rents due under the Lease.

**SEVENTH AFFIRMATIVE DEFENSE  
(Fraud In The Inducement)**

7. Plaintiff induced the Defendants to enter into the Lease and guarantee agreements by making fraudulent representations and failing to disclose material facts.

**EIGHTH AFFIRMATIVE DEFENSE  
(Waiver)**

8. Plaintiff has accepted performance by Defendants and waives any and all right to sue for breach of contract.

**NINTH AFFIRMATIVE DEFENSE  
(Bad Faith/Unclean Hands)**

9. The plaintiff is not entitled to the relief it seeks as it has acted in bad faith and with unclean hands.

**TENTH AFFIRMATIVE DEFENSE  
(Other Affirmative Defenses)**

10. Defendants reserve the right to supplement or amend this Verified Answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this litigation.

**COUNTERCLAIMS AGAINST WHITE PLAINS  
HEALTHCARE PROPERTIES I, LLC  
AND  
THIRD-PARTY CLAIMS AGAINST CCC EQUITIES, LLC,  
PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, AND WILLIAM NICHOLSON**

Now and for their counterclaims against plaintiff and third-party complaint against third-party defendants, Defendants, upon information and belief, allege the following:

1. CCC Equities, LLC is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

2. Project Equity Consulting is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

3. The Congress Companies is a corporation duly organized and existing under the laws of the State of Massachusetts with an address and place of business at 2 Bourbon Street, West Peabody Executive Center, Peabody, Massachusetts 01960 and regularly conducts business within the State of New York.

4. Howard Fensterman is an individual residing at 4 Pond Lane, Sands Point, New York 11050 with a business address and place of business at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

5. Through the period complained of herein, Fensterman acted as both a principal in the transaction and legal counsel to certain parties including the defendant Lizer Jozefovic.

6. William Nicholson is an individual residing at 12 Long Meadow Drive, Ipswich, Massachusetts 01938 with a business address and place of business at 2 Bourbon Street, West Peabody Executive Center, Suite 200, Peabody, Massachusetts 01960.

7. This case involves the development of a new state-of-the-art 160-bed skilled nursing facility on Church Street in White Plains, New York (the “Facility.”)

8. The Facility was proposed by the defendant, HBL SNF, LLC, and its principals Lizer Jozefovic and Mark Newman (the “Jozefovic Team”) to the New York State Department of Health (“NYSDOH”) in August 2009.

9. The Facility is dedicated to providing specialized services to “difficult to place patients,” including but not limited to, patients who exhibit psychiatric behaviors, patients who are undocumented, patients with developmental and physical disabilities, and patients who have no means of financial support and require charity care.

10. The Facility was intentionally located in White Plains to service high-density minority and high-density poverty populations as compared to surrounding regions.

11. In order to obtain a Certificate of Need from NYSDOH, the Jozefovic Team acquired skilled nursing bed licenses from other area nursing facilities including Hebrew Hospital Home of Westchester, Bethel Nursing Home, and Taylor Care Center.

12. After full review of the Jozefovic Team’s application, NYSDOH determined that the Jozefovic Team was a successful operator of nursing facilities that are authorized to care for the elderly and individuals with long-term physical care needs and has an established history of achieving high occupancy at the facilities it operated.

13. NYSDOH further determined that the Facility was unique and necessary as it provided care to patients not accepted by other facilities because of their special needs.

14. At the time the Jozefovic Team proposed the Facility, the Plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and the third-party defendants Howard Fensterman (“Fensterman”), William Nicholson (“Nicholson”), and their companies CCC Equities LLC (“CCCE”), Project Equity Construction (“PEC”), and The Congress Companies (“Congress”), approached the Jozefovic Team and proposed that they act as developers for the new Facility.

15. Led by third-party defendant Fensterman, these parties represented that they were capable of performing all aspects of development of the Facility including construction and financing (hereafter “the Project.”)

16. In fact, the Project costs for the Facility presented to NYSDOH by the Jozefovic Team were costs calculated and submitted by Fensterman and Nicholson.

17. Importantly, these costs established a total Project cost of \$56, 631,759.

18. The Project costs for the Facility were itemized by Fensterman and Nicholson as follows:

Land acquisition	\$ 4,528,333
New construction	\$37,282,722
Design Contingency	\$ 1,864,136
Construction Contingency	\$ 1,864,136
Architect/Engineering Fees	\$ 2,982,618
Construction Manager Fees	\$ 745,654
Other Fees (Consultant)	\$ 750,000
Movable Equipment	\$ 1,480,000
Financing Costs	\$ 2,112,000
Interim Interest Expense	\$ 2,710,400
CON Application Fee	\$ 2,000
CON Processing Fee	\$ 309,760
Total Project Cost	\$56,631,759

19. Many of these costs were to be paid to Fensterman and Nicholson directly, as well as Fensterman’s law firm, and other costs to their entities as fees, interest costs, and other Project expenses.

20. In addition, Fensterman and Nicholson represented that they could arrange for 100% of the Project financing.

21. More specifically, Fensterman and Nicholson specifically represented and agreed in writing that they could secure a HUD insured mortgage in the amount of \$42,240,000 with an interest rate of 5.5% and a term of thirty (30) years.

22. A description of this mortgage was included in the projected Medicaid Reimbursement submitted to NYSDOH as part of the Project feasibility forecast.

23. Furthermore, Fensterman represented that he could provide the necessary project equity in the amount of \$9,863,246 through his company CCC Equities, LLC.

24. The Jozefovic Team presented this financing arrangement to NYSDOH in support of its request for approval of the Facility and these costs became part of NYSDOH's Project approval.

25. Given that Fensterman and Nicholson agreed to develop, finance, and own the Project, the Jozefovic Team agreed to enter into a Lease Agreement to occupy and operate the Facility.

26. To accomplish this, Fensterman and Nicholson proposed that their company White Plains Healthcare Properties I, LLC become the landlord for the operating company owned by the Jozefovic Team known as HBL SNF, LLC.

27. The Lease was to be for a twenty (20) year term.

28. The rent was to be calculated as an amount equal to the debt service of the HUD insured mortgage to be obtained by Fensterman and Nicholson plus a return of cash equity to WPHP on the account of the equity contributions through CCCE.

29. The annual rent proposed by Fensterman and Nicholson and presented to NYSDOH equaled \$4,318,000 annually or \$360,000 per month.

30. The amount of annual rent as calculated above was eligible for reimbursement to HBL SNF, LLC through the NYSDOH.

31. The Project as proposed to the NYSDOH was to be completed in approximately twenty (20) months.

32. The NYSDOH gave approval for the Project on the terms described above in October 2012.

33. Throughout the NYSDOH application process, the Jozefovic Team relied upon representations made by Fensterman and Nicholson.

34. However, shortly after receiving approval from NYSDOH, the Jozefovic Team learned that Fensterman and Nicholson did not have the capital necessary to commence or complete the Project as presented.

35. As a result of this lack of capital the Project was delayed for years.

36. In an attempt to overcome this lack of capital, on November 15, 2015, HBL SNF, LLC entered into a Development Agreement with White Plains Healthcare Properties I, LLC (the “Development Agreement.”)

37. On the same date, HBL SNF, LLC entered into a Lease with White Plains Healthcare Properties I, LLC (the “Lease”) for the Facility in order to enable WPHP to obtain its Project financing.

38. The Development Agreement and Lease are essential parts of the same transaction and are constitute integrated agreements.

39. Pursuant to the Development Agreement, the Project was to be “turn-key” meaning that the plaintiff and third-party defendants would deliver a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place in accordance with the approval granted by NYSDOH.

40. However, because Fensterman and Nicholson lacked sufficient capital to complete the Project on a turn-key basis, they induced the Jozefovic Team to withdraw its equity from

another nursing facility which it owned and operated known as Waterview Nursing Home and to contribute that equity to the Project so that the Project could move forward in 2016.

41. In particular, the Jozefovic Team made the following capital contributions to the Project as memorialized in a Term Sheet dated November 20, 2015:

- a) \$2,200,000 paid to WPHP to be used by Congress for pre-development costs;
- b) \$197,072 to CCC Equities, LLC to be used in the discretion of Fensterman;
- c) \$1,595,368.32 into a control account in the name of HBL SNF.

42. Despite repeated requests since 2015, Fensterman, Nicholson, Congress, and CCCE have failed or refused to provide an accounting of the use of the predevelopment and discretionary funds paid to them.

43. In consideration for the \$2,200,000 contribution to WPHP, WPHP agreed that these funds constituted a loan to WPHP to be repaid to HBL SNF, LLC.

44. No provision was made for the payment of interest on the loan notwithstanding that WPHP had the use of such funds since 2015.

45. WPHP agreed to repay the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") in the amount of \$1,500,000 for the Project and by giving HBL SNF, LLC a future credit against Lease payments.

46. When advancing these funds to Fensterman, Nicholson, CCC Equities and Congress, the Jozefovic Team anticipated that the Facility would be delivered in September 2017.

47. The Facility was not delivered until December 2019.

48. Despite repeated requests, WPHP has never provided an accounting for purchases of the required FF&E or any documentation evidencing repayment of \$1,500,000 of the loan amount to HBL SNF, LLC.

49. In the absence of such an accounting, HBL SNF, LLC cannot determine how much of its loan amount, if any, has been repaid and how much of the remaining loan balance should be credited to current Lease payments.

50. In addition, accrued interest on the \$2,200,000 loan must be calculated from November 2015 and either paid to HBL SNF, LLC or credited to payments due under the Lease.

51. The Development Agreement required that the Project be substantially completed within twenty-two (22) months or before September 2017.

52. The plaintiff breached its obligations to HBL SNF, LLC by failing to complete the Project until December 2019.

53. The delay in completing the Project caused HBL SNF, LLC to lose substantial revenue.

54. In addition, by delivering the Project in December 2019, HBL SNF, LLC encountered market conditions during its start-up phase in 2020 caused by the COVID-19 pandemic which adversely affected HBL SNF LLC's operations as it has nursing homes throughout the region.

55. HBL SNF, LLC would not have encountered these adverse financial conditions but not for the delay caused by plaintiff and third-party defendants.

56. In addition to the Project being completed more than two (2) years late, plaintiff and third-party defendants delivered the Project well over budget.

57. The Development Agreement required the plaintiff to enter into a construction contract with Congress and to secure a 100% performance bond to guarantee the performance of the construction contract.

58. However, unbeknownst to HBL SNF, LLC, Congress could not secure a performance bond.

59. Fensterman and Nicholson never disclosed to HBL SNF, LLC or any of its principals that Congress could not obtain a bond.

60. As a result, WPHP entered into a contract without approval or consent from HBL SNF, LLC for a creation of a joint venture agreement with a third-party contractor.

61. The joint venture, among other reasons, added substantial costs to the Project.

62. These substantial additional costs exceeded the capital expenditures approved by NYSDOH and are not reimbursable through NYSDOH.

63. Upon information and belief, Congress's inability to secure the performance bond is related to certain judgments taken against its principal Nicholson arising from claims for diversion of project funds in a skilled nursing project located in Milwaukee, Wisconsin dating back to 2015, the time when the Jozefovic Team advanced monies to Nicholson and Congress.

64. Neither Fensterman nor Nicholson disclosed these adverse proceedings to the Jozefovic Team.

65. In fact, Nicholson was adjudged to have committed conversion and civil theft in the amount of \$1,903,452, and that judgement was affirmed on appeal to the Seventh Circuit Court of Appeals.

66. The Development Agreement required that plaintiff and third-party defendants deliver the Project at the costs approved by NYSDOH.

67. Only in the event of a change order, authorized by HBL SNF, LLC, would HBL SNF, LLC have responsibility for any cost higher than the cost approved by the NYSDOH.

68. There were no approved change orders.

- 69. The approved Project cost is \$57,000,000.
- 70. The plaintiff and third-party defendants caused the Project to exceed the approved costs by more than \$5,000,000.
- 71. The plaintiff and third-party defendants breached their obligations to HBL SNF, LLC under the Development Agreement by causing the Project to be over budget.
- 72. As a result, HBL SNF, LLC is not eligible for reimbursement of its rent payments as originally intended - a loss of eligibility that will cause substantial harm to HBL SNF, LLC.
- 73. Given these costs overruns and the loss of eligibility for reimbursement, the Lease is unenforceable.
- 74. As part of the “turn-key” delivery of the Project, plaintiff was obligated to provide permanent financing for the Project on the terms of the HUD insured loan submitted by plaintiff as part of the Project approved by NYSDOH.
- 75. The plaintiff and third-party defendants have failed to provide such permanent financing and are in breach of the Development Agreement and the Lease.
- 76. In connection with the permanent financing, the plaintiff and third-party defendants were required to demonstrate sufficient equity invested in the Project for HUD or any other lender of permanent financing to grant a thirty (30) year loan to the Project.
- 77. Plaintiff and third-party defendants have failed to demonstrate sufficient equity in the Project.
- 78. Upon information and belief, Fensterman procured financial contributions from individual third parties who contributed capital to CCCE to meet the equity requirement.
- 79. Although this capital is required to be and has, in fact, been represented by Fensterman to be in the nature of equity, upon information and belief, these contributions from

individual third-parties are loans at high rates of interest which are overdue as a result of the Project delays.

80. Fensterman, CCCE, and plaintiff have caused additional financial burden to the Project and have attempted to pass along to HBL SNF, LLC and the Jozefovic Team these higher interest costs.

81. The Project cost overruns and the higher finance costs due to the delay in delivering the Project, together with the lack of sufficient equity, have prevented the Project from securing permanent financing.

82. The plaintiff and third-party defendants have advised HBL SNF, LLC that they have initiated this lawsuit because they are in default of their current loan agreements.

83. As of this date, plaintiff and third-party defendants have been unable to provide to the Jozefovic Team an accurate Project accounting of Project expenditures and have refused to provide information concerning the Project financing.

84. As of this date, plaintiff and third-party defendants have been unable to procure the HUD insured financing which they represented they could secure and is required by NYSDOH Project approval.

85. As of this date, the Project does not comply with the approval issued by the NYSDOH.

86. As a result of the failure to deliver the Project on the terms approved by NYSDOH, HBL SNF, LLC cannot be reimbursed for the cost of the Facility as intended by the Development Agreement and the Lease and HBL SNF, LLC and its principals have suffered financial harm as a result.

87. Throughout the development process, WPHP, Fensterman, Nicholson and Congress have made false representations to the Jozefovic Team and have taken adverse actions which have adversely affected the business of HBL SNF, LLC.

**AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST WPHP,  
CCCE, CONGRESS, AND FENSTERMAN  
(DEMAND FOR ACCOUNTING)**

88. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “87” with the same force and effect as if fully set forth herein.

89. HBL SNF, LLC, Lizer Jozefovic and Mark Neuman had a trust-based relationship with Fensterman, Nicholson, and WPHP.

90. Given that relationship, HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman advanced monies to WPHP and Fensterman prior to commencement of the Project in order to allow the Project to proceed.

91. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman are entitled to an accounting of the use of the funds advanced for the Project.

**AS AND FOR A SECOND CAUSE OF ACTION AS AGAINST WPHP  
(PAYMENT OF INTEREST)**

92. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “91” with the same force and effect as if fully set forth herein.

93. HBL SNF, LLC is entitled to imputed interest on the \$2,200,000 made to WPHP loan from November 2015 to present.

**AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST WPHP  
(BREACH OF CONTRACT)**

94. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “93” with the same force and effect as if fully set forth herein.

95. WPHP breached the Development Agreement and the Lease.

96. As a result of such breach, HBL SNF, LLC has been damaged by the loss of reimbursable capital expenditures and has incurred other costs due to the nonperformance of WPHP.

97. In addition, HBL SNF, LLC has lost funds and continues to lose revenues as a result of Project delays.

**AS AND FOR A FOURTH CAUSE OF ACTION  
AS AGAINST FENSTERMAN AND NICHOLSON  
(FRAUD IN THE INDUCEMENT)**

98. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “97” with the same force and effect as if fully set forth herein.

99. Third-party defendants Fensterman and Nicholson fraudulently induced HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman to enter into the Development Agreement, the Lease, and the Guaranty.

100. Fensterman and Nicholson misrepresented the Project costs.

101. Fensterman and Nicholson misrepresented their ability to secure permanent HUD financing.

102. Fensterman and Nicholson misrepresented their ability to complete the Project.

103. Fensterman misrepresented the capital contributions made to CCCE to satisfy the equity requirement for the Project.

104. Fensterman and Nicholson failed to disclose the claimant civil proceeding against Nicholson for civil theft.

105. By reason of such fraud in the inducement, Defendants Lizer Jozefovic and Mark Neuman have no obligations under the guarantees.

106. By reason of such fraud in the inducement, HBL SNF, LLC has suffered financial damages.

**AS AND FOR A FIFTH CAUSE OF ACTION  
AS AGAINST ALL THIRD-PARTY DEFENDANTS  
(BAD FAITH)**

107. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “106” with the same force and effect as if fully set forth herein.

108. As alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.

109. As a result of such bad faith dealings, HBL SNF, LLC has suffered damages in an amount not less than \$15,000,000.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(FRAUD)**

110. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “109” with the same force and effect as if fully set forth herein.

111. The misrepresentations and non-disclosures by Fensterman and Nicholson and third-party defendants constitute fraud.

112. WPHP, Fensterman and Nicholson new such statements were false.

113. WPHP, Fensterman and Nicholson made such statements to deceive HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman.

114. HBL SNF, LLC has been damaged by such fraudulent conduct.

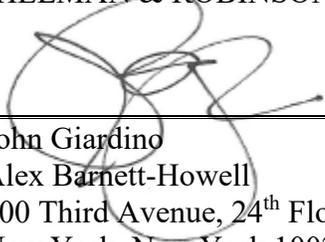
**WHEREFORE**, Defendants and Third-Party Plaintiffs deny generally and specifically that it committed any wrongdoing and demand:

- 1) A determination that the amount of rent payable under the Lease be modified by any sums not reimbursable by the NYSDOH and offset by prior payments and accrued interest;
- 2) The Guaranty Agreements be nullified;
- 3) Monetary damages in an amount to be determined;
- 4) Attorneys' fees, and
- 5) Such other relief as the Court deems appropriate.

Dated: New York, New York

November 5, 2020

MICHELMAN & ROBINSON, LLP

By:   
 \_\_\_\_\_  
 John Giardino  
 Alex Barnett-Howell  
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*Attorneys for Defendants*

**VERIFICATION BY ATTORNEY**

JOHN GIARDINO, being an attorney duly admitted to practice in the courts of New York, affirms the following under penalties of perjury:

I am an attorney for Defendants HBL-SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARK NEUMAN, in the above entitled action and have read the foregoing Verified Answer and know the contents thereof; that the same is true upon information and belief, and that as to those matters I believe them to be true.

I further state that the grounds of my belief as to all matters in the Verified Answer are based upon the file maintained by my office and conference and telephone conferences with Defendants. This verification is made pursuant to the provisions of RPAPL 741 because Defendants was not available to sign the same at the time the Verified Answer was prepared.

Dated: New York, New York

November 5, 2020

  
\_\_\_\_\_  
JOHN GIARDINO, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-vs-

HBL SNF, LLC, LIZER JOZEFOVIC A/KIA LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants.

-----X

**MEMORANDUM OF LAW  
IN OPPOSITION TO MOTION FOR DEFAULT JUDGMENT AND IN SUPPORT OF  
CROSS-MOTION FOR AN EXTENSION OF TIME TO RESPOND**

**MICHELMAN & ROBINSON, LLP**

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**I. PRELIMINARY STATEMENT**

Defendants HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman (collectively, “Defendants”) respectfully submit this Memorandum of Law and accompanying Affirmation in opposition to White Plains Healthcare Properties I, LLC’s (“Plaintiff”) motion for default judgment, dated October 28, 2020 (the “Motion”), or in the alternative, request that the Court grant Defendants’ cross-motion for an Order pursuant to CPLR § 2004 and 3012(d) holding that Defendants’ verified answer with affirmative defenses, counterclaims, and third-party complaint, dated November 5, 2020 (the “Answer”), was timely filed, and for sanctions pursuant to 22 NYCRR 130-1.1.

The facts are not complicated. Plaintiff filed and served a summons and complaint on Defendants. Before the time to file a responsive pleading had expired, counsel for Defendants, Michelman and Robinson LLP (“M&R”), contacted counsel for Plaintiff, Alfred E. Donnellan, Esq. at DelBello Donnellan Weingarten Wise & Wiederkehr LLP (“Mr. Donnellan”) and requested a brief extension until November 5, 2020. Mr. Donnellan consented to an extension, with the requirement that Defendants abide by certain conditions.

On November 5, 2020, in reliance on Mr. Donnellan’s word, Defendants filed the Answer which complied with all of Plaintiff’s conditions. Now, Plaintiff duplicitously claims that it never agreed to extend the time to answer, and that Defendants are in default. Plaintiff’s argument is directly contradicted by the email record, which clearly establishes that Plaintiff offered an extension under certain conditions and that Defendants accepted Plaintiff’s offer and filed the Answer in reliance on Plaintiff’s statements and in compliance with Plaintiff’s conditions. Moreover, even if Plaintiff were to allege that it secretly withdrew consent, Plaintiff would still not be entitled to a default judgment. Therefore, Defendants respectfully request that Plaintiff’s

motion be denied in its entirety, or in the alternative, grant Defendants’ cross-motion and find that the Answer was timely filed, and grant Defendants appropriate costs and fees for dealing with this frivolous and harassing Motion.

**II. STATEMENT OF FACTS**

On September 18, 2020, Plaintiff filed a summons and complaint with five exhibits. Dkt. Nos. 1-6. On October 7, 2020, Plaintiff filed an affidavit claiming to have served the summons and complaint on all Defendants on between the dates of September 22 and October 1, 2020. Dkt. No. 8.

On October 6, 2020, M&R contacted Mr. Donnellan and requested that the time to file a responsive pleading be extended until November 5, 2020. Affirmation of John Giardino in Opposition to the Motion for Default Judgment (“Giardino Aff.”) ¶ 6. Mr. Donnellan responded on the same day, agreeing to extend the time to file a responsive pleading under certain conditions. Giardino Aff. ¶ 9. Specifically, Mr. Donnellan agreed to extend the time to respond to November 5, 2020 if Defendants agreed to:

- (1) Pay the “[b]ase rent” by November 1, 2020, “without prejudice to any claims by any party”;
- (2) “Consent to jurisdiction and venue”; and
- (3) Use the extension “for a responsive pleading not a motion to dismiss.”

Giardino Aff. ¶ 9. Defendants accepted Plaintiff’s conditions and performed to the letter:

- (1) On November 1, 2020, Defendants paid the base rent;
- (2) On November 5, 2020, Defendants filed the Answer; and
- (3) The Answer, as Plaintiff had requested, did not contest “jurisdiction and venue,” and was “not a motion to dismiss.”

Giardino Aff. ¶¶ 12, 14, 16-17.

However, Defendants were surprised to discover that on October 28, 2020, Plaintiff had filed the Motion, requesting a premature default judgment. Giardino Aff. ¶ 18; Dkt. Nos. 9-19. In support of the Motion, Mr. Donnellan claimed that there never was an agreement to extend the time to respond to the Complaint. Giardino Aff. ¶ 19; Dkt. No. 10, ¶ 9.

Defendants cannot recall another matter in which opposing counsel moved for a default judgment after consenting to an extension of time, or where a plaintiff has, without providing notice to actively participating counsel, moved for a default judgment less than 30 days after service of the complaint. Giardino Aff. ¶¶ 21-22. Mr. Donnellan has falsely represented to the Court that the parties did not agree to an extension, and Mr. Donnellan's actions show a complete lack of respect for the Court and all expectations of professional courtesy and collegiality. Giardino Aff. ¶ 26. The Motion is simply a frivolous and harassing tactic designed to waste judicial resources and inconvenience Defendants. Giardino Aff. ¶ 25.

### **III. LEGAL ARGUMENT**

#### **1. The Court Should Deny the Motion for Default Judgment**

##### **A. Legal Standard**

CPLR § 3215(a) states, in relevant part:

Default and entry. When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him.

However, courts must deny motions for default judgment if the defendant can show “a reasonable excuse” for the delay and “a potentially meritorious defense.” *Brice v. City of New York*, 33 N.Y.S.3d 316, 317 (2016); *Allstate Ins. Co. v. Austin*, 851 N.Y.S.2d 375, 376 (2008).

As it is “the established policy of this State that disputes be resolved on their merits,” courts have interpreted the grounds for challenging default judgments broadly and generously. *Murray v. Matusiak*, 669 N.Y.S.2d 278, 280 (1998); *Cappel v. RKO Stanley Warner Theaters, Inc.*, 403 N.Y.S.2d 31, 33 (1978) (“It is the general policy of the courts to permit actions to be determined by trials on the merits wherever possible and for that purpose a liberal policy is adopted ...in furtherance of justice to the end that the parties may have their day in court to litigate the issues.”).

Therefore, “reasonable excuse” is found when there is a valid explanation of the delay and defendants have been actively involved in the matter. *See, e.g., Fried v. Jacob Holding, Inc.*, 970 N.Y.S.2d 260, 263 (2013); *Action Lawn & Landscaping Inc. v. E. Glenville Fire Dist.*, 678 N.Y.S.2d 826, 828 (1998) (finding “reasonable excuse” where “defendant acted promptly” and defense counsel had “prior contacts with plaintiffs’ attorneys...which demonstrated defendant’s intention not to default on such matters.”). Likewise, a “potentially meritorious defense” is shown by contesting the plaintiff’s claims and damages, as well as through the submission of a responsive pleading. *See Brice*, 33 N.Y.S.3d at 318; *see also Action Lawn*, 678 N.Y.S.2d at 828 (1998) (“Defendant also made a prima facie showing of legal merit contesting both liability and the amount of damages sought by plaintiffs.”) (citations omitted).

Courts must also consider other factors, including, but not limited to, whether “prejudice has resulted from the delay,” or if “there is evidence of willfulness on the defaulting defendant’s part.” *Brice*, 33 N.Y.S.3d at 317–18; *Sippin v. Gallardo*, 732 N.Y.S.2d 62, 63 (2001) (“In this case there a relatively short period of delay, a possible meritorious defense, no claim of prejudice to the plaintiffs, and no willfulness by the defendants.”); *LaValle v. Astoria Const. & Paving Corp.*, 697 N.Y.S.2d 605, 606 (1999) (finding that a delay of more than a year was not prejudicial).

Finally, the moving party must present proof setting forth the facts constituting the claim, the default, and the amount due. Specifically, CPLR § 3215(f) states, in relevant part:

Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint...and proof of the facts constituting the claim, the default and the amount due by affidavit made by the party.

In short, default judgments are not “rubber-stamped” by courts based solely upon a failure to appear, as the moving party must still submit valid evidence in support of their claims. *Joosten v. Gale*, 514 N.Y.S.2d 729, 732 (1987) (“[S]ome proof of liability is also required to satisfy court as to prima facie validity of uncontested cause of action, and plaintiff failed to meet even that minimal standard.”).

**B. Defendants Filed An Answer In Accordance With Plaintiff’s Agreement For An Extension Of Time**

Upon receiving the summons and complaint, Defendants immediately contacted Plaintiff to request an extension before the time to file a responsive pleading had expired. *Giardino Aff.* ¶¶ 6-7. Plaintiff responded by consenting to an extension of time to answer, so long as Defendants agreed to certain conditions. *Giardino Aff.* ¶ 9. Defendants agreed to those conditions and performed, *i.e.*, by paying rent, filing the Answer by November 5, 2020, and by not filing a motion to dismiss or contesting jurisdiction and venue. *Giardino Aff.* ¶¶ 12-17.

This should be the end of the Motion. Defendants acted diligently to obtain a brief extension, and then filed their answer within the agreed-upon time and in accordance with Plaintiff’s conditions. Plaintiff consented to the extension, never withdrew the extension, never informed Defendants that it was preparing to file a motion for default judgment and has no basis for withdrawing the extension after the fact.

Defendants regularly request and grant extensions to opposing counsel under similar circumstances without requiring sworn statements or judicial intervention. Instead, Defendants act honestly and expect the same in return, as both a professional courtesy and as officers of the court. Here, Mr. Donnellan consented to extend the time to file an answer, and Defendants performed in accordance with Plaintiff’s conditions. If Mr. Donnellan was uncertain about this issue, he could have contacted Defendants or provided notice of Plaintiff’s intent to seek a default judgment. Mr. Donnellan did neither, preferring to ambush Defendants with the Motion. As such, Defendants’ respectfully request that the Court hold Mr. Donnellan to his word and find Defendants answer was timely filed according to the extension that Plaintiff provided.

**C. In The Alternative, Defendants Have Shown Good Cause For Denying The Motion For Default Judgment**

To the extent that the Court finds that Plaintiff retroactively withdrew the extension of time for Defendants to file an answer, the Motion must still be denied. Courts do not automatically grant default judgments, as opposing parties must be given the opportunity to explain any delay and demonstrate that a meritorious defense exists. *See Settles v. OneWest Bank*, 186 A.D.3d 1551 (N.Y. App. Div. 2020). Time and time again, courts have shown an overwhelming preference for matters to be decided on their merits, not by motions for default. Courts must also weigh whether the opposing party defaulted willfully and if the moving party would be prejudiced by a denial. *See Fried v. Jacob Holding, Inc.*, 970 N.Y.S.2d 260, 263 (2013).

Here, Defendants have demonstrated a more-than reasonable excuse for any delay. As discussed *supra*, Plaintiff extended the time for Defendants to answer until November 5, 2020, so long as Defendants agreed to certain conditions. Giardino Aff. ¶ 11. Defendants agreed and, in reasonable reliance upon Plaintiff’s representations and in accordance with Plaintiff’s conditions, filed the Answer. Giardino Aff. ¶ 14. Defendants were under the false impression that Mr.

Donnellan could be taken at his word and had no way of knowing that Plaintiff’s would instead move for a surprise default judgment. *Giardino Aff.* ¶¶ 18-20. Therefore, any theoretical delay is excusable under these circumstances.

Second, Defendants have meritorious defenses which must be head. As described in detail in the Answer, Defendants contest both Plaintiff’s claims for liability and damages, have provided ten affirmative defenses, and have substantial counterclaims against Plaintiff and other third-party defendants. *Goldman v. City of New York*, 731 N.Y.S.2d 212, 214 (2001) (“The proposed verified answer...was sufficient to demonstrate the existence of a potentially meritorious defense.”); *see also Harris v. City of New York*, 817 N.Y.S.2d 99, 102 (2006). This matter contains serious issues which must be resolved through litigation, and as Plaintiff’s claims are fatally flawed, a premature default judgment is inapplicable.

Third, courts have reiterated, time and time again, that default judgments should only be granted in the most extreme circumstances, as cases that can be resolved on their merits must be resolved on their merits. *Jennings v. Queens Tribune Publications, LLC*, 956 N.Y.S.2d 528, 529 (2012). The issues between Plaintiff and Defendants are highly contested, and as a substantial amount of property and money are at risk, the parties deserve to have their day in court.

Finally, Defendants did not willfully default and there is no conceivable prejudice to Plaintiff. *Zeccola & Selinger, LLC v. Horowitz*, 931 N.Y.S.2d 536 (2011). Defendants have been fully engaged throughout and are diligently opposing Plaintiff’s claims. Any delay, to the extent it theoretically exists, does not have any impact on Plaintiff’s claims or damages.

**D. Plaintiff Has Failed to Provide Sufficient Proof to Obtain a Default Judgment**

Plaintiffs cannot claim a default judgment at will. Courts will not “rubber stamp” default judgments—the moving party must provide sufficient evidence in support of the alleged claims

and damages. *Joosten*, 514 N.Y.S.2d at 731–32. Therefore, to succeed on a motion for default judgment, the plaintiff must demonstrate some external documents for confirming the allegations. *St. Paul Fire & Marine Ins. Co. v. A.L. Eastmond & Sons, Inc.*, 664 N.Y.S.2d 448, 448 (1997). Plaintiff has failed to do so here.

Plaintiff has made vague and insubstantial claims against Defendants. In support of these claims, Plaintiff has attached nothing more than a complaint, a few base documents, and a conclusory, self-serving affirmation. *Tri-State Consumer Ins. Co. v. Brown*, 839 N.Y.S.2d 437 (Dist. Ct. 2007) (“To satisfy the requirements of CPLR § 3215(f) the verified complaint must, at a minimum, allege enough facts to enable a court to determine that a viable cause of action exists.”) (citations omitted). Plaintiff’s Motion and attached filings are facially insufficient to obtain a default judgment and cannot justify an incredible claim of \$115,517,567.01 in damages.

As Plaintiff has not provided sufficient evidence to prove it is entitled to a default judgment, the Motion must be denied regardless.

**2. The Court Should Grant Defendants’ Cross-Motion And Accept The Answer As Timely Filed**

**A. Legal Standard**

CPLR § 2004 states, in relevant part:

Extensions of time generally. Except where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed.

*See, e.g., Felix v. Thomas R. Stachecki Gen. Contracting, LLC*, 107 A.D.3d 664, 666, 966 N.Y.S.2d 494, 496 (2013); *Spence v. Davis*, 31 N.Y.S.3d 539, 540 (2016); *Hendeles v. Preferred Contractors Ins. Co. RRG, LLC*, 167 A.D.3d 581, 582, 89 N.Y.S.3d 711, 713 (2018) (“Given the

strong public policy favoring the resolution of cases on the merits, the Supreme Court has discretion to permit the filing of an untimely answer where the record demonstrates that there was only a short delay in appearing or answering the complaint, that there was no willfulness on the part of the defendant, that there would be no prejudice to the plaintiff, and that a potentially meritorious defense exists.”)

Additionally, CPLR § 3012(d) states, in relevant part:

(d) Extension of time to appear or plead. Upon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default.

Therefore, as part of considering a motion for default judgment, courts will often accept a late filing under either section. *See Yuxi Li v. Caruso*, 77 N.Y.S.3d 685, 687 (2018); *Fischer v. City of New York*, 1030, 46 N.Y.S.3d 916, 917 (2017); *Kim v. Strippoli*, 42 N.Y.S.3d 245, 246 (2016).

**B. Defendants Are Entitled To An Extension**

Out of an overabundance of caution, Defendants respectfully request that the Court find that Defendants’ answer, filed on November 5, 2020, was timely filed. For all the reasons stated above, Defendants filed the Answer in good faith reliance on Mr. Donnellan’s extension. To the extent any delay existed, it was accidental and extremely brief. Moreover, there is no prejudice to the Plaintiff, and Defendants have raised potentially meritorious defenses through their Answer.

**3. Plaintiff Must Be Sanctioned For Its Frivolous And Harassing Conduct**

**A. Legal Standard**

Courts may “award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney’s fees, resulting from frivolous conduct.” 22 NYCRR

§ 130-1.1(a). Conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false. 22 NYCRR § 130-1.1(c).

Sanctions pursuant to NYCRR § 130-1.1 further judicial interests, fairness, and equity by deterring vexatious litigation and preventing the waste of judicial resources. *Mechta v. Mack*, 156 A.D.2d 747, 748 (2d Dep’t 1989) (granting sanctions as a result of actions that constitute “a misuse of and a burden on judicial resources” and which place a “burden on the defendants in time and costs”). Sanctions are especially warranted when a party attempts to deceive the Court or engages in disingenuous conduct. *See Curcio v. J.P. Hogan Coring & Sawing Corp.*, 303 A.D.2d 357, 358–59 (2d Dep’t 2003) (awarding fees and costs due to the “the assertion of misleading factual statements”); *see also Bd. of Managers of Foundry at Wash. Park Condo. v. Foundry Dev. Co.*, 40 Misc. 3d 1234(A), 975 N.Y.S.2d 707 (Sup. Ct. Orange Co. 2013), *aff’d*, 137 A.D.3d 1181 (2d Dep’t 2016).

**B. Defendants Are Entitled To Sanctions Due To Plaintiff’s False Statements and Frivolous Motion Practice**

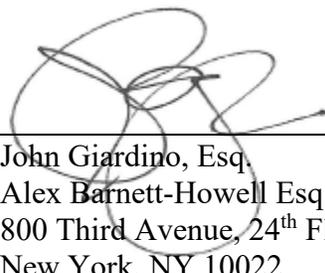
As described in detail above, Plaintiff has no legitimate purpose in filing the Motion. Plaintiff granted Defendants an extension to file a responsive pleading, and now deliberately misrepresents that fact. The Motion will only serve to waste judicial resources, already limited due to COVID-19, and to drive up Defendants’ costs. Given that this matter has barely begun, and Plaintiff is already making sworn statements to the Court that are false, Defendants request an immediate award of sanctions to prevent this and future frivolous and unethical conduct.

**IV. CONCLUSION**

For the foregoing reasons, Defendants HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman respectfully request that the Court deny White Plains Healthcare Properties I, LLC’s motion for default judgment, or in the alternative, grant Defendants HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman’s cross-motion for an Order pursuant to CPLR § 2004 and 3012(d) holding that Defendants’ answer was timely filed, and for sanctions pursuant to 22 NYCRR § 130-1.1.

Dated: New York, New York  
November 5, 2020

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_  
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*Attorneys for Defendants HBL SNF,  
LLC, Lizer Jozefovic, and Mark Neuman*



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-vs-

HBL SNF, LLC, LIZER JOZEFOVIC A/KIA LIZER  
JOZOFOVIC and MARK NEUMAN,

**[PROPOSED] ORDER**

Defendants.  
-----X

Upon consideration of Defendants HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman’s Notice of Cross-Motion, Memorandum of Law, Affirmation of John Giardino, Esq., and the exhibits annexed thereto, it is on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, hereby

**ORDERED** that Plaintiff White Plains Healthcare Properties I, LLC’s (“Plaintiff”) motion for default judgment, dated October 28, 2020 is **DENIED**;

**IT IS FURTHER ORDERED**, pursuant to Defendants’ Cross-Motion, dated November 5, 2020, that Defendants’ verified answer with affirmative defenses, counterclaims, and third-party complaint, dated November 5, 2020, shall be deemed timely filed is **GRANTED**; and

**IT IS FURTHER ORDERED** that Plaintiff be sanctioned in the amount of \$ \_\_\_\_\_; and

**IT IS FURTHER ORDERED** that Plaintiff shall pay to John Giardino, Esq., counsel fees in the amount of \$ \_\_\_\_\_ within thirty (30) days from the date of this Order.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon.  
JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

- against -

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants.

Index No. 60278/2020

STIPULATION

IT IS HEREBY STIPULATED, AGREED AND CONSENTED TO by and between the respective attorneys herein as follows:

Plaintiff's motion for an Order, pursuant to CPLR §3215, for default judgment (Motion Sequence #1), and Defendants Cross Motion for an Order pursuant to CPLR § 2004 and 3012(d) holding that Defendants' verified answer with affirmative defenses, counterclaims, and third-party complaint, dated November 5, 2020, was timely filed, for sanctions pursuant to 22 NYCRR 130-1.1, are hereby withdrawn.

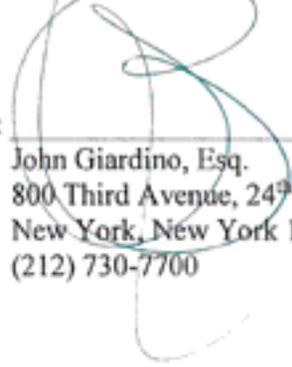
This Stipulation may be executed in counterparts and by facsimile transmission which shall be deemed an original, and when fully executed may be filed with the Court without further notice.

Dated: White Plains, New York  
November 9, 2020

DEL BELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
Attorneys for Plaintiff

By:   
Alfred E. Donnellan, Esq.  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Tel.: (914) 681-0200

MICHELMAN & ROBINSON LLP  
Attorneys for Defendants

By:   
John Giardino, Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
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FILED: WESTCHESTER COUNTY CLERK 10/28/2020 03:25 PM

INDEX NO. 60278/2020

RECEIVED NYSCEF: 10/26/2020

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

Motion  
Withdrawn  
based on  
Stipulation  
dated Nov. 9, 2020  
NYSCEF No. 29.  
Decker  
Walt  
J.S.R.

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
- against -  
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants.  
11/10/2020

Index No. 60278/2020  
NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed Affirmation of Default of Alfred E. Donnellan Esq., dated October 28, 2020, and the exhibits annexed thereto, plaintiff, White Plains Healthcare Properties I, LLC, will move this Court, located at 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, in the Commercial Division, before the Judge to be assigned, on November 12, 2020, at 9:30 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to CPLR § 3215 granting a default judgment in plaintiff's favor against defendant, HBL SNF, LLC as prayed for in the Verified Complaint in the amount of \$115,517,567.01, with interest thereon continuing to accrue at the statutory rate, upon ground that defendant, HBL SNF, LLC, has failed to appear timely in the action and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that opposition papers shall be served upon the undersigned at least seven (7) days prior to the return date of this motion pursuant to CPLR §2214(b).

FILED: WESTCHESTER COUNTY CLERK 10/28/2020 03:25 PM

INDEX NO.: 60278/2020

RECEIVED NYSCEF: 10/28/2020

Dated: White Plains, New York  
October 28, 2020

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP

By:   
Alfred E. Donnellan, Esq.  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Tel.: (914) 681-0200

-and-

ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, FORMATO, FERRARA, WOLF &  
CARONE, LLP  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
Tel: (914) 607-7010

*Attorneys for White Plains Healthcare  
Properties I, LLC*

To: HBL SNF, LLC  
537 Route 22  
Purdys, New York 10578

Lizer Jozefovic a/k/a Lizer Jozefovic  
53 Mariner Way  
Monsey, New York 10952

Mark Neuman  
22 Lyncrest Drive  
Monsey, New York 10952

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**60278/2020 - Westchester County Supreme Court**

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

**Narrow By Options**

Document Type:   Filed By:

Motion Info:   Filed Date:

Document Number:

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Sort By: Doc #

#	Document	Filed By	Status
1	<a href="#">SUMMONS + COMPLAINT</a>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
2	<a href="#">EXHIBIT(S)</a> - 1 <i>Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
3	<a href="#">EXHIBIT(S)</a> - 2 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
4	<a href="#">EXHIBIT(S)</a> - 3 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
5	<a href="#">EXHIBIT(S)</a> - 4 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
6	<a href="#">EXHIBIT(S)</a> - 5 <i>Notice of Default</i>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
7	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> <i>Affidavit of service upon defendant HBL SNF Inc</i>	<a href="#">Coleman, W.</a> Filed: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>

#	Document	Filed By	Status
8	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> affidavits of service of summons and complaint - all defendants	<a href="#">Coleman, W.</a> Filed: 10/07/2020 Received: 10/07/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
9	<a href="#">NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
10	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #1) Affirmation of Default of Alfred E. Donnellan	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
11	<a href="#">EXHIBIT(S)</a> - 1 (Motion #1) Complaint <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
12	<a href="#">EXHIBIT(S)</a> - 2 (Motion #1) Affidavit of Service	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
13	<a href="#">EXHIBIT(S)</a> - 3 (Motion #1) Confirmation Notices	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
14	<a href="#">EXHIBIT(S)</a> - 4 (Motion #1) Additional Notice	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
15	<a href="#">ORDER ( PROPOSED )</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
16	<a href="#">BILL OF COSTS</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
17	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
18	<a href="#">RJI -RE: NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
19	<a href="#">ADDENDUM - COMMERCIAL DIVISION (840C)</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
20	<a href="#">COURT NOTICE</a>	Court User Filed: 10/29/2020 Received: 10/29/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
21	<a href="#">ANSWER WITH COUNTER-CLAIM(S)</a>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
22	<a href="#">NOTICE OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020	<b>Processed</b>

	Filed: 11/05/2020 Received: 11/05/2020	Confirmed Payment Receipt
23 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
24 <a href="#">EXHIBIT(S)</a> - A (Motion #2) <i>Email Correspondence</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
25 <a href="#">EXHIBIT(S)</a> - B (Motion #2) <i>Proof of November Rent Payment</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
26 <a href="#">EXHIBIT(S)</a> - C (Motion #2) <i>Filed Answer</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
27 <a href="#">MEMORANDUM IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
28 <a href="#">ORDER ( PROPOSED )</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
29 <a href="#">STIPULATION - WITHDRAWING MOTION/ORDER TO SHOW CAUSE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 11/09/2020 Received: 11/09/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
30 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #1) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
31 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #2) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
32 <a href="#">JOINT ONE PAGE STATEMENT OF FACTS &amp; PARTIES CONTENTIONS</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
33 <a href="#">EXHIBIT(S)</a> - 1 <i>Copy of Pleadings</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
34 <a href="#">PRELIMINARY CONFERENCE ORDER (PROPOSED)</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	*** Pending *** <a href="#">Confirmation Notice</a>
35 <a href="#">EXHIBIT(S)</a> - 1 <i>ADR Attorney Certification for Alfred Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
36 <a href="#">ORDER - PRELIMINARY CONFERENCE</a>	Court User Filed: 11/13/2020 Received: 11/13/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
37 <a href="#">COMPLAINT (AMENDED)</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

	<i>Amended Verified Complaint</i>	Filed: 11/30/2020 Received: 11/30/2020	<a href="#">Confirmation Notice</a>
38	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended and Restated Operating Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
39	<a href="#">EXHIBIT(S)</a> - 2 <i>Jozefovic Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
40	<a href="#">EXHIBIT(S)</a> - 3 <i>Neuman Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
41	<a href="#">EXHIBIT(S)</a> - 4 <i>Jozefovic Security Agreement Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
42	<a href="#">EXHIBIT(S)</a> - 5 <i>Letter of Intent Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
43	<a href="#">EXHIBIT(S)</a> - 6 <i>Notice of Default Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
44	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> <i>Letter to Judge Walsh requesting pre motion conference</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
45	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
46	<a href="#">EXHIBIT(S)</a> - 2 <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
47	<a href="#">EXHIBIT(S)</a> - 3 <i>Compared version of amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
48	<a href="#">ANSWER TO THIRD PARTY COMPLAINT</a> <i>Verified Answer to Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
49	<a href="#">REPLY TO COUNTERCLAIM(S)</a> <i>Verified Reply to Counterclaims</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
50	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 01/11/2021 Received: 01/11/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
51	<a href="#">NOTICE OF MOTION</a> (Motion #3) <i>to file Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
52	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

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	<a href="#">MOTION</a> (Motion #3) <i>Affirmation of Alfred E. Donnellan in Support of Motion to file Amended Complaint</i>	Filed: 01/26/2021 Received: 01/26/2021	<a href="#">Confirmation Notice</a>
53	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>Complaint with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
54	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
55	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Amended Compliant with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
56	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Redline version of Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
57	<a href="#">EXHIBIT(S)</a> - E (Motion #3) <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
58	<a href="#">EXHIBIT(S)</a> - F (Motion #3) <i>Security Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
59	<a href="#">EXHIBIT(S)</a> - G (Motion #3) <i>Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
60	<a href="#">EXHIBIT(S)</a> - H (Motion #3) <i>NY County Action Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
61	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
62	<a href="#">NOTICE OF MOTION</a> (Motion #4) *Corrected*	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
63	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #4) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
64	<a href="#">EXHIBIT(S)</a> - A (Motion #4) <i>Complaint</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
65	<a href="#">EXHIBIT(S)</a> - B (Motion #4) <i>Answer</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
66	<a href="#">EXHIBIT(S)</a> - C (Motion #4) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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**Redacted** per 22 NYCRR §202.5(e)  
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Received: 02/03/2021
- 68 [EXHIBIT\(S\)](#) - E (Motion #4)  
Temporary Certificate of Occupancy  
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Received: 02/03/2021
- 69 [EXHIBIT\(S\)](#) - F (Motion #4)  
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[Donnellan, A.](#) **Processed**  
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- 70 [EXHIBIT\(S\)](#) - G (Motion #4)  
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- 71 [MEMORANDUM OF LAW IN SUPPORT](#) (Motion #4)  
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- 72 [LETTER / CORRESPONDENCE TO JUDGE](#)  
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- 73 [MEMORANDUM OF LAW IN OPPOSITION](#) (Motion #3)  
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Received: 02/05/2021
- 74 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION](#) (Motion #3)  
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Received: 02/05/2021
- 75 [EXHIBIT\(S\)](#) - A (Motion #3)  
Collateral Assignment  
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Received: 02/05/2021

FILED: WESTCHESTER COUNTY CLERK 11/05/2020 06:58 PM

INDEX NO. 60278/2020

NYSCEF DOC. NO. 22

RECEIVED NYSCEF: 11/05/2020

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-vs-

HBL SNF, LLC, LIZER JOZEOVIC A/KIA LIZER  
JOZOFOVIC and MARK NEUMAN,

NOTICE OF CROSS-  
MOTION

ORAL ARGUMENT  
REQUESTED

Defendants,

-----X

*Cross-motion  
withdrawn  
Based on  
Stipulation  
dated Nov. 9, 2020*

*NYSCEF Doc.*

*No. 29.*

*Dubhan  
Walsh  
J.S.C.*

PLEASE TAKE NOTICE that upon the annexed Memorandum of Law, dated November 5, 2020, Affirmation of John Giardino, Esq., dated November 5, 2020, and the exhibits annexed thereto, Defendants HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman will move this Court, located at 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, in the Commercial Division, before Judge Walsh, on December 7, 2020, at 9:30 A.M., or as soon thereafter as counsel can be heard, for an Order pursuant to CPLR § 2004 and 3012(d) holding that Defendants' verified answer with affirmative defenses, counterclaims, and third-party complaint, dated November 5, 2020, was timely filed, for sanctions pursuant to 22 NYCRR 130-1.4, and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that opposition papers shall be served upon the undersigned at least seven (7) days prior to the return date of this motion pursuant to CPLR §2214(b)

FILED: WESTCHESTER COUNTY CLERK 11/05/2020 06:58 PM

INDEX NO. 60278/2020

NYSCEF DOC. NO. 22

RECEIVED NYSCEF: 11/05/2020

Dated: New York, New York  
November 5, 2020

MICHELMAN & ROBINSON, LLP

By:   
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Alex Barnett-Howell Esq.  
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New York, NY 10022  
(212) 730-7700  
jgiardino@mrlp.com  
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*Attorneys for Defendants HBL SNF,  
LLC, Lizer Jozefovic, and Mark Neuman*

To: Alfred E. Domellan, Esq.  
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*Attorneys for Plaintiff White Plains Healthcare Properties I, LLC*

**Alfred E. Donnellan**  
**Partner**  
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**WISE & WIEDERKEHR, LLP**

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STAMFORD, CT 06905  
(203) 298-0000

November 12, 2020

**Via NYSCEF**

Hon. Gretchen Walsh  
Westchester County Supreme Court  
111 Dr. Martin Luther King Jr. Boulevard  
White Plains, New York 10601

Re: **White Plains Healthcare Properties I, LLC vs. HBL SNF, LLC, et al.,  
Westchester County Supreme Court Index No. 60278/2020**

Dear Justice Walsh:

Our office represents Plaintiff White Plains Healthcare Properties I, LLC (“WPH Properties”). I submit jointly with counsel for the defendants HBL SNF, LLC (“HBL”), Lizer Jozefovic a/k/a Lizer Jozofovic (“Jozofovic”), and Mark Neuman (“Neuman”) (collectively the “Defendants”) the following joint statement of the case in advance of the Preliminary Conference scheduled for November 13, 2020.

**Plaintiff’s Contentions:**

WPH Properties, as landlord, contends that HBL, as tenant, is in default of a certain commercial lease for a new, state-of-the-art 160-bed skilled nursing facility constructed by WPH Properties (the “Facility”).

Among the multiple breaches of the terms of the lease alleged by WPH Properties are: HBL’s failure to pay rent; HBL’s failure to pay real estate taxes; HBL’s failure to pay utility deposits; HBL’s failure to pay municipal maintenance escrows; HBL’s failure to pay utility charges; HBL’s failure to deliver certificates of insurance; HBL’s failure to pay late fees and costs; HBL’s failure to deliver an agreement with a certain funding group to allow WPH Properties to draw down on HBL’s credit line to pay rent to WPH Properties; HBL’s failure to deliver an unconditional letter of credit in the amount of \$3.7 million as security; HBL’s failure to deliver the additional security amount of \$1.6 million; HBL’s failure to provide certain monthly reporting, financial, and operational overviews; and, HBL’s failure to maintain working capital amounts, among others.

Upon HBL’s default, the lease provides that WPH Properties can terminate the lease and accelerate payment of all rent for the balance of the 30-year term. The accelerated rent, together with all other amounts due under the lease, total an amount of \$113,832,987.54 owed by HBL

plus attorneys' fees as provided in the lease. It is WPH Properties contention that it performed all its duties and HBL defaulted under the lease.

Subsequent to HBL's default, WPH Properties and HBL entered into a Letter of Intent to avoid termination of the lease whereby WPH Properties would sell the Facility to a Delaware Statutory Trust in which Jozofovic and Neuman would have 77.5 percent interest and WPH Properties would have 22.5 interest. WPH Properties alleges that HBL breached the LOI and the Facility was not sold causing additional damage, interest, and late charges on WPH Properties' related loans.

Jozofovic and Neuman each executed an absolute, unconditional and personal guaranty, which guaranties HBL's obligations under the lease and are enforceable without the necessity of any notice or demand. WPH Properties is also seeking to enforce the guarantees against Jozofovic and Neuman.

**Defendant's Contentions:**

Defendants deny WPH Properties' allegations of breach as they have proof of payment of the relevant rent, taxes, and utilities. Additionally, Defendants have asserted counterclaims and third-party claims, alleging that third-party defendants Howard Fensterman ("Fensterman") and William Nicholson ("Nicholson"), who acted as developers for the Facility and agreed to develop, finance, and own the Facility forming WPH Properties, fraudulently induced Defendants to enter into the lease by making material misrepresentations regarding the development, financing, and ownership of the Facility.

Defendants contend that Fensterman and Nicholson did not make required capital contributions necessary to complete the project as presented to Defendants. Defendants further allege that a certain development agreement entered into between HBL and WPH Properties is part of the transaction to develop and lease the Facility, which contemplated the delivery to Defendants of a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place. However, the facility was not completed on schedule, resulting in 26 months of delays causing Defendants to lose substantial revenue. Defendants further allege that Fensterman and Nicholson breached the development agreement by failing to obtain a necessary bond, failing to provide permanent financing, and by causing the development to be over budget, among others. As a result of the cost overruns and loss of eligibility for reimbursement of rent payments as originally intended, the lease is therefore unenforceable.

Defendants claim they made additional capital contribution pursuant to a certain term sheet, which were meant to be loans. It is Defendants' position that WPH Properties owes HBL imputed interest on the loans.

Defendants seek an accounting of the use of funds advanced for the development of the Facility. Defendants also seek \$15 million in damages as a result of Fensterman's and Nicholson's bad faith dealings. Defendants seek damages against WPH Properties, Fensterman and Nicholson for fraud. Finally, Defendants seek to nullify Jozofovic's and Neuman's guarantees and attorneys' fees.

Respectfully submitted,

*/s/ Alfred E. Donnellan*

ALFRED E. DONNELLAN

Enclosure

cc: John J. Giardino, Esq. (By NYSCEF)  
Alexander W. Barnett-Howell, Esq. (By NYSCEF)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

P R E S E N T :

Hon. Gretchen Walsh  
Justice Supreme Court

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff, : **PRELIMINARY CONFERENCE  
ORDER –COMMERCIAL CASE**

-against-

: Index No. 60278/2020

HBL SNF, LLC, LIZER JOZEFOIC, et al.,  
Defendant. :  
-----X

WALSH, J.:

Counsel having appeared for a preliminary conference on November 13, 2020:

Plaintiff:	Alfred E. Donnellan, Esq. ----- Name DelBello Donnellan Weingarten Wise & Wiederkehr, LLP ----- Firm One North Lexington Avenue, 11th Fl. White Plains, New York 10601 ----- Address  914-681-0200 ----- Telephone Number  914-684-0288 ----- Fax
Defendant:	John Giardino, Esq. ----- Name Michelman & Robinson LLP ----- Firm 800 Third Avenue, 24th Floor New York, New York 10022 ----- Address  212-730-7700 ----- Telephone Number  212-730-7725 ----- Fax

and the Court having conducted a preliminary conference in the above-entitled action, it is hereby ORDERED as follows, pursuant to Rule 8 of the Rules of Practice for the Commercial Division:

1. Any Demand for a Bill of Particulars shall be served on or before N/A and any Bill of Particulars shall be served on or before N/A.
2. Any Demands for Discovery and Inspection shall be served on or before Dec. 18, 2020 and all Responses to such Demands shall be served on or before Feb. 26, 2021.
3. Any Interrogatories shall be served on or before Dec. 18, 2020 and all Answers to Interrogatories shall be served on or before Feb. 26, 2021.
4. Any deposition on Oral Questions to be taken of Plaintiff shall be held on or before April 30, 2021 at a place to be agreed upon (including by video).
5. Any deposition on Oral Questions to be taken of Defendant shall be held on or before April 30, 2021 at a place to be agreed upon (including by video).
6. Any deposition on Oral Questions to be taken of any non parties shall be held on or before May 28, 2021 at a place to be agreed upon (including by video).
7. Other Disclosure, including Expert Disclosure, shall be:  
disclosed pursuant to CPLR.
8. Electronic Discovery shall be:  
  
bates stamped, produced with TIFF images, and a load file in a format to be agreed and with metadata fields to be agree.

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9. Discovery shall be limited to the following issues:

related to the claims and defenses stated in the pleadings including any amended pleadings and facts developed in discovery.

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10. Impleader shall be completed on or before July 30, 2021.

11. All discovery shall be completed by July 30, 2021 and any discovery not then completed may be considered waived. The failure to provide a document, or to otherwise provide discovery, may result in preclusion.

12. A Trial Readiness Conference will be held on \_\_\_\_\_ at \_\_\_\_\_. On this date a Trial Readiness Order will be issued to the Plaintiff to which Plaintiff shall serve and file a Note of Issue and Certificate of Readiness within (10) days of the date of the Trial Readiness Order.

13. Absent an order of the Court to the contrary, the making of any dispositive motion will NOT stay discovery and will NOT result in, or justify, any change or adjustment in the dates set forth hereinabove.

14. THE DATES SET FORTH ABOVE MAY NOT BE ADJOURNED EXCEPT WITH THE PRIOR APPROVAL OF THE COURT.

15. In the event of a discovery dispute, counsel shall comply with Rule 14 of the Rules of Practice in the Commercial Division. In furtherance thereof, in the event that counsel, after good faith consultation, cannot resolve a discovery dispute, counsel shall promptly contact the Court at 914-824-5193 and arrange for either an in-court or telephonic conference. No motion relating to discovery shall be made without the prior permission of the Court. Neither the existence of any discovery dispute nor the making of any discovery motion shall result in, or justify, any change or adjustment in the dates set forth above, unless otherwise permitted by the Court.

16. All motions (including any discovery motions permitted by the Court) shall be governed by Rules 16 through 24 of the Rules of Practice in the Commercial Division. No sur-reply (which includes reply in further support of a cross-motion) or post-submission papers will be considered by the Court, except as authorized by the Court or by Rule 18. All motions shall be made returnable on Fridays. No motion shall, absent the permission of the Court, be made returnable on any other day.

17. Counsel shall not copy the Court on correspondence between them.

18. No document, including correspondence, shall be sent to the Court without prior authorization from Chambers to do so.

19. Absent the express permission of the Court, copies of all papers filed with the Court shall be transmitted to all opposing counsel in such fashion as to be received by counsel prior to, or contemporaneously with, receipt by the Court.
20. As set forth in Commercial Division Rule 11-a (a) & (b), the parties are advised that the interrogatories in this action shall be limited both in terms of the topics to be covered and the number of interrogatories permitted (*i.e.*, 25 including subparts). Furthermore, pursuant to Commercial Division Rule 11-a(d), the Court hereby orders that there shall be no additional interrogatories permitted concerning the claims and contentions of the parties.

Dated: White Plains, New York

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GRETCHEN WALSH  
Supreme Court Justice

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER: COMMERCIAL DIVISION

PRESENT: HON. GRETCHEN WALSH

\_\_\_\_\_  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff(s),

Index No. 60278/2020

- against -

**ALTERNATIVE DISPUTE  
RESOLUTION ("ADR")  
ATTORNEY CERTIFICATION**

HBL 54F, LLC, UZER IQZEFOVIC, et al.,

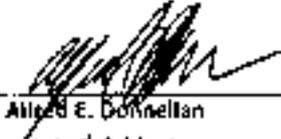
\_\_\_\_\_  
Defendant(s).

Pursuant to Rule 10 of the Commercial Division Rules, I certify that I have discussed with my client any Alternative Dispute Resolution options available through the Commercial Division and those offered by private entities. My client:

( ) presently wishes to jointly engage a mediator at an appropriate time to aid settlement.

(x) does not presently wish to jointly engage a mediator at an appropriate time to aid settlement.

Dated: November 11, 2020

Signature:   
Alfred E. Donnellan

Attorney Name and Address:

De'Bevo Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Avenue, 11th Floor  
White Plains, New York 10601

ATTORNEY FOR:

Plaintiff White Plains Healthcare Properties I, LLC

Note: This certification must be served and filed pursuant to Rule 10 of the Commercial Division Rules, with a copy submitted to the court at the time of the Preliminary Conference and each subsequent Compliance or Status Conference. Unless otherwise indicated by the Court, a separate certification is required for each party represented.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

P R E S E N T :

Hon. Gretchen Walsh  
Justice Supreme Court

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, -----X

Plaintiff,

**PRELIMINARY CONFERENCE  
ORDER - COMMERCIAL CASE**

-against-

Index No. 60278/2020

HBL SNF, LLC, LIZER JOZEFOIC, et al.,

Defendant. -----X

WALSH, J.

Counsel having appeared for a preliminary conference on November 13, 2020:

Plaintiff:

Alfred E. Donnellan, Esq.

Name  
DelBello Donnellan Weingarten  
Wise & Wiederkehr, LLP

Firm  
One North Lexington Avenue, 11th Fl  
White Plains, New York 10601

Address  
914-681-0200

Telephone Number  
914-684-0288

Fax  
John Giardino, Esq.

Defendant:

Name  
Michelman & Robinson LLP

Firm  
800 Third Avenue, 24th Floor  
New York, New York 10022

Address  
212-730-7700

Telephone Number  
212-730-7725

Fax

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7. Other Disclosure, including Expert Disclosure, shall be:  
disclosed pursuant to CPLR.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Electronic Discovery shall be:  
bates stamped, produced with TIFF images, and a load file in a format to be agreed and with metadata fields to be agree.  
\_\_\_\_\_  
\_\_\_\_\_

- 9. Discovery shall be limited to the following issues:  
related to the claims and defenses stated in the pleadings including any amended pleadings and facts developed in discovery.  

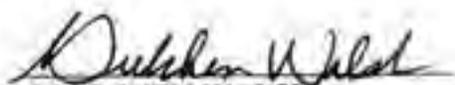

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- 10. Impleader shall be completed on or before ~~July 30, 2021~~ December 28, 2020
- 11. All discovery shall be completed by ~~July 30, 2021~~ June 4, 2021 and any discovery not then completed may be considered waived. The failure to provide a document, or to otherwise provide discovery, may result in preclusion.
- 12. A Trial Readiness Conference will be held on June 9, 2021 at 9:30 AM. On this date a Trial Readiness Order will be issued to the Plaintiff to which Plaintiff shall serve and file a Note of Issue and Certificate of Readiness within (10) days of the date of the Trial Readiness Order.
- 13. Absent an order of the Court to the contrary, the making of any dispositive motion will NOT stay discovery and will NOT result in, or justify, any change or adjustment in the dates set forth hereinabove.
- 14. THE DATES SET FORTH ABOVE MAY NOT BE ADJOURNED EXCEPT WITH THE PRIOR APPROVAL OF THE COURT.
- 15. In the event of a discovery dispute, counsel shall comply with Rule 14 of the Rules of Practice in the Commercial Division. In furtherance thereof, in the event that counsel, after good faith consultation, cannot resolve a discovery dispute, counsel shall promptly contact the Court at 914-824-5193 and arrange for either an in-court or telephonic conference. No motion relating to discovery shall be made without the prior permission of the Court. Neither the existence of any discovery dispute nor the making of any discovery motion shall result in, or justify, any change or adjustment in the dates set forth above, unless otherwise permitted by the Court.
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- 17. Counsel shall not copy the Court on correspondence between them.
- 18. No document, including correspondence, shall be sent to the Court without prior authorization from Chambers to do so.

- 19. Absent the express permission of the Court, copies of all papers filed with the Court shall be transmitted to all opposing counsel in such fashion as to be received by counsel prior to, or contemporaneously with, receipt by the Court.
  
- 20. As set forth in Commercial Division Rule 11-a (a) & (b), the parties are advised that the interrogatories in this action shall be limited both in terms of the topics to be covered and the number of interrogatories permitted (*i.e.*, 25 including subparts). Furthermore, pursuant to Commercial Division Rule 11-a(d), the Court hereby orders that there shall be no additional interrogatories permitted concerning the claims and contentions of the parties.

Dated: White Plains, New York  
Nov. 13, 2020



GRETCHEN WALSH  
Supreme Court Justice

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

[Display Document List with Motion Folders](#)

Sort By: Doc #

#	Document	Filed By	Status
1	<a href="#">SUMMONS + COMPLAINT</a>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
2	<a href="#">EXHIBIT(S)</a> - 1 <i>Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
3	<a href="#">EXHIBIT(S)</a> - 2 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
4	<a href="#">EXHIBIT(S)</a> - 3 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
5	<a href="#">EXHIBIT(S)</a> - 4 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
6	<a href="#">EXHIBIT(S)</a> - 5 <i>Notice of Default</i>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
7	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> <i>Affidavit of service upon defendant HBL SNF Inc</i>	<a href="#">Coleman, W.</a> Filed: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>

#	Document	Filed By	Status
8	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> affidavits of service of summons and complaint - all defendants	<a href="#">Coleman, W.</a> Filed: 10/07/2020 Received: 10/07/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
9	<a href="#">NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
10	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #1) Affirmation of Default of Alfred E. Donnellan	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
11	<a href="#">EXHIBIT(S)</a> - 1 (Motion #1) Complaint <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
12	<a href="#">EXHIBIT(S)</a> - 2 (Motion #1) Affidavit of Service	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
13	<a href="#">EXHIBIT(S)</a> - 3 (Motion #1) Confirmation Notices	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
14	<a href="#">EXHIBIT(S)</a> - 4 (Motion #1) Additional Notice	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
15	<a href="#">ORDER ( PROPOSED )</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
16	<a href="#">BILL OF COSTS</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
17	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
18	<a href="#">RJI -RE: NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
19	<a href="#">ADDENDUM - COMMERCIAL DIVISION (840C)</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
20	<a href="#">COURT NOTICE</a>	Court User Filed: 10/29/2020 Received: 10/29/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
21	<a href="#">ANSWER WITH COUNTER-CLAIM(S)</a>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
22	<a href="#">NOTICE OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020	<b>Processed</b>

	Filed: 11/05/2020 Received: 11/05/2020	Confirmation Notice Payment Receipt
23 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed <a href="#">Confirmation Notice</a>
24 <a href="#">EXHIBIT(S)</a> - A (Motion #2) <i>Email Correspondence</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed <a href="#">Confirmation Notice</a>
25 <a href="#">EXHIBIT(S)</a> - B (Motion #2) <i>Proof of November Rent Payment</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed <a href="#">Confirmation Notice</a>
26 <a href="#">EXHIBIT(S)</a> - C (Motion #2) <i>Filed Answer</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed <a href="#">Confirmation Notice</a>
27 <a href="#">MEMORANDUM IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed <a href="#">Confirmation Notice</a>
28 <a href="#">ORDER ( PROPOSED )</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	Processed <a href="#">Confirmation Notice</a>
29 <a href="#">STIPULATION - WITHDRAWING MOTION/ORDER TO SHOW CAUSE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 11/09/2020 Received: 11/09/2020	Processed <a href="#">Confirmation Notice</a>
30 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #1) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	Processed <a href="#">Confirmation Notice</a>
31 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #2) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	Processed <a href="#">Confirmation Notice</a>
32 <a href="#">JOINT ONE PAGE STATEMENT OF FACTS &amp; PARTIES CONTENTIONS</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	Processed <a href="#">Confirmation Notice</a>
33 <a href="#">EXHIBIT(S)</a> - 1 <i>Copy of Pleadings</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	Processed <a href="#">Confirmation Notice</a>
34 <a href="#">PRELIMINARY CONFERENCE ORDER (PROPOSED)</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	*** Pending *** <a href="#">Confirmation Notice</a>
35 <a href="#">EXHIBIT(S)</a> - 1 <i>ADR Attorney Certification for Alfred Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	Processed <a href="#">Confirmation Notice</a>
36 <a href="#">ORDER - PRELIMINARY CONFERENCE</a>	Court User Filed: 11/13/2020 Received: 11/13/2020	Processed <a href="#">Confirmation Notice</a>
37 <a href="#">COMPLAINT (AMENDED)</a>	<a href="#">Donnellan, A.</a>	Processed

		Filed: 11/30/2020 Received: 11/30/2020	<a href="#">Confirmation Notice</a>
	<i>Amended Verified Complaint</i>		
38	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended and Restated Operating Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
39	<a href="#">EXHIBIT(S)</a> - 2 <i>Jozefovic Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
40	<a href="#">EXHIBIT(S)</a> - 3 <i>Neuman Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
41	<a href="#">EXHIBIT(S)</a> - 4 <i>Jozefovic Security Agreement Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
42	<a href="#">EXHIBIT(S)</a> - 5 <i>Letter of Intent Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
43	<a href="#">EXHIBIT(S)</a> - 6 <i>Notice of Default Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
44	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> <i>Letter to Judge Walsh requesting pre motion conference</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
45	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
46	<a href="#">EXHIBIT(S)</a> - 2 <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
47	<a href="#">EXHIBIT(S)</a> - 3 <i>Compared version of amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
48	<a href="#">ANSWER TO THIRD PARTY COMPLAINT</a> <i>Verified Answer to Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
49	<a href="#">REPLY TO COUNTERCLAIM(S)</a> <i>Verified Reply to Counterclaims</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
50	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 01/11/2021 Received: 01/11/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
51	<a href="#">NOTICE OF MOTION</a> (Motion #3) <i>to file Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
52	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

#	Document	Filed By	Status
	<a href="#">MOTION</a> (Motion #3) <i>Affirmation of Alfred E. Donnellan in Support of Motion to file Amended Complaint</i>	Filed: 01/26/2021 Received: 01/26/2021	<a href="#">Confirmation Notice</a>
53	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>Complaint with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
54	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
55	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Amended Compliant with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
56	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Redline version of Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
57	<a href="#">EXHIBIT(S)</a> - E (Motion #3) <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
58	<a href="#">EXHIBIT(S)</a> - F (Motion #3) <i>Security Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
59	<a href="#">EXHIBIT(S)</a> - G (Motion #3) <i>Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
60	<a href="#">EXHIBIT(S)</a> - H (Motion #3) <i>NY County Action Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
61	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
62	<a href="#">NOTICE OF MOTION</a> (Motion #4) *Corrected*	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
63	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #4) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
64	<a href="#">EXHIBIT(S)</a> - A (Motion #4) <i>Complaint</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
65	<a href="#">EXHIBIT(S)</a> - B (Motion #4) <i>Answer</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
66	<a href="#">EXHIBIT(S)</a> - C (Motion #4) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

- 67 [EXHIBIT\(S\)](#) - D (Motion #4)  
Lease  
**Redacted** per 22 NYCRR §202.5(e)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 68 [EXHIBIT\(S\)](#) - E (Motion #4)  
Temporary Certificate of Occupancy  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 69 [EXHIBIT\(S\)](#) - F (Motion #4)  
AJA Form 0704  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 70 [EXHIBIT\(S\)](#) - G (Motion #4)  
NYSDOH Communication  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 71 [MEMORANDUM OF LAW IN SUPPORT](#) (Motion #4)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 72 [LETTER / CORRESPONDENCE TO JUDGE](#)  
[Donnellan, A.](#) **Processed**  
Filed: 02/04/2021 [Confirmation Notice](#)  
Received: 02/04/2021
- 73 [MEMORANDUM OF LAW IN OPPOSITION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021
- 74 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021
- 75 [EXHIBIT\(S\)](#) - A (Motion #3)  
Collateral Assignment  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

<p>WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, Plaintiff.</p> <p>-- against --</p> <p>HBL SNF, LLC, LIZER JOZEOFVIC A/K/A LIZER JOZEOFVIC and MARK NEUMAN, Defendants.</p>
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Index No. 60278/2020

**AMENDED VERIFIED  
COMPLAINT**

Plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties"), by its attorneys, DeBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, for its amended verified complaint against defendants, HBL SNF, LLC ("HBL"), Lizer Jozefovic a/k/a Lizer Jozefovic ("Jozefovic") and Mark Neuman ("Neuman"), alleges:

**NATURE OF THE CASE**

1. This action concerns HBL's material default of its obligations under an amended and restated operating lease dated as of November 19, 2015 (the "Lease"), by which WPH Properties leased to HBL a brand new, state-of-the-art, 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York.

2. WPH Properties had constructed the nursing facility and entered into the Lease with HBL, dated November 19, 2015. The Lease was amended and restated in 2017. It provided that HBL would operate the facility for 30 years. The Lease commenced on September 30, 2019. HBL took possession of the facility on September 30, 2019. By the end of October 2019, HBL had

defaulted.

3. On January 7, 2020, WPH Properties served notice of default and elected to terminate the Lease and accelerate all rents due. This action seeks to recover from HBL the Rent it owes and the other damages its defaults have caused and to enforce the unconditional guaranties of HBL's performance under the Lease given by Neuman and Jozefovic.

**PARTIES AND VENUE**

4. WPH Properties is a limited liability company duly organized and existing under the laws of the State of Massachusetts, with its principal place of business at 2 Bourbon Street, Suite 200, Peabody, Massachusetts. WPH Properties is duly authorized to do business in the State of New York.

5. HBL was and is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 537 Route 22, Purdys, New York.

6. Jozefovic is an individual residing at 53 Mariner Way, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

7. Neuman is an individual residing at 22 Lyncrest Drive, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

8. Pursuant to CPLR § 503(a), venue is properly designated in Westchester County based on the residences of WPH Properties and HBL, because a substantial part of the events giving rise to the claim occurred in Westchester County and because HBL and WPH Properties agreed in the Lease that any action or proceeding arising out of the Lease be brought in Westchester County. Lease § 20.1(b).

**FACTS**

9. WPH Properties is and was at all relevant times the owner of the real property known as 116-120 Church Street, White Plains, New York (the "Real Property").

10. WPH Properties constructed a brand new, state-of-the-art, 160-bed skilled nursing facility on the Real Property.

**THE LEASE**

11. In 2017, WPH Properties, as landlord, and HBL, as tenant, entered into the amended and restated Lease, dated as of November 19, 2015, under which WPH Properties leased to HBL the Real Property and the improvements to be constructed on the Real Property, together with other assets, all as defined in Section 2.1 of the Lease (the "Facility"). A true and accurate copy of the Lease is annexed to this complaint as Exhibit 1 and is incorporated into this complaint by reference.

12. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019.

13. HBL entered into possession of the Facility on September 30, 2019.

14. The Lease provided for a term of 30 years, with three 10-year options to the tenant, unless sooner terminated. Exhibit 1, Lease, § 3.1.

15. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 (the "Fixed Rent"). Exhibit 1, Lease, § 3.2.

16. The Lease also obligated HBL to pay WPH Properties other amounts which are defined as "Additional Rent." Fixed Rent and Additional Rent are referred to collectively as "Rent."

17. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Premises during the Term. Exhibit 1, Lease, § 4.1.

18. The Lease obligated HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit 1, Lease, § 4.2.

19. The Lease obligated HBL to keep the Premises in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses relating to the Premises. Exhibit 1, Lease, § 5.2.

20. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit 1, Lease, § 7.1.

21. A true and accurate copy of the Jozefovic Guaranty is annexed to this complaint as Exhibit 2.

22. A true and accurate copy of the Neuman Guaranty is annexed to this complaint as Exhibit 3.

23. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

24. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Jozefovic without the necessity of any notice of

nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Jozefovic expressly waived.

25. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

26. The Neuman Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

27. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an agreement by Capital Funding Group by which Capital Funding Group agreed to allow HBL to draw down on its credit line each month so as to enable Capital Funding Group to pay the Fixed Rent each month directly to WPH Properties on the commencement date and for the following 11 months. Exhibit I, Lease, § 7.1.

28. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease. Exhibit I, Lease, § 7.1.

29. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, \$1,600,000 as an additional security deposit. Exhibit I, Lease, § 7.1.

30. The Lease obligated HBL to provide WPH Properties all reports, statements and

inspections as defined in the Lease, including all Medicare, Medicaid and other provider agreements and reimbursement rates for the Facility, updated reimbursement rates, financial reporting and written reports providing an operational overview of significant events and circumstances on a monthly basis, Exhibit I, Lease, § 7.4.

31. The Lease obligated HBL to maintain working capital accounts in specified amounts, Exhibit I, Lease, § 7.7.

32. The Lease provides that HBL will be in default of the Lease if, among other things, (i) HBL fails to pay any installment of Rent within five days of the date when Rent was due; (ii) HBL defaults in the prompt and full performance of any other of its obligations and fails to correct that failure within 30 days of receipt of written notice from WPH Properties of the default; (iii) HBL fails to give WPH Properties timely notice or timely deliver copies of documents as required by Section 7.4 of the Lease; (iv) HBL defaults or breaches the provisions of Section 7.4(b); (v) a Guarantor defaults beyond expiration of any applicable cure period; or (vi) any governmental authority assesses a fine or penalty against HBL in an amount in excess of \$75,000, Exhibit I, Lease, § 16.1.

33. WPH Properties performed all of the conditions on its part required by the Lease.

34. The Lease provides in Section 16.1 that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent.

35. Section 16.1 of the Lease also provides that upon the occurrence of a default, and in addition to all of the other remedies provided for in the Lease, WPH Properties is immediately

entitled to retain the security deposit required by Section 7.1 of the Lease and HBL has no further claim, right, title or interest therein to the extent of WPH Properties' claims.

36. Section 16.1 of the Lease also provides that upon the occurrence of a default and the commencement of an action for Rent or for any other amount due under the Lease, HBL must pay to WPH Properties all of the expenses, including reasonable attorneys' fees, incurred by WPH Properties to enforce the Lease.

37. In addition, under the terms of the Lease, HBL's continuation in occupancy after termination does not constitute a renewal of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 201.13.

**THE JOZEFOVIC SECURITY AGREEMENT**

38. On August 11, 2017 Jozefovic executed a Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Jozefovic Security Agreement"), assigning to WPH Properties' nominee a first and superior security interest in Jozefovic's interest in Waterview Acquisition I, LLC (the "Jozefovic Waterview Collateral") in order to secure the obligations under the Jozefovic Security Agreement and under the Lease. A true and accurate copy of the Jozefovic Security Agreement is annexed to this complaint as Exhibit 4.

39. The Jozefovic Security Agreement provides that Jozefovic has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of the Jozefovic Waterview Collateral. Exhibit 4, Jozefovic Security Agreement § 3

40. The Jozefovic Security Agreement further provides that Jozefovic agrees not to subsequently further amend or voluntarily permit the amendment of the Waterview Acquisition I,

LLC Operating Agreement that would in any manner materially adversely affect the Jozefovic Security Agreement and or the rights of WPH Properties. Exhibit 4, Jozefovic Security Agreement § 4

41. On September 15, 2020 WPH Properties duly perfected its security interest with respect to the Jozefovic Waterview Collateral by filing a UCC financing statement.

42. Upon information and belief, in or around December 2019, Jozefovic assigned the Jozefovic Waterview Collateral to Metropolitan Commercial Bank ("MCB") to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

43. Upon information and belief, to effectuate Jozefovic's assignment of the Jozefovic Waterview Collateral to MCB, Jozefovic agreed to and voluntarily permitted the amendment of the Waterview Acquisition I, LLC Operating Agreement.

44. Jozefovic breached his obligations under the Jozefovic Security Agreement by agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and assigning the Jozefovic Waterview Collateral to MCB.

45. Jozefovic further breached the Jozefovic Security Agreement by failing to take all of the necessary steps to add Howard Fensterman, a principal of WPH Properties, as a co-signatory to the JP Morgan Chase accounts identified therein as required by the Jozefovic Security Agreement.

46. Jozefovic and HBL breached their obligation to post the \$1,600,000 additional security deposit required by the Jozefovic Security Agreement and the Lease.

47. Jozefovic's moving of funds into a separate account that he controls does not satisfy the obligation to post the \$1.6 million additional security deposit as required by the Jozefovic

Security Agreement and the Lease.

48. Jozefovic's and HBL's failure to satisfy the obligation to post the \$1.6 million additional security deposit constitutes a breach of the Jozefovic Security Agreement and a breach of the Lease.

49. The Jozefovic Security Agreement provides that Jozefovic pledges, assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member of Waterview Acquisition I, LLC to WPH Properties in order to secure the obligations under the Jozefovic Security Agreement and under the Lease

50. Pursuant to the remedies granted to WPH Properties under the UCC and the Jozefovic Security Agreement, in the event of a default, WPH Properties is entitled, among other remedies, to dispose of the Jozefovic Waterview Collateral at a public sale.

51. Jozefovic breached the Jozefovic Security Agreement and materially and adversely affected the Jozefovic Waterview Collateral and the rights of WPH Properties by (i) agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and (ii) assigning the Jozefovic Waterview Collateral to MCB to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

52. As a result of Jozefovic breaching the Jozefovic Security Agreement by amending the operating agreement and assigning the Jozefovic Waterview Collateral to MCB, any purchaser of the Jozefovic Waterview Collateral at public sale by WPH Properties will purchase the Jozefovic Waterview Collateral subject to MCB's senior security interest in the collateral.

53. Jozefovic's breach of the Jozefovic Security Agreement therefore has caused WPH Properties damages in the amount of \$3,000,000, the amount of Jozefovic's obligation to MCB

secured by Jozefovic's illicit assignment of the same collateral to MCB.

**HBL BREACHED ITS OBLIGATIONS UNDER THE LEASE**

54. HBL failed to perform its obligations, materially defaulting under the Lease, almost immediately after taking possession of the Premises.

55. HBL failed to pay Rent as required by the Lease.

56. HBL failed to pay real estate taxes as required by the Lease.

57. HBL failed to pay utility deposits as required by the Lease.

58. HBL failed to pay municipal maintenance escrows as required by the Lease.

59. HBL failed to pay utility charges as required by the Lease.

60. HBL failed or refused to deliver certificates of insurance as required by the Lease.

61. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility, as required by the Lease.

62. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider updated rate sheets, as required by the Lease.

63. HBL failed to deliver to WPH Properties the required financial reporting, as required by the Lease.

64. HBL failed to deliver to WPH Properties the required written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease, as required by the Lease.

65. HBL failed or refused to deliver to WPH Properties the security deposits, as required by the Lease.

66. HBL failed to deliver and maintain the required credit line in an amount equal to

12 months' rent, as required by the Lease.

- 67. HBL failed to have and maintain the working capital account required by the Lease.
- 68. HBL failed to pay late fees and costs, as required by the Lease.

**THE LETTER OF INTENT**

69. After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease, despite HBL's default.

70. On November 20, 2019, WPH Properties and HBL entered into a Letter of Intent (the "LOI") in which WPH Properties and HBL agreed that WPH Properties would sell the Facility for \$73,000,000 to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties or its designees would have a 22.5 percent interest.

71. A true and accurate copy of the LOI is annexed to this complaint as **Exhibit 5**.

72. The LOI provides for the Lease to be amended to require that HBL pay the November 2019 rent by November 15, 2019, the December rent by December 5, 2019 and all real estate taxes and utility payments by December 1, 2019, that by December 5, 2019 HBL reimburse WPH Properties for \$65,856 in municipal and utility deposits, that HBL enter into a Deposit Account Control Agreement with MNB requiring MNB to draw on the account first to pay the rent.

73. The LOI further provides for the Lease to be amended so that the \$3,700,000 security deposit required by Section 7.1(a)(ii) is reduced to \$2,000,000, \$1,000,000 of which was required to be paid by HBL on or before December 1, 2019 or the date on which WPH Properties obtained a permanent certificate of occupancy for the Facility (which was granted on November 14, 2019), whichever was later, and the balance of which was required to be paid on April 1, 2020.

which was the Closing date required by the LOI.

74. In addition, the LOI provides for the Lease to be amended so that in lieu of providing the additional \$1,000,000 in security required by Section 7.1(a)(iii) of the Lease, HBL would be required to enter into an agreement with JP Morgan Chase Bank prohibiting liquidation of that account until the second \$1,000,000 in security required by the LOI had been paid.

75. The LOI also provides for the Lease to be amended to require HBL to obtain a single working capital line of credit in the amount of \$8,000,000 by December 1, 2019.

76. HBL defaulted and breached its obligations under the LOI by failing to pay rent, failing to pay the municipal and utility payments to WPH Properties, failing to pay the real estate taxes and utility payments, failing to enter into the Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank, by failing to pay the first \$1,000,000 security deposit as required by the LOI and by failing to obtain the \$8,000,000 working capital credit line, and by failing to meet the required Closing date of April 1, 2020.

77. WPH Properties performed all conditions on its part required by the LOI.

78. Solely as a result of HBL's breach of the LOI, WPH Properties did not sell the property to the Delaware Statutory Trust, causing damage to WPH Properties, and WPH Properties incurred interest and late charges on its loans, all of which are the direct result of HBL's breach of the LOI.

**NOTICE OF DEFAULT, TERMINATION OF THE LEASE AND ACCELERATION OF RENT**

79. On January 7, 2020, while the LOI was in effect, WPH Properties served a "Notice of Default And Landlord's Election To Terminate Lease And Accelerate All Rents Due For The Balance of the Lease Term" upon HBL (the "Notice of Default").

80. A true and accurate copy of the Notice of Default is annexed to this complaint as Exhibit 6 and incorporated into this complaint by reference.

81. The Notice of Default contains a true and accurate accounting of the amounts then due and owing under the Lease and L.OI.

82. The Notice of Default gave HBL notice that by reason of HBL's defaults under the Lease, WPH Properties had exercised its right under Section 16.1 of the Lease to terminate the Lease, effective January 13, 2020.

83. The Notice of Default further gave HBL notice that pursuant to Section 16.1 of the Lease all Rent for the balance of the Term was accelerated and HBL became obligated to pay WPH Properties the present value of the accelerated rent, discounted at a rate of 6% per annum.

84. HBL continued, and still continues, to occupy the Premises, despite WPH Properties' termination of the Lease.

85. Because HBL has held over after its default resulted in termination of the Lease, HBL is a tenant month-to-month at a rent equal to 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

86. HBL has failed to perform its obligations as a tenant month-to-month by failing to pay rent in the amount of 300% of the most recent Rent payable by HBL under the Lease, remitting only the base rent which had been payable before WPH Properties terminated the Lease.

87. HBL is in default with respect to its obligations under the Lease and its obligations as a month-to-month tenant following termination of the Lease effective January 13, 2020.

**AMOUNTS DUE**

88. As a result of HBL's defaults, HBL is obligated to pay to WPH Properties, as of

August 25, 2020, the sum of \$113,832,987.54 (the "Amounts Due"), as follows: (i) holdover rent and rent, \$7,096,182.79; (ii) municipal and utility deposits, \$26,725.35; (iii) security and working capital deposits, \$9,800,000.00; (iv) late fees, default fees, costs and professional fees, \$1,948,753.00; and (v) accelerated rent, \$94,961,326.40.

89. HBL is obligated to pay to WPH Properties the Amounts Due in full, plus any amounts that have accrued since August 25, 2020.

90. HBL has failed or refused to pay the Amounts Due.

91. WPH Properties has fully performed all obligations required to be performed on its part with respect to the Lease, the LOI, HBL's month-to-month tenancy after the termination of the Lease, the Jozefovic Guaranty, the Neuman Guaranty, the HBL Security Agreement, the Jozefovic HBL Security Agreement and the Neuman HBL Security Agreement.

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

92. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "91" with the same force and effect as if fully set forth here.

93. By reason of HBL's material default and breach of its obligations pursuant to the Lease and its obligations as a month-to-month tenant after termination of the lease, WPH Properties is entitled to judgment against HBL for the Amounts Due, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law.

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

94. WPH Properties repeats and re-alleges each and every allegation set forth in

paragraphs "1" through "93" with the same force and effect as if fully set forth here.

95. By reason of HBL's material default and breach of its obligations pursuant to the LOI, WPH Properties is entitled to judgment against HBL in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

96. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "95" with the same force and effect as if fully set forth here.

97. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic for the Amounts Due pursuant to the terms of the Jozefovic Guaranty.

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

98. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "97" with the same force and effect as if fully set forth here.

99. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Neuman for the Amounts Due pursuant to the terms of the Neuman Guaranty.

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

100. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "99" with the same force and effect as if fully set forth here.

101. By reason of Jozefovic's default in the performance of his obligations under the Jozefovic Security Agreement and HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic in the amount of \$3,000,000.00.

WHEREFORE, WPH Properties demands judgment as follows:

1. On its First cause of action, against HBL, in the amount of \$113,832,987.54, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

2. On its Second Cause of Action, against HBL, in an amount to be determined at trial; and

3. On its Third Cause of Action, against Jozefovic in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

4. On its Fourth Cause of Action, against Neuman in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

5. On its Fifth Cause of Action, against Jozefovic in the amount of \$3,000,000.00; and

6. On all causes of action, awarding costs, disbursements and attorneys' fees against HBL, pursuant to the provisions of the Lease and against Jozefovic and Neuman pursuant to the provisions of the Jozefovic Guaranty and the Neuman Guaranty; and

7. Awarding such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
November 19, 2020

DILBERTO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

By:  .....  
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One North Lexington Avenue  
White Plains, New York 10601  
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*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
Robert A. Spolizino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS )
) ss:
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the annexed Amended Verified Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

[Handwritten signature of William A. Nicholson]
William A. Nicholson

Sworn to before me this
20th day of November 2020

[Handwritten signature of Kimberly B. Jackson]
Notary Public



# Exhibit 1 to Amended Verified Complaint

**AMENDED AND RESTATED OPERATING LEASE**

**By and Between**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,**  
a Massachusetts limited liability company  
("Landlord")

**and**

**HPI, SMF, LLC,**  
a New York limited liability company ("Tenant")

**Dated as of November 19, 2015**

2300440v5/17357 6

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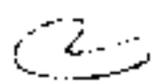
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**LIST OF EXHIBITS AND SCHEDULES**

<b>EXHIBIT "A"</b>	<b>Legal Description</b>
<b>EXHIBIT "B"</b>	<b>Guaranty</b>
<b>EXHIBIT 7.1(a)</b>	<b>Capital Funding Group Agreement</b>
<b>EXHIBIT 7.1(b)</b>	<b>Letter of Credit Agreement</b>
<b>EXHIBIT 7.1(c)</b>	<b>Letter to Bank</b>
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<b>SCHEDULE 19(f)</b>	<b>Health Care Warranties and Representations</b>
<b>SCHEDULE 19.2</b>	<b>Special Purpose Entity Provisions</b>

**EXHIBIT "A"**

**Legal Description**

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of White Plains, County of Westchester and State of New York. Said parcel being more particularly described as follows:

BEGINNING at a point in the easterly line of Church Street where the same is intersected by the southerly line of Barker Avenue;  
THENCE from said point North 70 degrees 40 minutes 10 seconds East a distance of 173.57 feet along the southerly line of Barker Avenue to a point where the same is intersected by the division line herein described parcel on the West and lands now or formerly of Koepfel & Mohr Equities on the East;  
THENCE from said point and along said division line South 17 degrees 59 minutes 50 seconds East a distance of 200.51 feet to a point in the division line between the herein described parcel on the north and lands now or formerly of Hamilton Plaza Company, Inc. on the south;  
THENCE from said point and along said line South 71 degrees 01 minutes 50 seconds West a distance of 173.24 feet to the easterly line of Church Street; and  
THENCE from said point and along said line North 18 degrees 05 minutes 04 seconds West a distance of 199.41 feet to the point and place of BEGINNING.

EXHIBIT A

1302449-517057-6



**EXHIBIT 'B'**

**GUARANTY**

See Attached



**SCHEDULE 3.1**

**Definition of Material Default**

Material Default shall mean the occurrence of any of the following:

(a) Any Lease Default except 16.1 (a) (xv) and (xxx), provided that the following Lease Defaults shall not be deemed a Material Default unless they occur two or more times within such period: 16.1 (a) (ix), (xvi), (xxx), (xxxI), and the following Lease Defaults shall not be deemed a Material Default unless they occur three or more times within such period: 16.1 (a) (i), (ii), (xvii).

(b) Any Lease Default during such period constitutes an "Event of Default" by Lendlord under any Loan Document between Lendlord and its Mortgagee(s) evidencing or documenting a loan secured by the Facility;

**EXHIBIT 7.1(a)**  
See Attached

**EXHIBIT 7.1(b)**  
See Attached

**EXHIBIT 7.1(c)**  
See Attached

SCHEDULE 7.4

<u>PERIOD</u>	<u>EBITDAR TARGET</u>
Quarter 1 (____, 201__ through ____ 201__)	\$ _____
Quarter 2	\$ _____
Quarter 3	\$ _____
Quarter 4	\$ _____
Quarter 5	\$ _____
Quarter 6 and thereafter	\$ _____

"EBITDAR" means with respect to any quarterly period for the Facility an amount determined on a consolidated basis equal to the sum of the following amounts for the Facility for a trailing twelve month period: (a) earnings/net income or net loss (including, as an expense an actual or theoretical management expense of five percent (5%) of gross receipts) from operations before (b) interest expense, (c) income tax expense, (d) depreciation expense, (e) amortization expense, and (f) Fixed Rent, defined in accordance with GAAP for such quarterly period. EBITDAR is not considered a measure of financial performance under GAAP. In calculating earnings for the trailing twelve months that encompasses any month prior to the Commencement Date, for the months prior to the Commencement Date, revenue shall be calculated using current rates of reimbursement, meaning reimbursement rates in effect as of the start of the applicable quarterly period.

**OPERATING LEASE**

THIS AMENDED AND RESTATED OPERATING LEASE ("Lease") is entered into as of November 19, 2015 (the "Effective Date"), by and between WHITE PLAINS HEALTHCARE PROPERTIES I, LLC a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 203, Peabody, MA 01960 ("WHCP") or (the "Landlord") and HBL SNP, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (the "Tenant"), and amends and restates in its entirety the lease between the Parties dated as of November 19, 2015.

**RECITALS**

A. WHEREAS, Landlord is the owner of the real property, improvements, and personal property constituting the long-term care facility commonly known as 116-120 Church Street, White Plains, New York and more particularly described on Exhibit A, attached herein and made a part hereof, (the "Real Property"), and following execution of this Lease, upon which certain buildings and improvements shall be erected (the "Facility"); and

B. WHEREAS, Landlord desires to lease the entire Leased Premises (defined herein) to Tenant and Tenant desires to lease the Leased Premises from Landlord pursuant to the terms, conditions and covenants set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, promises, representations and warranties set forth herein and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

**ARTICLE I**

**INCORPORATION OF RECITALS; PRINCIPLES OF CONSTRUCTION, DEFINITIONS**

Section 1.1 Incorporation of Recitals. The aforesaid Recitals A through B are hereby incorporated into this Lease as if fully set forth herein. Landlord and Tenant are hereinafter sometimes individually referred to as a "Party" and collectively referred to as "Parties".

Section 1.2 Principles of Construction. All references to articles, sections, schedules and exhibits are to articles, sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Landlord" shall mean

"Landlord and its successors and assigns"; the words "Leased Premises" shall include any portion of the Leased Premises and any interest therein, and the phrases "attorney's fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal, legal assistant and law clerk fees and disbursements, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise, and, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Landlord in protecting its interest in the Leased Premises and its rights hereunder. Wherever pursuant to this Lease it is provided that Landlord shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees as defined above. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The words "includes", "including" and similar terms shall be construed as if followed by the words "without limitation". Whenever in this Lease any consent, approval, determination or decision of Landlord is to be made by Landlord, or any matter is to be satisfactory to Landlord, then unless expressly provided to the contrary, such provision shall be deemed to mean that such consent, approval, determination or decision of Landlord or determination whether a matter is satisfactory shall be made by Landlord in its sole and absolute discretion for any or no reason and shall be final and conclusive. Any reference in this Lease shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease shall be deemed to be a reference to this Lease (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease or in the Guaranty shall be deemed to be a reference to the Guaranty (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time.

Section 1.3 Definitions.

- "Additional Rent" as defined in Section 3.2
- "Affiliate" as defined in Section 20.31.
- "Change of Ownership" means
- "Commencement Date" as defined in Section 3.1.
- "Commissioner" means the Federal Housing Commissioner also called the Assistant Secretary for Housing in the United States Department of Housing and Urban Development.
- "DOH" means New York State Department of Health.
- "Effective Date" as defined in introductory paragraph.
- "Eligible Institution" as defined in Section 4.3.
- "Extension Term" as defined in Section 3.1(i).



"Facility" as defined in Recital A.

"First Refinance" means the replacement or refinance of the Original Mortgage and/or original Junior Debt, in whole or part, in an amount not less than \$42,200,000.

"First Refinance Date" means the date of the First Refinance.

"Fixed Rent" as defined in Section 3.2.

"Governmental Authority" as defined in Section 5.2.

"Guarantors" mean Lizer Josefovic and Mark Neuman.

"Hazardous Materials" as defined in Section 10.3

"Hazardous Waste" as defined in Section 10.3.

"Health Care Authority or Authorities" means any Governmental Authority (including HUD) having responsibility for the approval, licensing, certification, payment, issuance of guarantees and insurance for, and/or otherwise setting standards for the operation and occupancy of skilled nursing facilities

"Health Care Licenses" means all Medicare and Medicaid certifications and provider agreements, all public third party payor certifications and provider agreements, and all certifications, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses and certificates of need required by Health Care Authorities for the legal use, occupancy and operation of the Facility.

"HUD" means the United States Department of Housing and Urban Development.

"Junior Debt" means a mortgage on the Premises junior to the first Mortgage, and/or debt relating to the development and construction of the Premises.

"Landlord" as defined in Introductory paragraph, and Section 1.2.

"Landlord's Indemnitees" as defined in Section 9.1.

"Landlord's Work" as defined in Section 5.1.

"Laws" as defined in Section 5.1.

"Lease Default" as defined in Section 16.1.

"Leased Premises" as defined in Section 2.1.

"Lease Year" as defined in Section 3.1.

"Letter of Credit" as defined in Section 7.1.

"Material Default" as defined in Schedule 3.1.

"Mortgages" shall refer to the first and second priority mortgages secured by fee simple interest in the Real Property as amended, restated, extended or replaced from time to time in Landlord's discretion.

"Original Mortgage" means the original Mortgage placed on the Premises by Landlord.

"Overdue Rate" as defined in Section 9.1(h).

"Primary Market of the Facility" means a fifteen mile radius of the Leased Premises.

"Prime Rate" as defined in Section 9.1.

"Prospective Mortgagor" means any Person chosen by Landlord as a Mortgage prior to a closing of a Mortgage to be held by such Person.

"Real Property" as defined in Recital A.

"Refinance" means the replacement or refinancing of the Mortgage, or Junior Debt, or any debt in replacement thereof, in whole or part, including the First Refinance.

"Refinance Date" means the date of any Refinance including the First Refinance.

"Rent" as defined in Section 3.2.

"Security Deposit" as defined in Section 7.1.

"Special Purpose Entity" as defined in Schedule 19.2.

"Substantial Completion Date" means the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Landlord's architect, that the Facility was substantially completed and in substantial compliance with the plans and specifications for the Facility, and (ii) the date Landlord delivers a Temporary Certificate of Occupancy (the "TCO") for the Facility, provided, however, if the Landlord is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (ii).

"Tenant's Lease Coverage Ratio" means EBITDAR divided by Fixed Rent.

"Term" as defined by Section 3.1 (including all exercised Extension Terms).

"Total Project Cost or "TPC" is the actual cost of purchasing, developing, constructing, and equipping the Facility, including without limitation, the cost of the Real Property and improvements, development costs, financing costs, and the cost of Landlord's Work and all equipment.

"Utilities" as defined in Section 4.1.

ARTICLE II

LEASED PREMISES

Section 2.1 Leased Premises. Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions set forth in this Lease, the following assets:

(a) all of Landlord's right, title, and interest in and to the Real Property, including, without limitation, all buildings, structures, erections, improvements, appurtenances, easements and fixtures, including fixed machinery and fixed equipment situated thereon or forming a part thereof; and

(b) all of Landlord's right, title and interest in and to all machinery, trade equipment, trade fixtures, furniture, furnishings, beds, and accessories of all kinds used in connection with the Facility located on the Real Property.

All of the items described in Sections 2.1(a) and 2.1(b) herein are collectively referred to as the "Leased Premises." Landlord and Tenant acknowledge and understand that all of the items which comprise the Leased Premises, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, shall be transferred back to Landlord in accordance with the terms and conditions set forth herein upon the expiration or earlier termination of this Lease.

Section 2.2 In connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein, and each successor in interest, shall have the right to transfer all amounts deposited pursuant to Section 4.3 with respect to the Facility, less any amount used pursuant to Section 4.3, to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, Landlord or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto. If Landlord's interest in the Leased Premises is sold or conveyed as provided above or otherwise or by operation of law: (i) at the new owner's option, Tenant shall affirm to and recognize the new owner as Tenant's Landlord under this Lease and Tenant shall take such actions to confirm the foregoing within ten (10) days after request.

ARTICLE III

TERM AND RENT

Section 3.1 Term of Lease.

(a) The term (the "Term") of this Lease shall be for a period of thirty (30) years commencing on the later to occur of (i) the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility and (ii) the date that New York State Department of Health (hereinafter sometimes, "DOH") determines that the Landlord's Work is sufficiently complete as constructed (but not necessarily the Tenant's operations) to accept patients, provided, however, if the Landlord is unable to obtain a permanent or temporary Certificate of Occupancy because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of a permanent or temporary Certificate of Occupancy shall not be a condition under clause (i) (the "Commencement Date"), and ending at 11:59:59 P.M. on the day preceding the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date (the "Expiration Date"). Under any and all circumstances, Landlord shall not be liable to Tenant, in damages or otherwise, for any delay in delivering the Leased Premises to Tenant and Tenant shall have no right to terminate or rescind this Lease on account thereof. Notwithstanding the Commencement Date, certain of the rights and obligations of the parties shall commence on the Effective Date, but not including Tenant's obligations to pay Fixed Rent and Impositions prior to the Commencement Date, or to maintain the Leased Premises, insure the Leased Premises or restore the Leased Premises after a casualty or condemnation prior to the Commencement Date, or any other rights and obligations, which by their terms are intended to commence as of the Commencement Date, which rights and obligations shall commence on the Commencement Date.

As used herein with respect to the Term and the periods for payment of Rent (unless the context otherwise requires) the term "Lease Year" shall mean a 365 day period (or 366 day period in the case of a leap year), first commencing on the Commencement Date and thereafter on successive anniversaries thereof, and ending on the day prior to the next succeeding anniversary of the Commencement Date.

Landlord and Tenant hereby acknowledge that the Commencement Date is presently indeterminate and shall occur only as hereinabove provided in this Section. Except for the rights of Tenant expressly stated herein, Tenant hereby waives any right to rescind this Lease under the provisions of Section 223-a of the Real Property Law of the State of New York, and agrees that the provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of said Section 223-a. Landlord and Tenant shall execute a memo specifying the Commencement Date immediately following its occurrence.

(b) Provided a Lease Default has not occurred and is then continuing either at the time of the exercise of the options provided below or at the end of the Term or Extension Term, or there has not been any Lease Default listed in Schedule 3.1 attached hereto (a "Material Default"), whether or not cured, within two years of the end of the Term or Extension Term, Tenant shall have the option to extend the Term of this Lease for three (3) additional periods of ten (10) years each (each an "Extension Term"), by giving written notice to Landlord

not less than five forty-five (45) days nor more than seven hundred (700) days prior to the expiration of the Term (or Extension Term as the case may be) of this Lease, TIME BEING OF THE ESSENCE to these time periods. These options may be exercised by Tenant serving written notice upon Landlord stating that Tenant is exercising the option to extend. If Tenant fails to give such notice in writing to Landlord within the time period specified herein, all rights and privileges granted to Tenant to extend this Lease shall lapse and become null and void. No later option may be exercised if Tenant has failed to exercise a prior option. If Tenant has validly exercised its option(s) to extend the Term, references herein to the "Term" shall be deemed to include an Extension Term.

Section 3.2 Rent

(a) Beginning in the first (1st) Lease Year of the Term and for each succeeding Lease Year thereafter, including during any and all Extension Terms, until the First Refinance Date, Tenant shall pay Landlord an annual amount of Six Million Seventy Three Thousand One Hundred Fifty Eight (\$6,073,158) Dollars ("Fixed Rent") in monthly installments of \$506,096.50.

(b) Tenant shall pay the Rent to Landlord during the term without deduction or setoff and without demand.

(c) The terms "Additional Rent" or "additional rent" means all sums, amounts, fees, expenses and costs (including, without limitation, legal fees and disbursements) payable or reimbursable to Landlord under this Lease other than Fixed Rent, and all of same shall be and constitute Additional Rent hereunder. The terms "Fixed Rent" and "Additional Rent" shall be collectively referred to as "Rent." Landlord shall have the same rights and remedies hereunder consequent upon a failure of Tenant to pay any item of Additional Rent as upon a failure of Tenant to pay any item of Fixed Rent.

(d) Rent shall be due and payable in advance in equal monthly installments during each year on the first (1st) day of each calendar month thereof (or in the event the first day of the calendar month is not a business day, on the first business day following the first day of each calendar month) throughout the Term. Rent for any period which is less than a full calendar month or full year, as the case may be, during the Term, shall be prorated on a daily basis. Rent shall not be paid more than one (1) month in advance. Rent shall be paid to Landlord at Landlord's address set forth in Section 12.1 or at such other place as Landlord designates from time to time by written notice to Tenant. Tenant agrees to pay Rent, at Landlord's direction, by electronic transfer or wire, as directed by Mortgage in writing.

(e) TENANT HEREBY ACKNOWLEDGES THAT LATE PAYMENT BY TENANT TO LANDLORD OF RENT WILL CAUSE LANDLORD TO INCUR COSTS NOT CONTEMPLATED HEREUNDER, THE EXACT AMOUNT OF WHICH IS PRESENTLY ANTICIPATED TO BE EXTREMELY DIFFICULT TO ASCERTAIN. SUCH COSTS MAY INCLUDE PROCESSING AND ACCOUNTING CHARGES AND LATE CHARGES WHICH MAY BE IMPOSED ON LANDLORD BY THE TERMS OF ANY LOAN AGREEMENT AND OTHER EXPENSES OF A SIMILAR OR DISSIMILAR NATURE. ACCORDINGLY, IF ANY INSTALLMENT OF RENT THAT IS PAYABLE TO LANDLORD

OR ITS DESIGNEE SHALL NOT BE PAID WITHIN FIVE (5) DAYS OF THE DATE WHEN DUE. TENANT WILL PAY LANDLORD ON DEMAND A LATE CHARGE EQUAL TO FIVE PERCENT (5%) OF THE UNPAID PORTION OF THE AMOUNT OF SUCH INSTALLMENT. THE PARTIES AGREE THAT THIS LATE CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE COSTS THAT LANDLORD WILL INCUR BY REASON OF LATE PAYMENT BY TENANT. THE PARTIES FURTHER AGREE THAT SUCH LATE CHARGE IS RENT AND NOT INTEREST AND SUCH ASSESSMENT DOES NOT CONSTITUTE A LENDER OR BORROWER/CREDITOR RELATIONSHIP BETWEEN LANDLORD AND TENANT. IN ADDITION, THE AMOUNT UNPAID, INCLUDING ANY LATE CHARGES, SHALL BEAR INTEREST AT THE OVERDUE RATE FROM THE DUE DATE OF SUCH INSTALLMENT TO THE DATE OF PAYMENT THEREOF, AND TENANT SHALL PAY SUCH INTEREST TO LANDLORD ON DEMAND. THE PAYMENT OF SUCH LATE CHARGE AND/OR SUCH INTEREST SHALL NOT CONSTITUTE A WAIVER OF, NOR EXCUSE OR CURE, ANY DEFAULT UNDER THIS LEASE, NOR PREVENT LANDLORD FROM EXERCISING ANY OTHER RIGHTS AND/OR REMEDIES AVAILABLE TO LANDLORD.

(f) If a default is declared by the Commissioner under the provisions of the Regulatory Agreement, provided a copy of Notice of Default is given to Tenant, Tenant shall thereafter make all future payments under this Lease to the Commissioner.

**Section 3.3 Net Lease Provisions.** Landlord and Tenant intend that the Rent herein specified shall be net to Landlord in each year during the Term, and that all costs, expenses and obligations of every kind and nature, (known or unknown, general or special, ordinary or extraordinary, foreseen or unforeseen, direct or indirect, contingent or otherwise) relating to the operation, repair and maintenance of the Leased Premises (except Landlord's income taxes) which may arise or become due during the Term shall be timely paid by Tenant; and that Landlord shall be indemnified by Tenant against such costs, expenses and obligations. Tenant's obligation to pay Rent is independent of all, and is in no manner conditioned upon any, other covenants, conditions and obligations of Landlord or Tenant under this Lease. There shall be no abatement of Rent payments for any reason nor shall Tenant be entitled to any offsets or deductions from Rent payments due hereunder.

**Section 3.4 Rent Tax.** If any governmental taxing authority levies, assesses, or imposes any tax, sales or use tax, privilege tax, excise or assessment (other than income or franchise taxes) upon or against the Rent payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise or assessment, or, if Landlord pays same, Tenant shall reimburse Landlord for the amount thereof within ten (10) days after written demand by Landlord.

It is the intent of this **Section 3.4** and all other provisions of this Lease to insure that the Rent (including Additional Rent) paid to Landlord by Tenant will be received by Landlord without diminution by any tax, assessment, charge or levy of any nature whatsoever, except United States, State of New York and local net income taxes, and the terms and conditions of this Lease shall be liberally construed to effect such purpose. Without limiting the generality of the foregoing, if any tax is assessed or based on gross income actually or



constructively received by Landlord pursuant to this Lease, Tenant shall pay such amount which, when added to said gross income, shall yield to Landlord, after deduction of all such tax payable by Landlord with respect thereto, a net amount equal to that which Landlord would have realized therefrom had no such tax been imposed.

Section 3.5. Assignment of Lease to Mortgagee. Tenant acknowledges that all of the interest of Landlord in and to this Lease has been or will be assigned to Mortgagee pursuant to the Loan Documents.

Tenant agrees to promptly execute and deliver to Landlord from time to time any and all documents required by a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender, or any successor, commercial, agency or private lender, including, without limitation, a lease addendum, regulatory agreement, subordination agreement, non-disturbance and attornment agreement, and/or escrow certificate, in order to finance or refinance the Facility or otherwise.

Tenant will on request at any time or from time to time by Landlord or any Mortgagee or Prospective Mortgagee subordinate this lease and all of Tenant's rights and estate hereunder to such Person's Mortgage and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, or declare such Mortgage to be prior to this lease and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, and agree with such holder that Tenant will assent thereto in the event of foreclosure. Landlord agrees to use reasonable efforts (except that Landlord shall not be obligated to expend money for any such agreement) to obtain a written agreement from any such holder in the form typically used by such holder which consents to this lease and provides that, notwithstanding such mortgage or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting said Mortgage, Tenant shall not be disturbed in peaceful enjoyment of the Leased Premises or this lease terminated or canceled at any time, except in the event Landlord shall have the right to terminate this lease under the terms and provisions set forth herein.

Section 3.6 True Lease. It is the intent of Landlord and Tenant and the parties agree that this Lease is a true lease and that this Lease does not represent a financing agreement. Each party shall reflect the transaction represented hereby in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

Section 3.7 Right of First Refusal; Buyout. (a) Landlord shall not sell, transfer or convey the Leased Premises to a third person or entity unless Tenant first is given the opportunity to purchase the Leased Premises pursuant to the terms and conditions set forth in this Section 3.7(a). If at any time during the first eleven years of Term Landlord receives from any third person or entity an Offer (as hereinafter defined) to purchase the Leased Premises which Landlord desires to accept, Landlord shall notify Tenant of such Offer by delivering written notice to Tenant, which notification (the "Offer Notice") shall contain a copy of the written Offer or, at Landlord's election, a written summary of the terms of the Offer. For purposes of this Lease, an "Offer" shall mean any bona fide written instrument or verbal communication setting forth the terms pursuant to which Landlord will convey the Leased Premises. Tenant shall have ten (10) Business Days after receipt of the Offer Notice in which to elect by written



notice delivered to Landlord (the "Acceptance Notice") to enter into a formal agreement on the same terms and conditions as those contained in the Offer ("Tenant's Purchase Right"). Such election shall be effective only if within ten (10) Business Days after delivery of the Acceptance Notice the parties enter into a written purchase agreement on terms reasonably acceptable to Landlord in good faith for the sale of the Leased Premises to Tenant containing all terms of the Offer. If Tenant fails to timely deliver the Acceptance Notice, or if Tenant fails to timely enter into said purchase agreement as provided herein, Landlord shall have the right to accept the Offer or any modification thereof on terms substantially similar as those set forth in the Offer. Tenant's right to purchase the Leased Premises identified in the Offer Notice shall not apply to (i) transfers of less than one hundred percent of the ownership interests in Landlord, (ii) a public offering of ownership interests in Landlord, (iii) a recapitalization transaction of any kind involving Landlord, (iv) condemnation, eminent domain or similar proceedings, or (v), rights exercised by Mortgagees in foreclosure or in lieu thereof pursuant to Mortgagee or other documents executed by Landlord in connection therewith, including the subsequent disposition of the Premises by Mortgagee or its affiliate or designee that acquires the Leased Premises in connection therewith.

(b) Notwithstanding anything to the contrary, if Landlord's Offer Notice states that it is purchasing from Tenant Tenant's Purchase Right, then (i) Tenant shall have no further rights under Section 3.7(a), and Section 3.7(a) shall be null and void without further effect, and (ii) upon the closing of the purchase and sale of the Leased Premises pursuant to the Offer, Landlord shall pay Tenant ten percent (10%) of the excess of the sales price agreed to pursuant to the Offer (less costs and fees, including broker's fees) over the TPC, the "Offer Fee", and (iii) the Rent shall be the greater of the amount as determined by Section 3.2(a) or fair market value, as shall be determined by an independent third party appraiser jointly appointed by Landlord or and Tenant, and absent their agreement appointed by the then chairman or similar officer of the Westchester County Society of Real Estate Appraisers. For purposes of clarification, Tenant shall not be entitled to the receipt of the Offer Fee if Tenant exercises Tenant's Purchase Right as set forth in Section 3.7(a) above.

(c) Upon expiration of the eleventh Lease Year, Tenant's Right of First Refusal as set forth in in Section 3.7(a) shall lapse and become null and void.

Section 3.8. Option to Purchase. Commencing on the latter of (i) the first day after the Commencement Date and (ii) 24 months from the date of the closing of the Original Mortgage, and ending on the last day of the fifteenth Lease Year of the Lease, Tenant shall have the option to purchase the Leased Premises from Landlord for a purchase price of \$65,055,000 by giving written notice of its exercise of the Option to Purchase including a proposed closing date, provided if Tenant does not exercise the Option to Purchase prior to receiving an Offer Notice pursuant to Section 3.7, Tenant's Option to Purchase under this Section 3.8 shall lapse unless and until the conveyance of the Leased Premises contemplated under Section 3.7 does not occur. Upon expiration of the fifteenth Lease Year, Tenant's the right to purchase the Leased Premises from Landlord, all as set forth above, shall lapse, become null and void, and Tenant shall have deemed to waived all such rights hereunder.

ARTICLE IV

UTILITIES AND TAXES

Section 4.1 Utilities. From and after the Commencement Date, Tenant shall pay or cause to be paid all charges next coming due and payable for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Leased Premises (the "Utilities") during the Term. Tenant covenants to place all Utilities in Tenant's name as of the Commencement Date. Adjustment shall be made for Utilities applicable to any period prior to the Commencement Date. In the event Landlord is billed directly by any service provider or utility company for any Utilities or services supplied to Tenant during the Term, Landlord shall send Tenant the bill and Tenant shall promptly pay the same. Landlord shall have no obligation or liability with respect to any interruption or failure in the supply of any such Utilities. If Landlord elects to or shall be required to pay for any Utilities to preserve and/or protect the Leased Premises, Tenant shall reimburse Landlord for the cost and expense thereof plus interest at the Prime Rate.

Section 4.2 Taxes. Tenant shall be solely responsible for the payment, prior to the date when penalties would attach, of all general and special real estate taxes and assessments (together with any excise taxes on such real estate taxes and assessments levied or imposed by any governmental taxing authority), fire district taxes, liens, impositions, including capital stock, franchise, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes; personal property taxes, assessments including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; ground rents; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Premises, and all interest and penalties thereon attributable to any failure in payment by Lessee which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon the Leased Premises (collectively, the "Impositions") that accrue from the Commencement Date through the Term. Adjustment shall be made for Impositions applicable to any period prior to the Commencement Date. Tenant shall pay all of the Impositions directly to the applicable taxing authorities and Tenant shall promptly forward proof of payment to Landlord in such form as shall be reasonably acceptable to Landlord unless Landlord elects to require escrow deposits in accordance with Section 4.3 hereof. Landlord shall promptly forward any tax bills which it may receive to Tenant. Landlord shall only bill Tenant for any of the Impositions if Tenant does not pay any of the Impositions before delinquency and Landlord is obligated or elects (in Landlord's sole and absolute discretion) to pay any of the Impositions directly to remain current with all taxing authorities. Tenant shall pay the full amount of any increases in any of the Impositions resulting from alterations or improvements made by or for the benefit of Tenant. After the expiration or termination of this Lease, Tenant shall pay all bills for any of the Impositions which become due and payable after the expiration or termination of the Lease covering any period through the expiration or earlier termination of the Lease. If any governmental taxing authority acting under any present or future ordinance or regulation, shall levy, assess or impose a tax, excise and/or assessment (other than any net income or franchise tax) upon Landlord or Tenant for rental payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise and/or assessment



or shall reimburse Landlord for the cost and expense thereof, as the case may be. Provided that Tenant shall have deposited a sufficient amount of funds to pay the Impositions pursuant to Section 4.3 and Tenant has done nothing to prevent payment by Landlord or its lender of the Impositions, then Tenant shall not be responsible for any and all late payment fees and/or penalties, including interest, imposed by any applicable taxing authorities with respect to the untimely payment of Impositions.

Section 4.3 Escrow Deposits.

(a) Escrow. At the option of Landlord, which may be exercised at any time by Landlord in its sole and absolute discretion Tenant shall, on the first day of the first calendar month commencing after notice from Landlord, and on the first day of each calendar month thereafter during the Term (each of which dates is referred to as a "Monthly Deposit Date"), pay to and deposit with Landlord a sum equal to one-twelfth (1/12th) of the Impositions to be levied, charged, filed, assessed or imposed upon or against the Leased Premises within one (1) year after said Monthly Deposit Date and a sum equal to one-twelfth (1/12th) of the premiums for the property insurance policies required pursuant to Article VI which are payable within one (1) year after said Monthly Deposit Date. If the amount of the Impositions to be levied, charged, assessed or imposed or insurance premiums to be paid within the ensuing one (1) year period shall not be fixed upon any Monthly Deposit Date, such amounts for the purpose of computing the deposit to be made by Tenant hereunder shall be reasonably estimated by Landlord with an appropriate adjustment to be promptly made between Landlord and Tenant as soon as such amount becomes determinable. In addition, Landlord may, at its option, from time to time require that any particular deposit be greater than one-twelfth (1/12th) of the estimated amount payable within one (1) year after said Monthly Deposit Date, if such additional deposit is required in order to provide to Landlord sufficient funds from which to make payment of all Impositions on or before the next due date of any installment thereof, or to make payment of any required insurance premiums not later than the due date thereof. If any Mortgagee or the Commissioner requires Landlord to impound insurance premiums on a periodic basis during the term, Tenant, on notice from Landlord indicating this requirement, shall pay a sum of money towards its liability under this Lease to Landlord on a periodic basis in accordance with Landlord's requirements. Landlord shall impound the premium payments received from Tenant in accordance with the requirements of Mortgagee and shall utilize such funds to timely pay insurance premiums.

(b) Use of Deposits. The sums deposited by Tenant under this Section 4.3 shall be held by Landlord or Mortgagee and shall be applied in payment of the Impositions or insurance premiums, as the case may be, when due. Any such deposits may be commingled with other assets of Landlord or such Mortgagee, and shall be deposited by Landlord or such Mortgagee in an Eligible Institution in such account or accounts as Landlord or the Mortgagee may, from time to time select, and Landlord shall not be liable to Tenant or any other person (i) based on Landlord's or the Mortgagee's (or any bank's) choice of investment vehicles, (ii) for any consequent loss of principal or interest or (iii) for any unavailability of funds based on such choice of investment. Furthermore, subject to the foregoing regarding the use of depositories and accounts, Landlord and its Mortgagee shall bear no responsibility for the financial condition of, nor any act or omission by the depository bank. No income, if any, from such investment or interest on such deposits shall be paid to Tenant. To the extent that Landlord does not have an

invoice or bill specifying the due date for payment, Tenant shall give not less than thirty (30) days prior written notice to Landlord in each instance when an Imposition or insurance premium is due, specifying the Imposition or premium to be paid and the amount thereof, the place of payment, and the last day on which the same may be paid in order to comply with the requirements of this Lease. If Landlord, in violation of its obligations under this Lease, does not pay any Imposition or insurance premium when due, for which a sufficient deposit exists, Tenant shall not be in default hereunder by virtue of the failure to pay such Imposition or such insurance premium and Tenant shall not be liable for any late payment fees and/or penalties, including interest imposed as a result of such failure to pay. The term "Eligible Institution" shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least "A-1+" by S&P, "P-1" by Moody's and "P-1+" by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's).

(c) Deficits. If for any reason any deposit made by Tenant or held by Landlord under this Section 4.3 shall not be sufficient to pay any Imposition or insurance premium within the time specified therefor in this Lease, then, within ten (10) days after demand by Landlord, Tenant shall deposit an additional amount with Landlord, increasing the deposit held by Landlord so that Landlord holds sufficient funds to pay such Imposition or premium in full (or in installments as otherwise provided for herein), together with any penalty or interest thereon. Landlord may change its estimate of any Imposition or insurance premium for any period on the basis of a change in an assessment or tax rate or on the basis of a prior miscalculation or for any other good faith reason; in which event, within ten (10) days after demand by Landlord, Tenant shall deposit with Landlord the amount in excess of the sums previously deposited with Landlord for the applicable period which would theretofore have been payable under the revised estimate.

(d) Transfers. Consistent with Section 2.2, in connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein and each successor in interest shall have the right to transfer all amounts deposited pursuant to the provisions of this Section 4.3 and not used pursuant to this Section 4.3 to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, the original Landlord named herein or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto.

(e) Security. All amounts deposited with Landlord pursuant to the provisions of this Section 4.3 shall be held by Landlord as additional security for the payment and performance of Tenant's obligations under this Lease and, upon the occurrence and during the continuance of any Lease Default, Landlord may, in its sole and absolute discretion, apply such amounts towards payment or performance of such obligations.

(f) Return. Upon the expiration or earlier termination of this Lease, as long as all of the Rent and any and all other obligations due under this Lease have been fully paid and performed, any sums then held by Landlord under this Section 4.3 shall be refunded to Tenant.

and subject to the rights of a Mortgagee, together with all interest, if any, earned thereon and all income, if any, earned therefrom; ~~provided, however,~~ that if a Lease Default has occurred and is continuing, all of such sums may be applied by Landlord towards any amounts owed to Landlord pursuant to this Lease.

(b) Receipts. Tenant shall deliver to Landlord copies of all claims and bills in relation to the Impositions and Insurance premiums promptly upon receipt thereof by Tenant.

This Article and the obligations herein shall survive expiration or earlier termination of this Lease.

## ARTICLE V

### LANDLORD'S WORK, MAINTENANCE AND REPAIR, IMPROVEMENTS

Section 5.1 Landlord's Work. (a) Landlord shall cause the Facility to be constructed ("Landlord's Work").

(b) Landlord will give Tenant thirty (30) days' notice of the date Landlord expects to be the Substantial Completion Date. On or prior to the Substantial Completion Date, Landlord and Tenant shall jointly prepare a list of the items for the Facility that remain to be completed or corrected, set a dollar value for the cost to complete the work, and fix time for their completion or correction (collectively the "Punchlist").

(c) Notwithstanding anything in this lease to the contrary, on and after the Substantial Completion Date Tenant shall be deemed to have agreed Landlord has completed Landlord's Work to Tenant's complete satisfaction, except for (i) the Punchlist, (ii) such items of decoration or mechanical adjustment of which Tenant gives Landlord written notice within thirty (30) days after the Substantial Completion Date (the "Initial Correction Items") or (iii) any defects in the Facility which were not known or reasonably discoverable by Tenant in the time period specified in the immediately prior clause (ii) ("Latent Defects"); provided that, as to Latent Defects, Landlord will have no responsibility or liability therefor, or for the correction thereof, unless (A) Tenant conducts at least one inspection of the Facility with a qualified engineer or other expert, within one year from the Substantial Completion Date, and (B) Tenant gives Landlord notice of such Latent Defects within thirty (30) days after discovery thereof and in any event not later than one year after the Substantial Completion Date, which notice will be accompanied by the certification of such engineer or other experts, specifying, in detail, such Latent Defects in the Facility.

(d) At its sole expense, Landlord shall complete the Punchlist, and remedy the Initial Correction Items, and the Latent Defects provided with respect to Latent Defects that the conditions set out in clause (iii) of section (c) are satisfied.

(e) To the extent assignable at no cost to Landlord, Landlord assigns to Tenant all manufacturer warranties on materials and equipment. Tenant shall have the benefit and right to enforce such warranties at its sole cost and expense.

**Section 5.2 Maintenance and Repair.** Except as provided in Section 5.1, Tenant, at Tenant's sole cost and expense, shall keep the Leased Premises, including all buildings, fixtures, trade equipment, trade fixtures, furniture, beds and other personal property leased to Tenant pursuant to this Lease, including, without limitation, all structural and non-structural components, the roof, foundation, all outer walls, plumbing, sprinklers, electrical, mechanical, heating, ventilation, utility service, air conditioning, vertical transport, telephone, communications, cable, computer, fire-life safety, nursing call, and all other systems of the Leased Premises in good condition and repair and in compliance with all Laws. Landlord shall not be responsible to make any improvements, repairs, maintenance or replacements whether occasioned by the act, omission, active negligence, or passive negligence of Landlord or Tenant and/or its agents, employees, invitees or licensees or otherwise, and Tenant shall pay for all improvements, repairs, replacements, maintenance and expenditures relating to the Leased Premises, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the commencement of the Lease, by Tenant's use or by a change in applicable Laws. The Leased Premises and its appurtenances shall at all times be kept clean, safe and sanitary and in good order, condition, replacement and repair by Tenant, at Tenant's sole cost and expense, except for ordinary wear and tear (provided, however, that, without limiting the generality of this Section 5.2, Tenant shall be obligated to replace any portion of the Leased Premises upon any obsolescence thereof or if proper repair is impractical). Tenant shall provide (if not currently a part of the Leased Premises) and maintain, repair and replace, as necessary, all furniture, fixtures, equipment and/or other personal property required by any Governmental Authority (other than furniture, fixtures, equipment and/or other personal property owned by contractors providing ancillary services at the Facility) necessary for the operation of the Facility and to comply with all Laws. All such property provided by Tenant shall immediately become the property of Landlord and Tenant shall execute such documentation as Landlord may reasonably require vesting title in such property in Landlord. Landlord shall have no liability or obligation with respect to such property or any of Tenant's operations relating thereto. All replacements made by Tenant hereunder shall be made in a good and workmanlike manner in accordance with Laws using the same, similar or better quality of materials as being replaced and shall immediately become the property of Landlord. Tenant acknowledges that title and ownership of all repaired and replaced furniture, fixtures, equipment and/or other personal property made hereunder shall belong to and is for the benefit of Landlord. Tenant shall not enter into any equipment lease or conditional sales contracts for any furniture, fixtures, equipment and/or other personal property relating to the Facility without Landlord's consent which it may grant or withhold in its sole discretion. The term "Laws" means, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Leased Premises or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Tenant, at any time in force affecting the Leased Premises or any part thereof. The term "Governmental Authority" means any court, board, agency, arbitrator, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

**Section 5.3 Improvements, Renovation, Alterations and Additions.** Tenant shall have the right during the Term to make such non-structural interior alterations, changes and improvements to the Leased Premises as may be proper and necessary for the conduct of Tenant's business, to cause the Leased Premises to conform to all Laws, for patient comfort and safety, or for the full beneficial use of the Leased Premises, so long as such improvements do not (i) exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) in any given calendar year, (ii) interfere with any of the purposes for which the Facility was leased or affect the roof or structure, (iii) decrease the value of the Leased Premises, (iv) affect any building system, including, heating, ventilation, air conditioning, mechanical, electrical, plumbing or vertical transport systems, or (v) affect the exterior appearance of the Leased Premises. Tenant shall not make any other alterations, changes, or improvements without the express written approval in each instance by Landlord, which consent shall not be unreasonably withheld; provided, however, that the granting or withholding of consent shall not result in any liability to Landlord. Furthermore, Tenant may make all repairs or replacements required by a Governmental Authority without obtaining Landlord's consent, provided, however, Tenant shall give Landlord no less than ten (10) days prior written notice of such government mandated repairs or replacements prior to making or implementing same, unless emergency factors necessitate the making of such repairs before Tenant can reasonably give notice to Landlord, in which event Tenant shall give notice to Landlord as soon as reasonably possible. Tenant shall pay for all costs, fees and penalties imposed by the applicable state agencies or the Center for Medicare and Medicaid Services ("CMS") or other Governmental Authority in connection with any survey or the Change of Ownership. Tenant shall notify Landlord of any alterations, changes or improvements required and/or permitted by the applicable state agencies or the CMS or other Governmental Authority prior to the commencement thereof. Tenant shall pay all costs and expenses of any required and/or permitted alterations, changes, and improvements, shall make the same in a good and workmanlike manner, and in accordance with all Laws, having obtained all necessary permits and approvals from Governmental Authorities having jurisdiction over the Facility and work performed thereon or therein, and shall assure Landlord, in form reasonably satisfactory to Landlord, all necessary permits and authorizations have been received and that payment for the work and materials will be made by Tenant. Tenant hereby completely and fully indemnifies Landlord against any mechanic's liens or other liens or claims in connection with the making of any alterations, changes, and/or improvements. Any liens arising out of any required and/or permitted alterations, changes, and/or improvements shall be discharged of record by Tenant within the earlier of thirty (30) days after the same have been filed by payment, bonding or otherwise, as permitted by law, or five (5) days after commencement of a foreclosure or enforcement action. Notwithstanding any provision of this Lease to the contrary, Tenant shall not undertake any alterations, renovations, or improvements to the Facility or otherwise commence any project or activity with respect to the Facility, which may result in any bed being taken out of service for more than seven (7) days without Landlord's and/or Mortgagee's prior written consent, which Landlord's consent shall not be unreasonably withheld. Tenant shall give Landlord written notice ten (10) days prior to commencing repair, construction, or alterations whose costs exceed One Hundred Thousand Dollars (\$100,000.00).

**Section 5.4 Signs.** All signs installed by Tenant at the Facility shall comply with all Laws, and all necessary permits or licenses shall be obtained by Tenant. Tenant shall maintain all signs in good condition and repair, and/or replace as may be required by applicable law, at all times at Tenant's sole cost and expense. Upon vacating the Leased

Premises, Tenant shall remove all signs and supporting material or installations so installed by Tenant, but only if Landlord shall request such removal, and Tenant shall repair all damage caused by such removal. Landlord acknowledges and agrees that neither Landlord nor any subsequent tenant of Landlord shall be authorized to use any company or registered trade name of Tenant or any of Tenant's affiliates or subcontractors.

Section 5.5 Surrender (a) Subject to applicable law and to receipt of any necessary DOH approval, Tenant shall deliver up and surrender to Landlord possession of the Leased Premises and all improvements and replacements thereof, including all of Tenant's alterations, improvements work (and all replacements thereof) and all fixtures permanently attached to the Leased Premises by Tenant during the Term, upon the expiration of this Lease or its termination in any manner whatsoever, in as good condition and repair and in substantially similar form, character and manner as the same shall be on the Commencement Date, reasonable wear and tear excepted (without compensation to Tenant), with permitted changes, improvements and additions made during the Term as authorized herein, subject to no liens, encumbrances, charges, restrictions, conditions, limitations or claims whatsoever to the extent not encumbering the Leased Premises as of the Commencement Date, and deliver the keys and/or operational security cards to the Leased Premises to Landlord or Landlord's designated agent.

(b) Licenses and Transfer of Operations. Upon the expiration of the Term or earlier termination of the Lease, Tenant shall and shall cause its subcontractors to, (i) transfer to Landlord or Landlord's nominee a fully operational, licensed and certified, and staffed facility and shall cooperate with Landlord or Landlord's designee or nominee in connection with the processing by Landlord or Landlord's designee or nominee of any applications for all licenses, operating permits and other governmental authorization, all contracts, including contracts with all Governmental Authorities or quasi governmental entities (provided that except following a Lease Default, the reasonable costs and expenses of the processing of any such application shall be paid by Landlord or Landlord's designee or nominee), (ii) transfer to Landlord or Landlord's nominee all tangible personal property of Tenant, including financial and accounting records, business records, data, employee and/or personnel records, patient and resident records, and all records held in electronic form, (all subject to the Laws requiring confidentiality), all equipment and small ware and all inventory used in connection with the Facility, (iii) transfer to Landlord or Landlord's nominee all intangible property except accounts receivable of Tenant, and (iv) transfer to Landlord or Landlord's nominee all residents in the Facility. With respect to resident funds, Tenant shall transfer to Landlord or its designee, all patient and resident trust accounts, and shall cause its subcontractor to prepare and submit to Landlord or its designee a true, correct, and complete accounting and inventory (properly reconciled) of any patient trust funds and resident property to be transferred to Landlord, or its designee. Tenant shall, and shall cause its subcontractor, not to commit any act or be remiss in the undertaking of any act that would jeopardize the licensure or certification of the Facility, and Tenant shall and shall cause its subcontractor to comply with all requests for an orderly transfer of the same upon the expiration or early termination of the Term, including, but not limited to, upon the request of Landlord or its designee, the transitioning of employees in compliance with applicable laws. Without limiting the generality of the foregoing, if requested by Landlord or a proposed replacement operator for the Facility, Tenant hereby agrees to enter into a reasonable operations transfer agreement with such replacement operator. Tenant shall not unreasonably withhold, condition or delay its

consent to entering into any interim subleases or management agreements as may be necessary to effectuate an early transfer of the operations of the Facility prior to the time that such replacement operator holds all licenses and permits from all applicable Governmental Authorities with jurisdiction necessary to operate the Facility for its intended use. In addition, upon request, Tenant shall and shall cause subtenants, to promptly deliver copies to Landlord or Landlord's designee of all books and records relating to the Leased Premises and operations thereon (including inventories, employee lists and personnel records, and policies and procedures manuals). Tenant shall allow Landlord or a proposed replacement operator for the Facility to utilize Tenant's, subtenants' computer hardware and software for a minimum of ninety (90) days to facilitate the transfer of operations, the collection of accounts receivable, the billing of providers, and the provision of patient care. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any loss, damage, cost or expense incurred by Landlord or Landlord's designee or nominee in connection with the correction of any and all deficiencies of a physical nature identified by any Governmental Authority responsible for licensing the Leased Premises in the course of any change of ownership inspection and audit. Tenant shall be responsible for any alterations or renovations necessitated by, or imposed in connection with, a change of ownership inspection survey for the transfer of operation of the Leased Premises to Landlord or its designee. Tenant shall not commence to wind up and terminate the operations of the Facility or relocate the patients or occupants of the Facility to any other health care facility. In addition, Tenant shall not terminate the employees of the Facility except in connection with and upon the transfer of operations of the Facility to Landlord or its designee.

(c) If Landlord notifies Tenant in writing that it intends to transfer the operations of the Facility to a new operator and desires to have Tenant continue to operate the Facility after the Expiration Date or earlier termination of the Lease, then Tenant shall continue to operate the Facility until the earliest to occur of (i) the date on which such successor operator shall assume operation of the Facility, or (ii) the date that is 180 days after the applicable Expiration Date or termination date (the "Reimbursement Period"). During the Reimbursement Period (x) Landlord shall provide Tenant with an operating budget, (y) Landlord shall include in the aforesaid operating budget, and Tenant shall continue to pay during the Reimbursement Period, all Rent that would have been owing under this Lease as to the Leased Premises if this Lease had not expired or terminated as to, and/or Tenant had not been dispossessed from, such Leased Premises, and (z) provided that this Lease was not terminated with respect to, and Tenant was not dispossessed from, such the Lease Premises due to a Lease Default, Landlord shall reimburse Tenant for any operating deficits with respect to the Facility that Tenant may be required to fund out-of-pocket on account of operating losses and expenses incurred by Tenant by reason of, or arising out of compliance with, such budget with respect to the Reimbursement Period. Any such reimbursement shall be due from Landlord to Tenant within 60 days after request by Tenant, provided that Tenant shall furnish such documentation of any operating deficits, losses and expenses as Landlord may reasonably request. The terms of this Section 5.5(c) shall survive the expiration or earlier termination of this Lease and/or any dispossession of Tenant from the Lease Premises.

(d). Use of Legacy Tradename. Without limitation of the other provisions of (b) Section 5.5 and notwithstanding anything to the contrary contained in this Lease, Tenant agrees to allow Landlord or its designee operator, at its option and at no cost to Landlord or any such designee, to continue to use, in its signage, marketing and advertising materials, operations

and otherwise, any or all name(s) (including tradenames) associated with the operation of the Facility as a going concern for up to 180 days following (i) the expiration or termination of this Lease and (ii) the vacation from, and surrender of, the Leased Premises and Facility by Tenant. At the end of such 180 day period, or upon sooner written notice from Landlord to Tenant, Tenant shall, promptly and at its expense, remove its aforesaid name(s) from all signs on the Facility and repair any damage to such signs caused by such removal. Landlord acknowledges and agrees that Tenant, not Landlord, owns the aforesaid names and that neither Landlord nor any designee of Landlord may use the same except as described in this Section 5.3(d) or as otherwise agreed in writing by Tenant.

(c) Management of Terminated/Dispossessed Premises. Commencing on the applicable Termination/Dispossession Date as to any Terminated/Dispossessed Premises, Landlord or its designee, upon notice to Tenant, may elect to assume the responsibilities and obligations for the management and operation of the Business at such Terminated/Dispossessed Premises, and Tenant agrees to cooperate fully to accomplish the transfer of such management and operation without interrupting the operation of such Business to the extent allowable by Law. Tenant shall permit Landlord or its designee to operate the Facility under Tenant's license, certifications and other authorizations pending the issuance of new licenses, certifications and other authorizations Landlord or its designee. Tenant shall not commit any act or be remiss in the undertaking of any act that would jeopardize any licenses, certifications and other authorizations related to the Facility, and Tenant shall comply with all requests for an orderly transfer of all licenses, certifications and other authorizations related to the Facility and any payor's certifications.

(f) In addition, upon any expiration or termination of this Lease, Tenant covenants and agrees to do such things and to take such action as may, from time to time, be necessary or appropriate to permanently surrender and withdraw from possession and operation (including but not limited to licensure and certification) of the Leased Premises, and shall thereafter be fully and permanently relieved of all powers, duties, responsibilities and obligations that are conferred or imposed upon Tenant under this Lease (except those continuing obligations, including but not limited to the obligation to pay all Rent due and owing under this Lease, and the obligation to pay all amounts owed by Tenant to the Medicare, Medicaid, third party payor programs and residents for the period of the Term, which survive the termination hereof as provided herein) and to restore and place Landlord or its designee in possession and operation of the Leased Premises, or any portion thereof, and Tenant covenants and agrees to execute and deliver to Landlord or Landlord's designee (each subject to the approval of DOH) all assignments, operation transfer agreements, consents, consents to assignments (including Medicare and Medicaid provider agreements, if requested by Landlord) documents and other instruments, to the reasonable satisfaction of Landlord in order to effectuate the provisions hereof.

Section 5.6 Condition of Leased Premises. (a) Subject to Section 5.1, Tenant shall accept and take possession of the Leased Premises in its "AS IS," "WHERE IS" "WITH ALL FAULTS" condition, and acceptance of possession of the Leased Premises on the Commencement Date shall be deemed an acknowledgment by Tenant of Tenant's acceptance of the condition of the Leased Premises. Tenant acknowledges and agrees that Landlord is not making any representation, warranty or covenant whatsoever with respect to the condition of the

Leased Premises, or any portion thereof, or its suitability for any particular purpose, and Tenant shall be relying solely on its inspection of the Leased Premises and due diligence investigations with respect thereto.

(b) LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND FOR COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. EFFECTIVE AS OF THE DATE OF THIS LEASE, TENANT SHALL RELEASE LANDLORD FROM ALL CLAIMS WHICH TENANT OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MANAGER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTING ON TENANT'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH TENANT ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES, INCLUDING THE INFORMATION AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS, AND TENANT SHALL NOT LOOK TO LANDLORD IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION, EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS LEASE; (A) TENANT WILL ACQUIRE THE LEASED PREMISES SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS, AND (B) WITHOUT LIMITING THE FOREGOING, WAIVES ANY RIGHT IT OTHERWISE MAY HAVE AT LAW OR IN EQUITY AGAINST LANDLORD WITH RESPECT TO ANY ASPECT OF LEASED PREMISES.

ARTICLE VI

INSURANCE

Section 6.1 INSURANCE. (A) Tenant shall obtain and maintain, or cause to be maintained, insurance for Tenant and the Facility providing at least the following coverages or as required from time to time by any Mortgagee:

(i) comprehensive "all risk" insurance on the Facility and the Personal Property, including Building Ordinance Coverage from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation (except with respect to the insurance pursuant to clauses (D), (x), (y) and (z) below); (B) containing an agreed amount

endorsement with respect to the Facility and Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Ten Thousand Dollars (\$10,000.00) for all such insurance coverage (except as stated in the penultimate sentence of this subsection); and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if the Facility or the use of the Facility shall at any time constitute legal non-conforming structures or uses and covering the increased cost of reconstruction, demolition cost, value of the undamaged portion of the structure and any increased expenses to rebuild due to the enforcement of building or zoning laws or requirements following a covered loss of the Leased Premises. In addition, Tenant shall obtain: (x) if any portion of any of the Leased Premises is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of any loan encumbering the Leased Premises or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or successor legislation, or such greater amount as Landlord and/or Mortgagee shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in an area with a high degree of seismic activity and (z) coastal windstorm insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in a coastal region; provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive insurance policy required under this Subsection (i); and further provided that the earthquake insurance pursuant to clause (y) may provide for a deductible of up to the greater of One Hundred Thousand Dollars (\$100,000.00) and two percent (2%) of the amount of such coverage, (iii) the flood insurance pursuant to clause (x) may provide for a deductible of up to One Hundred Thousand Dollars (\$100,000.00), and (IV) the ordinance and law coverage pursuant to clause (D) may have a sub-limit of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Facility, such insurance (A) with a combined limit of not less than Five Million Dollars (\$5,000,000.00) in the aggregate and Two Million Dollars (\$2,000,000.00) per claim, (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) to continue at not less than the aforesaid limit until required to be changed by Landlord and Mortgagee in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability; and (5) contractual liability covering the indemnities contained in Section 9.1 of the Lease to the extent the same is available;

(iii) business income with extra expense insurance (A) with loss payable to Landlord and Mortgagee; (B) covering all risks required to be covered by the insurance provided for in Subsection (i) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Facility and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Facility is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred

percent (100%) of the projected net profit and extra expense with respect to the Facility for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire at the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Tenant's reasonable estimate of the gross income from the Facility for the succeeding twelve (12) month period. Nothing herein contained shall be deemed to relieve Tenant of its obligations to pay the Rent when due except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Facility, and only if the Facility coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above and (3) with an agreed amount endorsement waiving co-insurance provisions;

(v) worker's compensation insurance with respect to any employees of Tenant, as required by any Governmental Authority, Health Care Authority, Legal Requirement or Health Care Requirement;

(vi) boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Landlord and Mortgagee on terms consistent with the commercial property insurance policy required under Subsection (i) above;

(vii) intentionally omitted;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million Dollars (\$1,000,000.00);

(ix) if the Facility is or becomes a legal "non-conforming" use, ordinance or law coverage and insurance coverage to compensate for the cost of (upon a Casualty) demolition or rebuilding of the undamaged portion of the Facility along with any reduced value and the increased cost of construction in amounts as requested by Landlord and Mortgagee;

(x) the commercial property and business income insurance required under Sections 6.1(a)(i) and (iii) above shall cover perils of terrorism and acts of terrorism and Tenant shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i) and (iii) above at all times during the Term;

(xi) professional liability and malpractice insurance with limits of at least Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate. Tenant shall also require each medical director for the Facility and the associated nurse practitioner at the Facility to carry professional liability and malpractice insurance with

limits of not less than Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate; and

(iii) notwithstanding anything to the contrary in the foregoing, all insurance coverage required by any mortgagee of Landlord shall be met by Tenant, from time to time as necessary;

(xiii) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Landlord and/or Mortgagee from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Facility located in or around the region in which the Facility is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or, in the singular, the "Policy"), and shall be subject to the approval of Landlord and Mortgagee as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State of New York and having a claims paying ability rating of "A" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the companies (one of which shall be S&P if they are rating the securities and one of which will be Moody's if they are rating the companies), or if only one Rating Agency is rating the companies, then only by such Rating Agency and shall specifically name Landlord and Mortgagee as loss payees and additional insureds, as applicable. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Landlord and Mortgagee, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Landlord and Mortgagee of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Tenant to Landlord and Mortgagee.

(c) Any blanket insurance Policy shall specifically allocate to the Facility the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Facility in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Tenant as the insured and Landlord and Mortgagee as the additional insured, as their interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called lender's loss payee endorsement in favor of Mortgagee providing that the loss thereunder shall be payable to Mortgagee.

(e) All Policies provided for in Section 6.1 shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Tenant, or anyone acting for Tenant, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Landlord and Mortgagee are concerned;

(ii) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' written notice to Landlord and Mortgagee and any other party named therein as an additional insured;

(iii) the issuers thereof shall give notice to Landlord and Mortgagee if the Policies have not been renewed fifteen (15) days prior to its expiration; and

(iv) Neither Landlord nor Mortgagee shall be liable for any insurance premiums thereon or subject to any assessments due thereunder.

(f) If at any time Landlord and Mortgagee is not in receipt of written evidence that all Policies are in full force and effect, either shall have the right, without notice to Tenant, to take such action as either deems necessary to protect its interest in the Leased Premises, including, without limitation, the obtaining of such insurance coverage as either in its sole discretion deems appropriate. All premiums incurred by Landlord and/or Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Tenant to Landlord and/or Mortgagee, as the case may be, upon demand and, until paid, shall be secured by the Mortgagee and shall bear interest at the Overdue Rate.

(g) Tail Insurance. If Tenant has claims made insurance coverage of any type, upon expiration or earlier termination of this Lease, Tenant shall purchase so-called "tail" insurance for a period of three years in an amount not less than its existing coverages in order to assure Tenant is covered by insurance after the expiration or earlier termination of this Lease for all claims arising or relating to the period prior to the expiration or earlier termination of this Lease, and Landlord and Mortgagee shall be named as additional insured thereunder.

Section 6.2 Certificates of Insurance. Upon the Commencement Date of this Lease, Tenant shall furnish Landlord, Mortgagee and other third parties which Landlord shall designate with appropriate certificates of insurance on acceptable Accord forms, together with an additional insurance endorsement showing that each type of insurance required under this Article VI is in full force and effect and not cancelable or modifiable without thirty (30) days prior written notice to Landlord, and upon request of Landlord or one or more of such additional insureds, deliver copies of such insurance policies. Tenant will provide Landlord with acceptable certificates of insurance pursuant to this Section 6.2 evidencing the renewal of such Policies ten (10) Business Days prior to the Policies' expiration date. Tenant acknowledges that all such certificates shall name Landlord, its successors and assigns, and Mortgagee, its successors and assigns, as additional insureds on the general liability and umbrella policies and as a loss payee/mortgagee, as their interests may appear, on the property and boiler and machinery policies.

Section 6.3 Waiver of Subrogation. Landlord and Tenant hereby waive all rights of recovery for causes of action which either has or may have or which may arise hereafter against the other for any damage to the Leased Premises or the property or business of either of them or of anyone claiming through either of them, by way of subrogation or otherwise, caused by any of the perils covered by a special form policy of property insurance or contents insurance or by any other insurance for damage to property carried by the party whose property was damaged; provided, however, that the foregoing waiver shall apply only if and to the extent that

a waiver of subrogation for property damage is not prohibited in the State of New York, has been consented to by the applicable insurance carrier, and only to the extent of such insurance coverage.

ARTICLE VII

SECURITY, ACCESS AND REPORTING OBLIGATIONS, WORKING CAPITAL

Section 7.1 Security Deposit/Guaranty.

(a) Contemporaneously with the execution of this Lease, Tenant shall deliver a guarantor of this Lease (the "Guaranty") from Liza Josefovic and Mark Naumen (collectively, the "Guarantors") in the form of Exhibit "B" attached hereto, or in form and amount as may be otherwise required by the Landlord and Landlord's first and second Mortgages. The Guaranty shall set forth that the Guarantors will be required to cooperate in turning the license over to the Landlord's designees or be personally liable for all costs, expenses and damages or deficiencies. The Guarantors shall ensure that the Tenant shall deliver all of the documents required to transfer the license in escrow to Posternak, Blackstein & Lund, or such other party as Landlord designates. As further security for the Tenant's performance under the Lease, the Tenant hereby agrees as follows:

(i) Tenant agrees that it shall deliver to Landlord 60 days prior to the Commencement Date, an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group. In the form attached hereto as Exhibit 7.1(a) or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months.

(ii) Tenant agrees that it shall deliver 60 days prior to the anticipated Commencement Date either (i) an unconditional Letter of Credit, in accordance with the Letter of Credit Agreement attached hereto as Exhibit 7.1(b) (which shall be executed simultaneously herewith), in the amount of \$3,700,000, or (ii) \$3,700,000 in cash ("Security Deposit") to secure the full and timely payment and performance of Tenant's obligations under this Lease. Tenant's failure to deliver the Letter of Credit or timely pay to Landlord the Security Deposit shall be deemed a Lease Default by Tenant. Landlord may retain the Security Deposit in such accounts as Landlord elects in its sole discretion and Landlord may commingle the Security Deposit with other funds of Landlord or its affiliates. Tenant shall have no right to any interest on the funds comprising the Security Deposit that it delivers to Landlord.

(iii) Sixty days prior to the anticipated Commencement Date, the funds in the controlled account number [REDACTED] at JPMorgan Chase Bank, N.A. (the "Bank") in the amount not less than \$1,000,000 shall be delivered by Tenant to Landlord and released by Tenant to Landlord to be held as an additional Security



Deposit by Landlord. The letter to Bank implementing the Tenant's obligations pursuant to the preceding sentence, attached hereto as Exhibit 7.1(c), which shall be held in escrow by Posternak, Blankstein & Land, shall be delivered by it to the Bank sixty days prior to the anticipated Commencement Date upon notice from Landlord.

(b) The term "Letter of Credit" shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit in favor of Landlord in form and content reasonably satisfactory to Landlord and entitling Landlord to draw thereon without the payment of any fees or charges in New York, New York, issued by a domestic banking institution or the U.S. agency or branch of a foreign banking institution; provided, that such banking institution has a long term senior unsecured debt obligation rating of at least "AA" by S&P. The Letter of Credit shall have an expiration date of the date that is the first anniversary of the date hereof. The Letter of Credit shall provide that it shall be deemed automatically renewed (without amendment) for consecutive periods of one year each thereafter during the Term unless the issuing bank sends written notice to Landlord and Tenant by certified mail, return receipt requested, not less than thirty (30) days preceding the then expiration date of the Letter of Credit that it elects not to have such Letter of Credit renewed. If such notice is sent, then at least twenty (20) days prior to the expiration of the Letter of Credit (and each subsequent or replacement Letter of Credit), Tenant shall deliver to Landlord a new Letter of Credit in the same amount and a failure to do so shall entitle Landlord to draw upon the existing Letter of Credit and to receive the proceeds therefrom and hold such proceeds as a cash Security Deposit pursuant to this Section 7.1 pending delivery of a new Letter of Credit.

(c) Upon a Lease Default, Landlord shall have the right, but not the obligation, in Landlord's sole and absolute discretion, to draw upon the Security Deposit and/or Letter of Credit and apply some or all of the funds to remedy such default or occurrence and to compensate Landlord for any loss or damage resulting therefrom, without prejudice to any other rights or remedies of Landlord under this Lease or at law or in equity. Upon any such application by Landlord, Tenant shall promptly deposit with Landlord an amount in cash equal to the amount from the Security Deposit so utilized by Landlord. Landlord shall at all times have, as security hereunder, Letter of Credit and cash Security Deposit in the amounts stated in Section 7.1(a). Upon the termination or expiration of this Lease, as long as Tenant has performed all of its obligations pursuant to this Lease and no Lease Default has occurred which is continuing, the remaining amount of the Security Deposit shall be returned or refunded to Tenant, without interest, subject in all events to Landlord's right to apply the Security Deposit as provided herein.

(d) Upon the occurrence of a Lease Default, Landlord may use, apply or retain the whole or any part of the Security Deposit or draw under a Letter of Credit to the extent required for the payment of any Rent or any other sums due to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the reletting of all or any portion of the Leased Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the Security Deposit, Tenant shall upon demand immediately deposit with Landlord a sum equal to the amount so used, applied or retained. In the event of any sale or financing of Landlord's interest in the Leased Premises, Landlord shall have the right to assign its interests in the

Security Deposit to the transferee, assignee or mortgagee, as the case may be, and if Landlord has given notice to Tenant of the assignment of Landlord's interest in the Security Deposit and if assignee or transferee of the Security Deposit has accepted liability for the Security Deposit, Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof; and Tenant shall look solely to the new landlord or mortgagee for the return or payment of the same. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit and neither Landlord, nor its successors or assigns, shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Section 7.2 Access to Leased Premises. Tenant shall permit Landlord, Mortgagee and their agents to enter upon the Leased Premises at all reasonable times during ordinary business hours and upon at least twenty-four (24) hours advance oral notice (except that in the case of emergency, Landlord may enter at any time and without prior notice) to inspect and examine the Leased Premises, to perform repairs as to Landlord's Work pursuant to Section 5.1, and to inspect and copy any operating manuals, procedures manuals, training manuals, and other books and records concerning unemployment, workers' compensation, insurance, tax, and any other business issues pertaining to the Leased Premises (subject to applicable laws and regulations governing patient confidentiality and privacy and the confidentiality of medical records) and any information necessary for audit relating to cost reimbursement, collections, general financial matters, litigation, inquiries and related activities (as may be necessary in connection with the Lease or the Leased Premises or any matters relating to periods prior to the Commencement Date). Any access by Landlord to patient records or medical records shall be strictly governed by Laws governing patient confidentiality and privacy and the confidentiality of medical records and all appropriate consents and/or waivers from residents or their guardians or representatives shall have been obtained before access to such records shall be granted. Landlord shall make reasonable efforts not to materially interfere with or materially disrupt Tenant's business and use and enjoyment of the Leased Premises during any such inspection or examination. Landlord shall also have the right but not the obligation to conduct a physical inspection of the Facility and from time to time and within ninety (90) days prior to the expiration of the Term or earlier termination of the Lease, upon twenty-four (24) hours advance oral notice. If Landlord reasonably determines based on this inspection that the Facility, or any portion of the Facility, requires repairs or maintenance so that the condition of the Facility is in compliance with this Lease and all Laws, then within thirty (30) days of notification by Landlord, Tenant shall commence making said repairs and diligently pursue such repairs to completion. Should Tenant fail to do so, within seven (7) days of notification by Landlord, Tenant shall pay to Landlord a deposit of funds in an amount equal to Landlord's reasonable estimate of the costs of such repairs or maintenance, which funds shall be released to Tenant from time to time during the progress of such repairs and maintenance based on submission by Tenant of evidence reasonably satisfactory to Landlord that such work is complete and all costs and expenses incurred to date have been paid in full. Tenant and Landlord acknowledge that the operations of the Facility and its maintenance are the sole and absolute responsibility of Tenant. Landlord shall have no liabilities or obligations with respect to the Facility, including no liabilities or obligations with respect to inspections of the Facility or the failure by Landlord to inspect the Facility.

Notwithstanding anything to the contrary in this in this Lease, Landlord and Tenant agree that all information, records and data collected or maintained regarding Facility

residents shall be confidential. Landlord, Tenant, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable New York and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) and the regulations issued in connection therewith (collectively, "HIPAA"). No employee or agent of Landlord or Tenant shall discuss, transmit or narrate in any manner the Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility's assets, or otherwise fulfilling its obligations under this Lease or under law. The obligations under this Section 7.2 shall survive the termination of this Lease, whether by rescission or otherwise.

**Section 7.3 Changes in Licensure and Certification Status.** As of the Commencement Date, Tenant represents and warrants that the number of beds licensed or certified for the Facility is one hundred sixty (160). Tenant shall not increase or decrease the licensed or certified number of beds, or change the license or certification thereof, without the consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; Tenant may increase the number of licensed or certified beds of the Facility upon thirty (30) days prior written notice to Landlord, but without the prior written consent of Landlord. If required, Tenant shall not increase the number of beds without the consent of the Commissioner and/or the DOH and Tenant agrees to return to Landlord upon the expiration of the Lease, the Leased Premises. Should Tenant increase the number of licensed beds at the Facility, the Fixed Rent payable for the Facility shall be increased proportionately for such additional beds. In no event shall the Fixed Rent be reduced in the event the number of Licensed Beds at the Facility is reduced. Landlord and Tenant acknowledge that the Leased Premises are, and at all times under the Term of this Lease are, the sole and absolute property of Landlord. Upon any termination of this Lease or any Lease Default by Tenant hereunder (which breach or default is not cured within any applicable grace period), and subject to the approval of the DOH, Landlord shall have the right to cause the Facility's licenses to be reissued in Landlord's name or in the name of Landlord's designee upon application therefor to, and the receipt of approval from, the DOH and to further have the right to have any and all Medicare, Medicaid and any other provider and/or third party payor agreements issued in Landlord's name or in the name of Landlord's designee. In the event Landlord exercises its rights pursuant to this Section 7.3, Tenant and Guarantors shall cooperate with Landlord in transferring the aforementioned issues to Landlord's name or for the benefit of Landlord or as Landlord may direct pursuant to the terms of this Lease.

**Section 7.4 Reporting and Other Obligations.**

(a) During the Term, Tenant shall and shall cause all Subtenants, sub-subtenants and any operators of the Facility to provide (without duplication) Landlord and Mortgagee with the following reports, statements, and inspections:

(i) **Annual Budget.** Within 60 days prior to the projected Substantial Completion Date, and no later than thirty (30) days prior to the end of each calendar year thereafter, Tenant shall submit to Landlord an annual budget (each an "Annual Budget") covering the operations of and proposed capital expenditures to be made with respect to the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Annual Budget).

(A) Capital Expenditures. The Annual Budget shall include a capital budget (the "Capital Budget") outlining a program of capital expenditures as may be required by Laws, any order to Landlord, or Tenant's reasonable business judgment during the next calendar year (or the remainder of the current calendar year, in the case of the initial Capital Budget), in which each proposed capital expenditure will be designated as either mandatory, highly recommended or desirable. Tenant shall be responsible for designating as a "mandatory capital expenditure" any expenditure which, if not made would, in Tenant's reasonable judgment: (a) cause the Facility to lose or put at risk its License; (b) place at risk the safety of a patient or resident or employee of the Facility; (c) cause the ineligibility of the Facility under any third party payor program applicable to the Facility; (d) cause the issuance of a formal notice that any of the operating licenses for the Facility or any substantial portion of the Facility will be revoked or suspended or qualified in any material adverse respect; or (e) subject Landlord or Tenant to criminal prosecution. Tenant shall make during the calendar year, or calendar quarter for which they are budgeted, all capital expenditures approved by Landlord. On and after the Commencement Date, Tenant shall expend at least Five Hundred Twenty-Three Dollars (\$523.00) per bed per month for capital expenditures at the Facility, including amounts expended to comply with the licensure and other expenditures required by any Governmental Authority or such other amounts as may be required by Mortgagee from time to time. If Mortgagee requires Landlord to deposit sums for capital expenditures, replacements and/or refurbishments relating to furniture, fixtures, equipment and/or improvements to the Facility, then Tenant shall pay to Landlord, as Additional Rent hereunder, all reserve or escrow amounts, sums and/or deposits which Landlord is required to pay to such Mortgagee with respect to such capital expenditures, replacements and/or refurbishments. Tenant shall pay any and all of such amounts and sums to or as directed by Landlord as Additional Rent hereunder together with each payment of Fixed Rent hereunder. Tenant acknowledges that as of the date hereof, Mortgagee requires a monthly deposit of Five Hundred Twenty-Three Dollars (\$523.00) per bed with respect to the Facility. In the event that such deposits are made by Tenant hereunder, Landlord shall use its reasonable efforts, subject to the terms and conditions of the loan agreements with Mortgagee, to obtain disbursements of such funds to be used for the payment of or reimbursement for the costs of such capital expenditures, replacements and/or refurbishments.

(B) Operating Budget. The Annual Budget shall include an operating budget (the "Operating Budget") setting forth an estimate of operating revenues and expenses for the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Operating Budget), together with an explanation of anticipated changes in the Facility. Tenant shall provide to Landlord upon written request such other reports, including a cost comparison report, and all appropriate Medicare and Medicaid reports, as may be required under these programs, as are normally provided by Tenant to the owners of other similar rehabilitation hospitals, psychiatric hospitals, and skilled nursing facilities leased by Tenant.

(ii) Financial Reporting. Tenant will keep and maintain or will cause to be kept and maintained on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Tenant and all items of income and expense in connection with the operation on an individual basis of the Facility. Notwithstanding the foregoing, Tenant's interim unaudited financial statements shall be prepared in accordance GAAP for interim financial information, but may not include all information or notes required by GAAP for a complete set of financial statements; such financial statements

shall include all adjustments and reclassifications of a normal recurring nature considered necessary for a fair and comparable presentation; all such interim financial statements shall be read in conjunction with most recent audited financial statements. Landlord and Mortgagee shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Tenant or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Landlord and/or Mortgagee shall desire. After the occurrence of a Lease Default, Tenant shall pay any costs and expenses incurred by Landlord and/or Mortgagee to examine Tenant's accounting records with respect to the Facility, as Landlord and/or Mortgagee shall reasonably determine to be necessary or appropriate in the protection of Landlord and/or Mortgagee's interest.

(ii) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, as soon as available, and in any event (A) within thirty (30) days after each calendar month's end, unaudited monthly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the month then-ended and year to date, prepared on a basis consistent with the annual statements; monthly census and revenue information of the Facility as of the end of such month and year to date in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average monthly census of the Facility and year to date; an aged accounts receivable report from the Facility in sufficient detail to show amounts due from each class of patient-mix by the account age classifications of 30 days, 60 days, 90 days, 120 days, and over 120 days; (B) within forty-five (45) days after the end of each calendar quarter, unaudited quarterly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the quarter then-ended, prepared on a basis consistent with the annual statements; quarterly census and revenue information of the Facility as of the end of such quarter in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average quarterly census of the Facility; (C) no later than 120 days after the end of each calendar year of Tenant, audited annual financial statements of Tenant, prepared by an independent certified public accounting firm reasonably acceptable to Landlord, prepared in accordance with generally accepted accounting principles, with an unqualified opinion, and including a balance sheet, a statement of income and expenses for the year then ended, a statements of cash flow, and a schedule audited by such independent certified public accountant reconciling Tenant's net operating income to net cash flow, which shall itemize all adjustments made to net operating income in arrive at net cash flow deemed material by such independent certified public accountant.

(iv) Each financial report provided by Tenant shall reconcile and show variances between the actual experience incurred during each such reporting period with respect to each metric to the metric shown on the Operating Budget and Capital Budget for such period.

(v) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, any other reports and certificates reasonably requested by Landlord or Mortgagee from time to time.

(vi) In addition, Tenant shall prepare and deliver to Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, a written report providing an operational overview of significant events and circumstances at the Facility during the prior month, during the first six months of the Term and then quarterly thereafter, including, but not limited to, clinical events, employee relations and staffing matters and provide such other information as Mortgagee may require from time to time. Tenant shall provide Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, with a copy of all federal income tax returns of Tenant and its Subtenants within fifteen (15) days after filing thereof. Whenever practicable, all reports shall be delivered to Landlord electronically in a format usable by Landlord.

(b) All unaudited financial reports from Tenant shall include an Officer's Certificate certifying that such financial statements present fairly the financial condition and the results of the operations of Tenant and the properties being reported upon and that such financial statements have been prepared in accordance with the Tenant's customary accounting procedures. The Officer's Certificate accompanying the annual audited financial statements of Tenant shall also include a statement that they have been prepared in accordance with GAAP and whether there exists an event or circumstance which constitutes a default or an event of default under the Lease, the nature thereof, the period of time it has existed, and the action then being taken to remedy the same.

(c) Tenant shall furnish Landlord and Mortgagee, within five (5) days of the receipt by Tenant, any and all notices (regardless of form) from any Health Care Authority that Tenant's license, Medicare or Medicaid certification, or VA or other governmental program participation is being, or could be revoked or suspended, that action is pending, being considered or being taken to revoke or suspend the Tenant's license or certification or to fine or penalize the Tenant, or that action is pending, being considered, or being taken, to discontinue, suspend, deny, decrease or reduce any payments due, made or coming due to Tenant or related to the operation of the Facility other than in the ordinary course of business related to billing adjustments.

(d) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the receipt by Tenant, any and all notices (regardless of form) from any Governmental Authority or third party payor (i) alleging that the Facility has three or more deficiency(ies) of a scope and severity of "G" or hire, or one or more deficiency(ies) of a scope and severity of "J" or higher, (ii) alleging that the residents of the Facility are in jeopardy, (iii) freezing admissions to the Facility or (iv) denying reimbursement for any class of residents by any third party payor.

(e) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the sending or receipt by Tenant of any communication copies thereof, including a plan of correction, with respect to the matters referenced to Section 7.4(d).

(f) Tenant shall file all required reports, including without limitation, Medicare or Medicaid cost reports, on or prior to the date such reports are due (such due date to include approved regulatory extensions allowed by the applicable Governmental Authority for the filing of such reports) and shall furnish Landlord and Mortgagee, within thirty (30) days of the date of filing, a complete and accurate copy of the annual Medicare or Medicaid cost report

for Tenant, which will be prepared by Tenant and accompanied by an Officer's Certificate of Tenant certifying as of the date thereof that such report is accurate, complete and not misleading, and promptly furnish Landlord and Mortgagee any amendments filed with respect to such reports and all notices, responses, audit reports or inquiries with respect to such reports.

(g) Tenant shall furnish Landlord and Mortgagee, within thirty (30) days of the receipt by Tenant, the annual Medicaid and Medicare provider agreement(s) and the annual Medicaid and Medicare reimbursement rate sheets for the Facility.

(h) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt but at least five (5) days prior to the earliest date on which Tenant is required to take any action with respect thereto or would suffer any adverse consequence, a copy of any Medicare, Medicaid or other licensing or accreditation or rating agency or entity survey, report, warning letter, or notice, and any statement of deficiencies, and within the time period required by the particular agency for furnishing a plan of correction also furnish or cause to be furnished to Landlord and Mortgagee a copy of the plan of correction generated from such survey, report, warning letter, or notice to Tenant and any subsequent correspondence related thereto, and correct or cause to be corrected any deficiency, the curing of which is a condition of continued licensure or of full participation in Medicare or Medicaid or a care program offered by an insurance company, managed care company, or other third-party payor by the date required for cure by such agency or entity (plus extensions granted by such agency or entity).

(i) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any other notices or charges issued relating to the non-compliance by Tenant with any Governmental Authority, insurance company, managed care company, or other third-party payor laws, regulations, requirements, licenses, permits, certificates, authorizations or approvals, but only such matters which could reasonably be expected to have a material adverse effect on the financial condition of such Person or the operation of the Facility.

(j) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any new, revised or amended Medicare or Medicaid reimbursement rate sheets which may be issued subsequent to the annual reimbursement rate sheets.

(k) Tenant shall notify Landlord within five (5) days of any condition or event that constitutes a breach of any term, condition, warranty, representation or provision of this Lease or any other agreement between Landlord or its Affiliates and any Tenant, any Guarantor or any of their Affiliates, and of any adverse change in the financial condition of any Tenant, any Guarantor or any Affiliate of any Tenant or any Guarantor and of any Event of Default. Additionally, Tenant shall notify Landlord within seven (7) days after receipt of any formal or informal written notice or advice from its insurance carrier, reinsurance provider, accountants, actuary, any Governmental Authority, or any third party payor program provider of any actual, pending, threatened or contemplated increase in Tenant's reserves for expenses relating to malpractice or professional liability claims or any material increase in the premium costs for malpractice or professional liability insurance.

(l) To the extent performed, Tenant shall furnish Landlord and Mortgagee, a copy of written external consultant reports (including environmental, operations,

quality assurance, physical plant, property inspection, etc.) (which shall be delivered promptly upon receipt from the consultant).

(m) Tenant shall furnish Landlord and Mortgagee, a copy of cost reports as filed by Tenant.

(n) Any supporting documents or data requested by Landlord in connection with the items in this Section 7.4.

(o) Within 10 days of event of any of the following, Tenant shall deliver to Landlord, notice of:

(i) any rate appeal brought before any Governmental Authority or any administrator of any third party payor program or referral source;

(ii) any reimbursement appeals or recoupment claims made or contests pending or threatened as a result of any audits by any third party payor, and

(iii) any claim, requirement or demand (excluding all claims, requirements, and demands, if any, that have been waived) of any Governmental Authority, third party payor or insurance body or carrier having or claiming any licensing, certifying, supervising, evaluating or accrediting authority over the Leased Premises to rework or redesign the Leased Premises, its professional staff or its professional services, procedures or practices in any material respect or to make any of the Leased Premises conform to or comply with a legal requirement.

(p) The receipt by Landlord of any reports, statements, financial information, surveys or otherwise from Tenant or its Affiliates shall not in any way impose any obligation or liability upon Landlord to act or take any action upon any information, facts or circumstances which may be disclosed or shown therein and Landlord shall have no liability for its failure to act thereon or as a result thereof.

(q) Financial Covenants. Tenant covenants and agrees to the following, as may be amended time to time as required by Landlord's 1st or 2nd Mortgagee:

(i) Commencing the third full quarter of the Term Tenant's Current Ratio shall not be less than 1.1 to 1.0. The term "Current Ratio" means the current assets of Tenant divided by the current liabilities of Tenant determined in accordance with GAAP.

(ii) For each quarter of the Lease Term commencing the third full quarter following the Commencement Date, Tenant's Lease Coverage Ratio shall be not less than 1.25 to 1.0.

(iii) For each quarter of the Lease Term commencing the second full quarter following the Commencement Date, the Facility shall have achieved the EBITDAR benchmarks as described on Schedule 7.4, attached hereto. The term "EBITDAR" is defined in Schedule 7.4.

**Section 7.5 Payment in the Ordinary Course.** Tenant shall pay in full: (a) prior in each case to the date when penalties would attach, all Impositions (except only those so long as and to the extent that the same shall be contested in good faith by appropriate and timely proceedings and for which adequate reserves have been established in accordance with GAAP), provided that (i) Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) for which Tenant may be or become liable; (ii) no Lease Default has occurred and remains uncured, (iii) such proceeding shall suspend the collection of such Impositions or the Impositions shall have been paid, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Tenant is subject and shall not constitute a default thereunder, (v) no part of or interest in the Leased Premises will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Tenant shall have furnished such security as may be required in the proceeding, or as may be requested by Landlord or Mortgagee, to insure the payment of any such Impositions, together with all interest and penalties thereon, which shall not be less than 125% of the unpaid Impositions being contested and (vii) Tenant shall promptly upon final determination thereof pay the amount of such Impositions, together with all costs, interest and penalties; (b) all of Tenant's wage obligations to Tenant's employees in compliance with the Fair Labor Standards Act (29 U.S.C. §§ 206-207) or any comparable provisions under federal, state or local law; (c) all obligations owed in connection with any claim, demand or notice of any overpayment received from Medicare, Medicaid or other third party payor; and (d) all of Tenant's obligations calling for the payment of money (except only those so long as and to the extent that the same shall be contested in good faith and for which adequate reserves have been established in accordance with GAAP, provided that Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) before such payment becomes overdue.

**Section 7.6 Security Agreement.** In order to secure the payment and performance of all of Tenant's obligations under this Lease and all of Tenant's obligations to Landlord, and all and all other documents contemplated thereby, Tenant hereby grants to Landlord a first priority security interest in and lien upon, all of the assets of Tenant including, without limitation, (i) all trade fixtures, equipment, furniture, merchandise, inventory and other personal property located from time to time in or upon the Leased Premises (including the proceeds thereof), and (ii) to the fullest extent permitted by applicable law, all accounts, accounts receivable, licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, certificates of need, and other authorizations issued to or held by Tenant with respect to the operation of the Facility skilled nursing facility and Tenant's interest in and rights under all third party payor provider agreements with respect to the Facility (the items listed in clauses (i) and (ii), together with the proceeds of same, are collectively, "Collateral"). The security interest granted to Landlord with respect to Tenant's tangible personal property is intended to be subordinate to any purchase money security interest or capital lease on any of Tenant's tangible personal property provided that Tenant has notified Landlord of the creation of such security interest or capital lease prior to the creation thereof and Landlord has approved same. Landlord agrees to subordinate its lien on Tenant's accounts receivable in favor of Tenant's accounts receivable lender, which shall be a nationally recognized nursing home accounts receivable lender with experience acceptable to HUD or Mortgagee on at least 20 nursing homes, securing up to a \$2,000,000.00 accounts receivable loan, provided such lender enters into an Intercreditor agreement reasonably acceptable to Mortgagee and Landlord. Should

Mortgagee require a subordination of the priority of Landlord's security interest in the Collateral, Landlord and Tenant shall execute such documents as Mortgagee may request to subordinate Landlord's lien to the Mortgagee's security interest in the collateral. In addition, Tenant's members shall grant to Landlord a first lien pledge (subject to the following sentence) of the membership interests of Tenant. To the extent required by Tenant's accounts receivable lender, Landlord agrees to subordinate its lien on Tenant's membership interests to a lien in favor of such lender securing up to a \$2,000,000.00 accounts receivable loan; provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. On or before the Commencement Date, Tenant shall provide Landlord with a detailed list and description of all the Collateral. Upon a Lease Default by Tenant, Landlord shall have all the rights and remedies of a secured party under the laws of the State of New York. Tenant, as debtor, shall cause to be executed (if appropriate or necessary) and delivered to Landlord, as the secured party, upon execution of this Lease by Tenant, UCC-1 Financing Statements in proper form, and thereafter, from time to time, deliver to Landlord such extensions and/or updates of such financing statements as are required for the purpose of perfecting and maintaining the priority of the security interest granted to Landlord herein, and to perform any other acts reasonably necessary to the perfection of such security interest. Tenant and Tenant's members consent to Landlord's preparation of and the filing of such financing statements by Landlord and agrees that the provisions of this Section 7.6 shall constitute a security agreement for the purposes contemplated hereby. The security interest granted by this Section 7.6 shall be in addition to any lien of Landlord that may now or at any time hereafter be provided by law. In the event Landlord exercises its remedies to foreclose the security interest created under this Section 7.6, or elsewhere in this Lease, Tenant shall cooperate with Landlord in transferring all of the aforementioned items promptly as requested by Landlord in Landlord's or its designee's name or for the benefit of Landlord. Tenant covenants and agrees that it shall not sell, move, surrender, cancel, modify, transfer, assign, relocate, pledge, grant a security interest in, convey or in any other manner encumber any assets of Tenant including, without limitation, the personal property, the certificate of need approval or any of the licensed or Medicare- and/or Medicaid-certified beds at the Facility, or any licenses for the Facility, or attempt at any time to do so, except as expressly provided hereunder and with the written consent of Landlord. This Section 7.6 and Landlord's rights and remedies hereunder shall survive the termination of the Lease.

Section 7.7 Working Capital. As of the Effective Date, Tenant shall have and maintain until the Commencement Date in accounts, acceptable to Landlord in its sole and complete discretion, an amount of funds equal to the greater of ("Working Capital") (i) any debt service reserve required by Mortgagee, (ii) the aggregate negative net operating income of Tenant for the period of months from the Commencement Date to the first day of the first two month period in which aggregate net income from operations exceeds zero, all as reflected in the projections attached hereto as Schedule 2.2 ("Cash Requirement"); for the purpose of this calculation net operating income shall be determined on a cash basis, and (iii) 4.5 million dollars. Working Capital shall not include any accounts or reserves established to satisfy the requirements of Section 7.1(a) (i) and (k). From and after the Commencement Date, the Working Capital, subject to any requirement of the Mortgagee, may be used by Tenant only to fund the Cash Requirement.

7.8 Refinance. Tenant shall fully cooperate with Landlord in its efforts to Refinance from time to time, including without limitation, providing all information and executing all

documents required by Landlord or its lender(s). On and after each Refinance Date the Fixed Rent for each twelve month period shall equal the sum of the amounts provided for in clauses (a) through (e): (a) the annual debt service payments (principal, interest, and mortgage insurance premiums, if any) that Landlord is required to pay to Lender pursuant to the first Mortgage (the "Mortgage Debt"), plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations; (b) the annual aggregate debt service payments or preferred equity payments that the Landlord is required to pay pursuant to the Junior Debt (or replacement thereof) (with the Mortgage Debt, the "New Debt Service"); plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations under the Junior Debt (or replacement thereof); (c) an annual amount equal to \$1,390,115; (d) an additional amount of \$250,000 per year prior to the fourth year of the Term; \$350,000 per year during Lease Years 4 and 5; and \$400,000.00 per Lease Year thereafter until the end of the Term, including all Extension Terms; and (e) an additional amount equal to one-half of the amount that (i) a sum equal to the last 12 months interest payment on the original Mortgage and Junior Debt exceeds (ii) New Debt Service.

ARTICLE VIII

PERSONAL PROPERTY

Section 8.1 Landlord's Personal Property. Upon the expiration or termination of this Lease, Tenant shall leave all personal property leased to Tenant hereunder, as required, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, in or on the Leased Premises, except for ordinary wear and tear. Any and all restorations, alterations or replacements of, or repairs, reconstructions or additions to, the personal property at the Facility made by Tenant shall become part of Landlord's personal property, and any and all security interests (except in favor of Landlord) in Tenant's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Tenant shall pay off in full the remaining payments due on all personal property leased by Tenant and such personal property shall become part of Landlord's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Any of Tenant's software, software licenses, proprietary information, and policies, and procedures of Tenant ("Retained Assets") shall not become part of Landlord's personal property except in the event of the termination of this Lease as a result of a Lease Default, in which case the Retained Assets shall become the personal property of Landlord; provided, however, upon request of Landlord, in consideration of a payment by Landlord or its designee of Ten Dollars (\$10.00) and any applicable lease, rent, or license fees owed to any third parties during the Transition Period (hereinafter defined), Tenant shall license Landlord or its designee(s) (at Tenant's cost with no mark-up) to utilize the Retained Assets for a period of one hundred twenty (120) days (the "Transition Period") in connection with the transition of operations from Tenant and Landlord's new operator(s). To the extent Tenant or any Subtenants are obligated under license agreements with third party vendors supplying software (and/or computer hardware which Tenant does not own or lease) to such Tenant, Tenant shall use its best

efforts to arrange for Landlord or Landlord to enter into licensing agreements with such third party vendors to allow Landlord or its designee to utilize such software and computer hardware supplied by such third party vendors for the duration of the Transition Period.

Section 8.2 Tenant's Retained Assets. At the termination of the Lease, Landlord shall have the right to purchase all or a portion of Tenant's Retained Assets located at the Facility at the lower of its fair market value or book value. To the extent any of Tenant's Retained Assets is subject to a license, Landlord shall have the right but not the obligation to assume some or all of such license Landlord's sole cost and expense and at no additional liability to Tenant.

ARTICLE IX

INDEMNIFICATION

Section 9.1 Tenant's Indemnification (a) During the Term of this Lease and after the surrender of the Leased Premises in accordance with Section 5.5 of this Lease, Tenant shall protect, defend (at Landlord's request), indemnify and hold harmless Landlord, Landlord's members, managers, officers, owners, directors, employees, agents, representatives, and Mortgagee and their respective agents, executors, heirs, representatives and assigns, and any entity providing financing which is secured by the Leased Premises (collectively the "Landlord's Indemnitees"), from and against any claims, losses, costs, penalties, damages, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) imposed or resulting from, arising out of or attributable in whole or in part to any of the following: (i) any violation of any Law, order of Governmental Authority, whether occasioned by the intentional act, omission, or negligence of Tenant or those holding under Tenant, (ii) any accident or other occurrence on or about the Leased Premises on or after the Commencement Date causing injury to any person or property whatsoever or whatsoever, including but not limited to patient care claims or elder abuse, (iii) any failure of Tenant in any respect to comply with or perform any term, condition, covenant, requirement and/or provision of this Lease, or a breach of this Lease by Tenant, including, but not limited to, a breach of any of Tenant's representations and warranties under Section 19.1 of this Lease, (iv) in any way relating to Tenant's use, operation and/or maintenance of the Facility (including, without limitation, third-party claims, whether by the State of New York, the United States, private insurer, private parties, for recoupment, false claims, or any other claims, assumption of and use by Tenant of Landlord's permits, variances, waivers, and certificate of need approval or its possession of the Leased Premises and/or (v) any liability under Section 20.14. The indemnity provided for herein shall survive the expiration of this Lease or the surrender of the Leased Premises for the period of the relevant statute of limitations.

(b) Any amounts which become payable by Tenant under this Article IX shall be paid within ten (10) days after liability therefor is determined by litigation or otherwise, and if not timely paid shall bear interest at the Prime Rate plus 5% (the "Overdue Rate") from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or may compromise or otherwise dispose of the same as Tenant sees fit provided that Landlord receives a full and complete release with respect to such claim, action or proceeding. Any legal

counsel selected by Tenant to defend Landlord shall be reasonably satisfactory to Landlord. All indemnification covenants are intended to apply to losses, damages, injuries, claims, costs, penalties, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) incurred directly or indirectly by the indemnified parties and their property, as well as by the indemnifying party or third party, and their property. For purposes of this Article IX, any acts or omissions of Tenant, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant. It is understood and agreed that payment shall not be a condition precedent to enforcement of the foregoing indemnification obligations. The "Prime Rate" shall mean on any date, a rate equal to the annual rate on such date publicly announced by Citibank, N.A. as its prime, base or reference rate. Such rate need not be the lowest rate charged by Citibank, N.A. If Citibank, N.A. discontinues its use of such prime, base or reference rate or ceases to exist, Landlord shall designate the prime, base or reference rate of another state or federally chartered bank with offices in New York, N.Y. to be used for the purpose of calculating the Prime Rate hereunder.

ARTICLE X

USE OF LEASED PREMISES

Section 10.1 Compliance with Laws and Regulations. Tenant shall use the Leased Premises solely as a licensed Medicare- and Medicaid-certified skilled nursing facility with at least the number of licensed and verified beds existing at the Facility on the Commencement Date, and for no other purpose (the "Intended Use"). On or before the Commencement Date, Tenant shall have acquired, and thereafter Tenant shall maintain all licenses, certificates, accreditations, approvals, permits, variances, waivers, provider agreements and other authorizations needed to operate the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility. Tenant hereby covenants, warrants and represents to Landlord that as of the Commencement Date and throughout the Term: (a) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be validly licensed and Medicare and Medicaid certified to operate a skilled nursing facility in accordance with the applicable rules and regulations of the DOH, federal governmental authorities and accrediting bodies, including, but not limited to, the United States Department of Health and Human Services ("DHHS"), CMS, and the DOH; (b) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be, certified by and the holder of valid provider agreements with Medicare and Medicaid issued by DHHS, DOH and/or CMS and shall remain so certified and shall remain such a holder in connection with its operation of the Leased Premises as a licensed and Medicare and Medicaid certified skilled nursing facility; (c) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be in compliance with and shall remain in compliance with all applicable Laws with regard to the operation of the Facility, including, without limitation, compliance under Laws governing patient confidentiality and privacy and the confidentiality of medical records; (d) Tenant (and any subtenant, operator or manager of Tenant) shall operate the Facility in a manner consistent with high quality skilled nursing services and sound reimbursement principles under the Medicare and Medicaid programs and as required under Laws; and (e) Tenant (and any subtenant, operator or manager of Tenant) shall not abandon, terminate, vacate or fail to renew any licenses,

certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or any other authorization which relates to the operation of the skilled nursing facility business or other permitted operations on the Leased Premises or in any way commit any act which will or may cause any such licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or other authorization to be revoked by any Governmental Authority or accrediting body having jurisdiction thereof.

Section 10.2 No Waste. Tenant shall not commit or suffer to be committed any waste on the Leased Premises nor shall Tenant cause or permit any nuisance thereon.

Section 10.3 Hazardous Materials and Hazardous Waste. (a) Tenant shall not place or hold any Hazardous Materials on or at the Leased Premises, except as is necessary for the ordinary course of its business as a skilled nursing facility in compliance with Section 10.1. If Tenant's business requires the use of any Hazardous Materials, other than such cleaning materials as are typically found in skilled nursing facilities in compliance with Section 10.1, Tenant shall notify Landlord in writing and shall comply with hazard communication and notification requirements of the Occupational Safety and Health Act ("OSHA") and all Laws which require notification of employees, the community or any governmental agency of the hazardous properties of such Hazardous Materials. For purposes of this Lease, "Hazardous Materials" means and includes any hazardous substance defined as such in OSHA, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous substance or material, as now or at any time hereafter in effect.

(c) Tenant shall not cause or allow any asbestos or any asbestos containing materials to be incorporated into any improvements or alterations which it makes or causes to be made on or to the Leased Premises. Tenant shall obtain and maintain O&M Programs for the Facility if the Facility is determined to contain asbestos or asbestos containing materials and upon Landlord's request, shall furnish copies of same to Landlord, Mortgagee or their designee(s).

(d) Tenant shall not place, hold or dispose of any Hazardous Waste on, under or at the Leased Premises except as specifically allowed in this Section 10.3. Tenant further agrees that it shall not use the Leased Premises as a treatment, storage, or disposal (whether permanent or temporary) facility for Hazardous Waste. If Tenant, in the ordinary course of its business as a skilled nursing facility generates Hazardous Waste, then Tenant shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to the appropriate use, storage, transportation and disposal of Hazardous Waste. For the purposes of this Lease, "Hazardous Waste" means and includes any hazardous material that has entered the waste stream or any contaminant or pollutant as defined as such in the Resource Conservation and Recovery Act, CERCLA, as amended, any so-called "Superfund" or "Superfund" law, the TSCA, or any other Law, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste. Tenant further agrees that it shall properly dispose in accordance with Laws of all "infectious waste" such as laboratory waste, pathological waste, blood specimens or products, patient or resident waste including, without

limitation, bandages and disposable gowns, sharp waste and any material generated by the production or testing of biological agents. Immediately upon receipt of any Environmental Notice (as hereinafter defined) from any Person, Tenant shall deliver to Landlord a true, correct and complete copy of same. "Environmental Notice" shall mean any note, notice, or report of any suit, proceeding, investigation, order, consent order, injunction, writ, award, or action related to or affecting or indicating the treatment, storage, handling, disposal, generation, spill, release or discharge of any Hazardous Waste or Hazardous Materials in, upon, under, from or affecting the Leased Premises. All of the terms, covenants, warranties and indemnifications contained in this Section 10.3 shall survive the expiration or termination of this Lease.

(e) Without in any way limiting Tenant's obligation to indemnify Landlord and Landlord's Indemnitees under Section 9.1 of this Lease, Tenant shall indemnify, defend (at Landlord's request) and hold harmless Landlord and Landlord's Indemnitees from and against any claims, losses, costs, damages or expenses of any and every kind whatsoever (including reasonable attorney's fees and expenses and consultant's and expert's fees and expenses) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord and/or Landlord's Indemnitees for, with respect to, or as a direct or indirect result of: (a) a breach by Tenant of the covenants set forth in Section 10.3 or, (b) caused, permitted or allowed by Tenant or any agent, employee, business, or licensee of Tenant, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, onto, or into the Leased Premises, the atmosphere, or any watercourse, body of water, or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, as amended, any so-called "Superfund" or "Superfund" law, or any other Law, relating to or imposing liability or standards of conduct concerning, any Hazardous Material) occurring from and after the Commencement Date; and the provisions of and undertakings and indemnification set out in this Section 10.3(d) shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever. If required by Mortgagee, Tenant shall enter into an agreement to indemnify, defend and hold harmless Mortgagee with respect to matters contained in this Section 10.3 and other similar matters pursuant to a form of agreement reasonably acceptable to Mortgagee. In no event however shall Tenant have any liability to Landlord or Landlord's Indemnitees for Hazardous Materials located at or under the Leased Premises prior to the Commencement Date or for the remediation of same.

(f) If Tenant or its employees, agents, or contractors violate the provisions of this Section 10.3, then, in addition to any other duty or obligation of Tenant hereunder, at law or in equity, Tenant shall be obligated to clean up, remove, and dispose of the material causing the violation, in compliance with all applicable environmental laws and repair any damage to and remediate the Leased Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord; provided that such work shall commence no later than thirty (30) days from the date of such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time and procedure for any clean-up, remediation or removal of material causing the violation under this provision, and Landlord shall have the right to require reasonable changes in such method, time or procedure.

(k) Landlord reserves the right from time to time, but not more than once a year, except in the event of an emergency or during the occurrence and continuation of an uncured Lease Default during the Term hereof, at Landlord's cost and expense (except that, in the event of a continuing and uncured Lease Default, at Tenant's sole cost and expense), to have the Leased Premises inspected by environmental engineers and/or specialists for the purpose of determining compliance by Tenant with any environmental laws, rules and regulations applicable to Tenant's operations in or about the Leased Premises and with the terms and conditions of this Lease dealing with environmental matters, including without limitation, the provisions of this Section 10.3. If the environmental assessment or report resulting from such inspection discloses any non-compliance with Laws, Tenant shall immediately, following receipt of the environmental assessment, take all such steps as are necessary to put the Leased Premises into compliance, including without limitation, cleaning up any spills or other emissions of Hazardous Wastes or Hazardous Materials, and reimburse Landlord for the costs of its inspection.

(l) Upon the expiration of the Term, or the earlier termination thereof, subject to the last sentence of Section 10.3(d) above, Tenant shall forthwith remove all Hazardous Materials and Hazardous Waste from the Leased Premises or any portion thereof in accordance with applicable Law. Landlord shall have the right to inspect the Leased Premises with regard to the management and disposal of Hazardous Materials and Hazardous Waste at all reasonable times during the Term.

ARTICLE XI

DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction. Tenant shall immediately notify Landlord of any casualty, fire, damage, destruction or injury ("Casualty") affecting the Facility, including a description of the Casualty, and whether the Casualty is such as to cause the Leased Premises to be unusable, in whole or in part, for the intended Use. Tenant shall proceed with reasonable diligence to repair or reconstruct the Leased Premises and Tenant shall be liable for any costs of repair or replacement to the Leased Premises, whether or not such Casualty, or the costs of repairing such Casualty, are fully covered by the proceeds of Tenant's insurance required to be carried hereunder. If such Casualty renders the Facility unusable for the purpose of this Lease and if Landlord's Mortgagee so requires, Landlord, upon notice to Tenant, Landlord may terminate this Lease and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance to the extent such difference results from Tenant's breach of Article VI. Notwithstanding the foregoing, if Landlord's obligations to its Mortgagee have been satisfied in full and the DOH approves and agrees to reimburse the costs of rebuilding the Facility, Landlord shall not so terminate this Lease with respect to the Facility, and Tenant shall repair or reconstruct the Leased Premises in substantially the same condition as just prior to the incident with the proceeds of the property casualty insurance carried by Tenant, as required hereunder (if not otherwise paid to the Mortgagee), and/or with funds of Tenant. Regardless of any Casualty, except as provided above, this Lease shall continue in full force and effect without any abatement of Rent, and Tenant shall

not be entitled to surrender possession of the Leased Premises as a result of such casualty. Landlord's receipt of Rent from Tenant's rental interruption insurance shall be credited against Rent payments due from Tenant hereunder. If Tenant fails to commence such repair or reconstruction within thirty (30) days of the Casualty, Landlord shall have the option, subject to the approval of the DOH if required by Laws, to either terminate this Lease upon written notice to Tenant or repair and reconstruct the Leased Premises in substantially the same condition just prior to the incident and costs and expenses incurred as a result thereof shall be deemed Additional Rent hereunder and shall be payable to Landlord by Tenant, upon demand. Upon payment of all such sums demanded by Landlord, Tenant may re-enter and resume possession of the Leased Premises pursuant to the terms of this Lease. All insurance proceeds collected under the Policies shall be paid to Landlord, and made available to Tenant to pay for or reimburse Tenant for the costs and expenses for such repairs and reconstruction subject to the terms, conditions and provisions of any mortgage or other loan documents encumbering the Leased Premises. If Mortgagee does not make the insurance proceeds available to Landlord, then Landlord may terminate this Lease upon thirty (30) days' notice to Tenant, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance.

Section 11.2 Precedence of Rights of Mortgagee. All provisions contained in the loan documents between Landlord and Mortgagee, or any other document in connection therewith which concern or pertain to the restoration of the Leased Premises, the application of insurance proceeds and any and all matters concerning a casualty, shall take precedence over and be in lieu of any contrary provision provided for in this Lease, and in all respects are binding upon Tenant who agrees to and acknowledges the same.

Section 11.3 Tenant hereby waives the provisions of Section 227 of the Real Property Law of the State of New York and acknowledges that the terms of this Article XI shall govern in lieu thereof.

**ARTICLE XII**

**EMINENT DOMAIN**

Section 12.1 Eminent Domain. (a) In the event that all or substantially all of the Leased Premises, or such portion of the Real Property which renders the balance of the Facility unsuitable for the purpose of this Lease, shall be taken by condemnation or right of eminent domain, this Lease shall terminate as of the day the taking authority takes possession of the Leased Premises, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except as otherwise expressly provided in this Lease. In the event only a portion (and less than substantially all) of the Leased Premises is taken by condemnation or right of eminent domain and the portion so taken does not render the balance of the Leased Premises unsuitable for the purposes of this Lease, as determined by Landlord, this Lease shall not terminate. In such an event, Tenant shall restore the Leased Premises with reasonable diligence with its own funds and with the proceeds of any award from the applicable public or quasi-public authority, or private corporation or individual having the

power of condemnation ("Award") to an architectural unit as nearly like its condition prior to such taking as shall be practicable. Notwithstanding anything to the contrary herein, this Section 12.1(a) is subject to the terms, conditions and provisions of any mortgage and other loan documents encumbering the Leased Premises.

(i) Notwithstanding anything to the contrary contained in Section 12.1(a), Landlord may cancel this Lease with no further liability to Tenant, in the event that following a taking by condemnation or right of eminent domain, Mortgagee elects to require Landlord to repay the mortgage on the Leased Premises.

(j) Tenant shall not be entitled to any part of any award or settlement of damages representing the value of land and buildings appropriated, the value of this Lease or any estate therein, or damage to the residue of the Leased Premises or other property of Landlord; it being agreed as between Landlord and Tenant any such award shall be the sole property of Landlord. No appropriation of part or all of the Leased Premises or cancellation of this Lease pursuant to this Article XII shall be deemed an eviction of Tenant or a breach of any covenants of Landlord hereunder.

ARTICLE XIII

NOTICES

Section 13.1 Notice. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if (a) hand delivered or sent by (b) certified or registered United States mail, postage prepaid, return receipt requested or (c) Federal Express or other nationally recognized overnight next business day courier service at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 13.1):

If to Tenant:

HBL SNP, LLC  
1280 Albany Post Road  
Crown-on-Hudson, New York 10520

with a copy to:

Michelman & Robinson  
800 Third Avenue, 24th Floor  
New York, NY 10022  
Attn: Mark Zafrit, Esq.  
Telephone: 212.730.7700

If to Landlord:

White Plains Healthcare Properties I, LLC,



2 Bourbon Street, Suite 200  
Peabody, Ma 01960

with a copy to:  
Gerald Y. Billow, Esq.  
Posternak Blankstein & Lund LLP  
800 Boylston Street, Suite 3200  
Boston, Massachusetts 02199

-and-

Howard Fensterman, Esq.  
Abrams Fensterman  
111 Marcus Avenue  
Lake Success, New York 11042

The effective date of such notices shall be as follows: (a) upon delivery or refusal of delivery if sent by personal delivery, (b) two (2) Business Days after mailing (or upon actual receipt, if earlier), if sent by certified or registered mail, (c) one (1) Business Day after deposit with the courier for next business day delivery, if sent by overnight courier. The term "Business Day" means any day other than (i) a Saturday or a Sunday, and (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

Section 13.2 Notices to Mortgagee. (a) Tenant hereby agrees, upon request of Mortgagee, to give to Mortgagee copies of all notices given by Tenant of default by Landlord under this Lease at the same time and in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord. Such Mortgagee shall have the right to remedy any default under this Lease, or to cause any default of Landlord under this Lease to be remedied, and for such purpose Tenant hereby grants such Mortgagee such period of time as may be reasonable to enable such Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default which is a default. Tenant shall accept performance by such Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No default by Landlord under the Lease shall exist or shall be deemed to exist: (i) as long as such Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (ii) if possession of the Leased Premises is required in order to cure such default, or if such default is not susceptible of being cured by such Mortgagee, as long as such Mortgagee, in good faith, shall have notified Tenant that such Mortgagee intends to institute proceedings under the mortgage and, thereafter, as long as such proceedings shall have been instituted and shall prosecute the same with reasonable diligence and, after having obtained possession, prosecutes the cure to completion with reasonable diligence. This Lease shall not be assigned by Tenant or modified, amended or terminated without Mortgagee's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed. In the event of the termination of this Lease by reason of any default thereunder or for any other reason whatsoever except the expiration thereof, upon such Mortgagee's written request, given

within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Mortgagee or its designee or nominee a new lease of the Leased Premises for the remainder of the Term of the Lease upon, at a minimum, all of the terms, covenants and conditions of this Lease. Neither such Mortgagee or its designee or nominee shall become liable under this Lease unless and until such Mortgagee or its designee or nominee becomes, and then only for so long as such Mortgagee or its designee or nominee remains, the fee owner of the Leased Premises or the owner of the leasehold interest of Landlord under this Lease. Such Mortgagee shall have the right, without Tenant's consent, to, as the case may be, foreclose its mortgage or to accept a deed in lieu of foreclosure of such mortgage.

(b) In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Mortgagee, and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such Mortgagee within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Mortgagee shall have become entitled under its loan documents with Landlord in connection therewith, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy).

ARTICLE XIV

QUIET ENJOYMENT

Section 14.1 Quiet Enjoyment. Landlord covenants, warrants and represents to Tenant that, provided no Lease Default exists under this Lease, Tenant shall at all times during the Term peacefully and quietly have, hold, occupy and enjoy the Leased Premises, subject to the terms and conditions of this Lease, without any hindrance, interference or molestation by Landlord or by, under or through Landlord.

ARTICLE XV

SUBLETTING AND ASSIGNMENT

Section 15.1 Subletting and Assignment (a) Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in the Landlord's sole and absolute discretion (and, if required by law, without the prior written consent of the Commissioner, which consent may be withheld in the Commissioner's sole and absolute discretion), transfer or assign this Lease or Tenant's interest in the Leased Premises or any part thereof or sublease all or any part of the Leased Premises. In all events of assignment, transfer or subletting, the prior approval of the DOH shall be required. Tenant shall not at any time, without the prior written consent of Landlord, which consent may be withheld or given in the sole and absolute discretion



of Landlord, pledge, mortgage, or hypothecate the leasehold estate hereby created or any interest of Tenant therein. The issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant aggregating to forty-nine percent (49%) or more of the stock, membership or ownership interest in Tenant or any subtenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; notwithstanding anything to the contrary, any change in the management or control of Tenant such that Lizer Josefovich does not control all of the decisions of Tenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof. Notwithstanding anything to the contrary, the issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant resulting in the aggregate interest of Lizer Josefovich, Marc Neuman, and their spouse or issue, or a trust for their benefit, equaling less than seventy-five percent (75%) of the stock, membership or ownership interest in Tenant or any subtenant to any person or entity shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; provided that any assignment by Lizer Josefovich to Joseph Josefovich made after five years after the Commencement date shall not be unreasonably denied by Landlord taking into account, among other things, the experience, performance record, and financial strength of Joseph Josefovich. The consent by Landlord to any transfer shall not constitute consent to any subsequent transfer or to any successive transfer. Further, subject to the provisions of Section 2.2, and without in any way limiting or otherwise affecting the provisions of this Lease, Landlord shall be permitted to assign this Lease and all agreements, duties, obligations and rights incidental thereto to any entity related to, or affiliated with Landlord, without any consent from Tenant. The term "transfer" shall mean any direct or indirect sale, conveyance, transfer, lease (including any amendment, extension, modification, waiver or renewal thereof), sublease, sub-sublease, assignment, mortgage, pledge, grant of a security interest or hypothecation, whether by operation of law or otherwise, whether voluntary or not, of or in (i) all or part of the Leased Premises (including any legal or beneficial direct or indirect interest therein) or (ii) any direct or indirect interest in Tenant. Notwithstanding anything to the contrary contained herein, Tenant may assign this Lease to, or enter into a sublease with, or transfer interests in an entity comprising Tenant to, an affiliate under common control with Tenant, or owned by Lizer Josefovich, Marc Neuman, or their spouse or issue, or a Trust for their benefit, without Landlord's consent, provided (x) Landlord is given thirty (30) days prior written notice of such intended transfer, assignment or sublease with copies of the organizational documents of the assignee, transferee or sublessee, (y) after such transfer, assignment or sublease, Lizer Josefovich controls all of the decisions of the assignee, transferee or sublessee, and (z) all required consents from, the Mortgagee, the DOH and/or the Commissioner (if required), have been obtained by Tenant. Notwithstanding the foregoing and any other provision contained herein to the contrary, no transfer or series of transfers of legal, economic, beneficial or equitable (direct or indirect) interest in the Lease or in Tenant's membership interest that requires DOH's consent shall occur without the prior written consent of Landlord and DOH. Tenant shall enter into such subordination agreements or subordination, non-disturbance agreements ("SNDAs") as Mortgagee may request from time to time.

Section 15.2 ~~Assignment and Related Matters~~. Any sublease shall be expressly subject and subordinate to all applicable terms and conditions of this Lease and provide that upon the expiration or earlier termination of this Lease, Landlord, at its option and without any

obligation to do so, may require any subtenant to ~~attorn~~ to Landlord, its successors and assigns, in which event Landlord shall undertake the obligations of Tenant, under such sublease from the time of the exercise of such option to the termination of such sublease; provided, however, that in such case Landlord shall not be liable for any prepaid rents, fees or other charges or for any prepaid security deposits paid by such subtenant to Tenant or for any other prior defaults of Tenant under such sublease. In the event that Landlord shall not require such attornment with respect to any sublease, then such sublease shall automatically terminate upon the expiration or earlier termination of this Lease, including any early termination by mutual agreement of Landlord and Tenant. In addition, any such sublease shall provide that in the event that the subtenant or other transferee receives a written notice from Landlord stating that a Lease Default has occurred or that an event or circumstance has occurred which with notice and/or passage of time would constitute a Lease Default, such subtenant or other transferee thereafter shall without further consent or instruction of Tenant pay all rentals accruing under such sublease directly to Landlord or as Landlord may direct; provided, however, that (a) as and to the extent that the amounts so paid to Landlord, together with other amounts paid to or received by Landlord on account of this Lease, exceed the amounts then due Landlord from Tenant under this Lease, the excess shall be promptly remitted to Tenant, and (b) at such time as the Lease Default has been cured and this Lease reinstated (if ever), Landlord shall notify and direct the subtenant(s) in writing to resume making payments of rentals under their sublease(s) directly to Tenant, or as Tenant may direct. Any such rentals collected from such subtenant or other transferee by Landlord shall be credited against the amounts owing by Tenant under this Lease in such order of priority as Landlord shall reasonably determine. Furthermore, any sublease or other agreement regarding a transfer shall expressly provide that the subtenant, assignee, manager or other transferee shall furnish Landlord, its lender, the Mortgagee, if applicable, the HUD Mortgagee, and/or the Commissioner, and for DOH, if applicable, with such financial, operational and other information about the Facility and subtenant, etc., as Landlord may request from time to time.

Section 15.3 Assignment of Subleases. To secure the prompt and full payment by Tenant of the Rent and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to the conditions hereinafter set forth and any required consent(s) from DOH, all of Tenant's right, title and interest in and to all permitted subleases, assignments, licenses and occupancy agreements, to the extent permitted by law, involving the Facility, as set forth on Schedule 15.3 attached hereto (the "Sublease", and the subtenant under a Sublease herein referred to as a "Subtenant") and hereby confers upon Landlord, its agents and representatives, a right of entry (subject to prior notice) in, and sufficient possession of, the Leased Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Sublease, and further agrees that the exercise of said right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Leased Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever; provided, however, that such assignment shall become operative and effective only if (a) a Lease Default shall occur and be continuing or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof or (c) there occurs a repossession under a dispossessionary warrant

or other re-entry or repossession by Landlord under the provisions hereof or (d) a receiver for all or a portion of the Leased Premises is appointed, and then only as to such of the subleases that Landlord may elect to take over and assume. At any time and from time to time within ten (10) days after Landlord's written demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants, with a photostatic copy of each of the Subleases. Upon request of Landlord, Tenant shall permit Landlord and its agents and representatives, and Mortgagee, its agents and representatives, to inspect all Subleases affecting the Leased Premises. Tenant covenants that each Sublease shall provide that the Subtenant thereunder shall be required from time to time, upon request of Landlord or Tenant, to execute, acknowledge and deliver, to and for the benefit of Landlord, an estoppel certificate confirming with respect to such Sublease the information set forth in Section 20.11 hereof.

**Section 15.4 Additional Sublease Requirements.** Tenant covenants and agrees that all Subleases hereafter entered into affecting the Leased Premises shall provide that (a) they are subject to this Lease and that the principals of the Subtenant acknowledge that they have read this Lease and accept the terms hereof, (b) the term thereof shall not end less than one (1) day prior to the Expiration Date hereof, unless Landlord shall consent otherwise, which consent may be withheld in Landlord's sole and absolute discretion, (c) the Subtenants will not do, authorize or execute any act, deed or thing whatsoever or fail to take any such action which will or may cause Tenant to be in violation of any of its obligations under this Lease, (d) the Subtenants will not pay rent or other sums under the Subleases with Tenant for more than one (1) month in advance, (e) the Subtenants shall give to Landlord at the address and otherwise in the manner specified in Section 13.1 hereof, a copy of any notice of default by Tenant as the landlord under the Subleases at the same time as, and whenever, any such notice of default shall be given by the Subtenants to Tenant; and (f) all of the representations, warranties and covenants given by Tenant to Landlord in this Lease, including but not limited to all reporting requirements and covenants set forth in Section 7.4 above, shall be made and given by each Subtenant for the benefit of Landlord, Mortgagee, and their respective successors and assigns.

**Section 15.5 Transfers in Bankruptcy.** (a) In the event of a transfer pursuant to the provisions of Title 11 of the United States Code or any statute of similar purpose or nature (the "Bankruptcy Code"), all consideration payable or otherwise to be delivered in connection with such transfer shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any consideration constituting Landlord's property pursuant to the immediately preceding sentence and not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. For purposes of this Section 15.5, the term "consideration" shall mean and include money, services, property and any other thing of value such as payment of costs, cancellation or forgiveness of indebtedness, discounts, rebates, barter and the like. If any such consideration is in a form other than cash (such as in kind, equity interests, indebtedness earn-outs, or other deferred payments, consulting or management fees, etc.), Landlord shall be entitled to receive in cash the then present fair market value of such consideration. If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment shall be given to Landlord by Tenant no later than fifteen (15) days after receipt of such offer by Tenant, but in any event no

later than ten (10) days prior to the date that Tenant shall file any application or motion with a court of competent jurisdiction for authority and approval to enter into such assumption and assignment. Such notice shall set forth (a) the name and address of the assignee, (b) all of the terms and conditions of such offer, and (c) the proposal for providing adequate assurance of future performance by such person under the Lease, including, without limitation, the assurance referred to in Section 365 of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease from and after the date of such assignment. Any such assignee shall execute and deliver to Landlord upon demand an instrument confirming such assumption.

(b) The term "adequate assurance of future performance" as used in this Lease shall mean (in addition to the assurances called for in Bankruptcy Code Section 365(1)) that any proposed assignee shall, among other things, (i) deposit with Landlord on the assumption of this Lease an amount equal to the greater of (x) two (2) times the then monthly Fixed Rent and Additional Rent or (y) such other amount deemed by the Bankruptcy Court to be reasonably necessary for the adequate protection of Landlord under the circumstances, as security for the faithful performance and observance by such assignee of the terms and obligations of this Lease, (ii) furnish Landlord with financial statements of such assignee for the prior three (3) calendar years, as finally determined after an audit and certified as correct by a certified public accountant, which financial statements shall show a net worth at least equal to the amount of the deposit referenced in (i) above, (iii) if determined by the Bankruptcy Court to be appropriate under the circumstances, grant to Landlord a security interest in such property of the proposed assignee as Landlord shall deem necessary to secure such assignee's future performance under this Lease, and (iv) provide such other information or take such action as Landlord, in its reasonable judgment, shall determine is necessary to provide adequate assurance of the performance by such assignee of its obligations under this Lease.

(c) If, at any time after Tenant may have assigned Tenant's interest in this Lease in a proceeding of the type described in Section 16.1 (iv) through (vii), this Lease shall be disaffirmed or rejected in any proceeding of the types described in Section 16.1 (iv) through (vii) hereof, or in any similar proceeding, or in the event of termination of this Lease by reason of any such proceeding or by reason of lapse of time following notice of termination given pursuant to Article XVI based upon any of the Lease Defaults set forth in said Section 16.1 (iv) through (vii) Tenant, upon request of Landlord given within thirty (30) days next following any such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord); shall (a) pay to Landlord all Rent due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant", enter into a new lease with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the expiration date of the term, unless sooner terminated as in such lease provided, at the same Fixed Rent and Additional Rent upon the then executory terms, covenants and conditions as are contained in this Lease, except that (i) Tenant's rights under the new lease shall be subject to the possessory rights, if any, of the assignee under this Lease and the possessory rights of any person claiming through or under such assignee or by virtue of any applicable Law, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant with due diligence, and (iii) such new lease shall require Tenant to

pay all Rent reserved in this Lease which, had this Lease not been so disaffirmed, rejected or terminated, would have accrued under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant shall default in its obligation to enter into said new lease for a period of ten (10) days next following Landlord's request therefor, then in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant as if Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 15.6 Management Agreement. Tenant agrees and acknowledges that it will not enter into any management agreements during the Term with regard to the Facility except with an entity (i) owned wholly by a an individual principal of Tenant which entity has been received establishment approval from the New York State Department of Health Public Health and Health Planning Council in compliance with 10 NYCRR 600.9(d)(1) and (ii) approved by HUD if the Facility is, or is about to be financed by a HUD program, and/or Mortgagee. Any such management agreement shall be subordinate to Landlord's rights hereunder, to the rights of Mortgagee and to the rights of the Commissioner. Tenant shall cause such manager to execute such documents as are required by Landlord or Mortgagee or by the Commissioner to effect such subordination.

Section 15.7 Memorandum of Lease. This Lease shall not be recorded, but either party may record a memorandum of lease in which shall describe the parties to this Lease, a description of the Leased Premises and a recitation of the Term. The party requesting that the memorandum of lease be recorded shall prepare and pay all costs of recording the memorandum of lease, and the other party agrees to execute at any and all times such instruments as may be reasonably required for such recording. Upon the expiration or earlier termination of this Lease, Landlord may release the memorandum of lease. For this purpose Tenant constitutes and appoints Landlord its true and lawful attorney in fact with full power of substitution to execute a release of such memoranda in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. To the extent any transfer tax, conveyance tax, excise tax, or similar tax is imposed by any Governmental Authority as a result of the recording of such Memorandum of Lease, or is otherwise due and payable as to Tenant's leasehold interest granted pursuant to this Lease, Tenant shall pay same to the applicable Governmental Authority.

ARTICLE XVI  
DEFAULT

Section 16.1 Default by Tenant and Remedies of Landlord. (a) Tenant shall be in default under this Lease upon the occurrence of any of the following events referred to herein individually or collectively as a "Lease Default" (any reference to such event occurring or involving Tenant shall be deemed to include any such event occurring or involving any of Tenant's Subtenants):

- (i) if Tenant fails to pay any installment of Rent within five (5) days after the date when due;
- (ii) if Tenant defaults in the prompt and full performance of any other of Tenant's covenants, obligations or agreements hereunder which are not specifically enumerated herein as a Lease Default and fails to correct such failure within thirty (30) days of receipt of written notice from Landlord of such default (unless such default cannot reasonably be cured within thirty (30) days, in which event such period shall be extended, provided Tenant shall have commenced in good faith to cure such default within the first such thirty (30) day period and shall proceed with all due diligence to correct such default thereafter but in no event more than ninety (90) days of receipt of such written notice);
- (iii) if the leasehold interest of Tenant shall be levied upon under execution or be liened or attached and such levy, lien or attachment is not removed within sixty (60) days of the date Tenant receives notice of it;
- (iv) in the event of a filing by or against Tenant of a petition under federal or state law pertaining to bankruptcy or insolvency or for a reorganization or other relief;
- (v) if Tenant shall admit in writing its inability to pay its debts generally as they become due;
- (vi) if Tenant is adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, with or without the consent of Tenant, a receiver or trustee of Tenant or of the whole or substantially all of its property;
- (vii) if Tenant makes any general assignment for the benefit of creditors;
  - (A) if Tenant abandons the Leased Premises or if, except as a result of damage, destruction or a partial or complete condemnation, Tenant ceases operations of the Facility, or Tenant closes any portion of the Facility;
- (viii) if Tenant receives a state or federal notice of termination of license or de-certification and such notice has not been suspended, extended, withdrawn or terminated prior to 30 days before the effective date of such termination or decertification by any Governmental Authority;
- (ix) if Tenant fails to maintain its qualifications for licensure as required by this Lease if failure to do so would result in an inability to operate the Facility or would result in the appointment of a receiver with respect to the Facility;
- (x) if any transfer or assignment of this Lease or Tenant's direct or indirect interest therein or a transfer of Tenant's direct or indirect equity ownership interests occurs in violation of this Lease;
- (xi) if any malpractice award or judgment exceeding any applicable malpractice insurance coverage and any applicable umbrella coverage by more than One Million

Dollars (\$1,000,000.00) shall be rendered against Tenant or any subtenant, and either (A) enforcement proceedings shall have been commenced by any creditor upon such award or judgment or (B) such award or judgment shall continue unsatisfied and in effect for a period of sixty (60) consecutive days without an insurance company reasonably satisfactory to Landlord having agreed to fund such award or judgment in a manner reasonably satisfactory to Landlord, or (C) such award or judgment has been appealed and without a bond having been posted to cover such amount that exceeds any insurance coverage, and in any case such award or judgment shall, in the reasonable opinion of Landlord, have a material adverse affect on the ability of Tenant or any subtenant to operate the Facility;

(xii) upon the denial, refusal to issue, or loss of any licenses, certifications, certificates, approvals, permits, variances, waivers, provider agreements and other authorizations necessary or required for Tenant to operate the Facility in accordance with the requirements of this Lease;

(xiii) if any of the representations or warranties made by Tenant under this Lease or any subtenant under its Sublease or otherwise proves to be untrue when made in any material respect;

(xiv) if any Governmental Authority having jurisdiction over the operation of the Facility removes ten percent (10%) or more of the patients or residents who reside in the Facility for violations of standards of care;

(xv) Tenant fails to give Landlord and Mortgagee timely notice or timely deliver copies of documents within the times required under Section 7.4 (c) through (o);

(xvi) Tenant's receipt of notice of an allegation or determination of "immediate jeopardy" (as such term is customarily used) or equivalent notice from any Governmental Authority or officer, acting on behalf thereof relating to the Facility;

(xvii) Tenant's receipt of notice of the freeze on admissions or the imposition of a denial of payment for new admissions or equivalent notice from any Governmental Authority or officer acting on behalf thereof relating to the Facility;

(xviii) Tenant's breach of its obligations under Section 3.5 including Tenant's failure to execute and deliver to Landlord within seven days of its request therefore any and all documents, certificates or agreement required or reasonably requested by Landlord, a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender or the Commissioner, including confirming the subordination required hereunder;

(xix) Tenant's breach of its obligations under Section 15.6 Management Agreement;

(xx) Tenant's breach of its obligations under Section 7.6 Security Agreement;



(xxi) Tenant fails to notify Landlord within twenty-four (24) hours after receipt of any notice from any Governmental Authority, terminating or suspending or threatening termination or suspension of any material license or certification relating to the Facility;

(xxii) a default beyond any applicable notice and cure periods under any Sublease, operating agreement, management agreement or any other material agreement relating to the Leased Premises or to which Landlord and Tenant are a party;

(xxiii) the creation of any indebtedness relating to the Leased Premises (other than trade payables which are not more than 30 days past due, not evidenced by a note and not in excess of One Million Dollars \$1,000,000.00);

(xxiv) the amendment, modification, restatement, termination or cancellation of any material contract relating to the Leased Premises, including but not limited to any Sublease, without Landlord's prior written consent, which consent shall not be unreasonably withheld;

(xxv) default or breach by Guarantor under the Guaranty beyond the expiration of any applicable cure period contained therein;

(xxvi) failure by Tenant to deposit all or any portion of the Security Deposit or Letter of Credit or to replace any portion of the Security Deposit or Letter of Credit utilized by Landlord;

(xxvii) a default or breach of any of the provisions set forth in Article XIX;

(xxviii) Tenant violates any term, covenant or condition of Tenant's Regulatory Agreement (with respect to a HUD financing) which violation is not cured within thirty (30) days of written notice to Tenant;

(xxix) a default or breach of the provisions set forth in Section 7.4(b) or a report required by Section 7.4 proves to be untrue in any material respect;

(xxx) any act or omission by Tenant or any Subtenant referenced in Section 7.4 that constitutes a default by Landlord under its loan documents with Mortgagee;

(xxxi) Tenant's failure to meet the covenants provided in Section 7.4 (g)

(xxxii) the sale or transfer or attempted sale or transfer of all or any portion of any certificate of need, bid or vote right or other similar authorization relating to any portion of the Facility or the Leased Premises, assignment or subleasing in violation of the provisions of Section 15.1;

(xxxiii) the use of any portion of the Premises other than for the intended Use;

(xxxiv) the Facility appears on the Special Focus Facility List, or similar list established by CMS;

(xxxv) Tenant fails to procure the insurance coverage, or loss of the insurance coverage, required by this Lease;

(xxxvi) Tenant enters into any corporate integrity agreement, settlement or consent decree, or deferred prosecution agreement with any Governmental Authority;

(xxxvii) Any Governmental Authority assesses a fine or penalty against, or with, Tenant that imposes a payment or fine upon Tenant in excess of \$75,000;

(xxxviii) The conviction of, or plea of no contest or nolo contendere by, Tenant or any member or beneficial owner of Tenant with respect to (1) any felony or (3) any misdemeanor that involves any act of fraud, embezzlement, theft or misappropriation;

(xxxx) Tenant fails to comply with its obligations in Section 18.1(n) within 10 days after written notice from Landlord; or

(xxxxi) Tenant or any Subtenant fails or refuses to execute escrow certificate required pursuant to Section 20.11, or otherwise complying with the requirements of Section 2.1 within ten (10) days after Tenant's receipt thereof.

Upon the occurrence of a Lease Default, Landlord, may, if Landlord so elects, upon five (5) days written notice of such election, forthwith terminate this Lease and Tenant's right to possession of the Leased Premises and, at Landlord's sole and absolute discretion, accelerate the payment of all Rent for the balance of the Term and declare the same presently due and payable in full provided, however, that with respect to a Lease Default under Section 16.1(a)(iv), this Lease shall automatically terminate. In the event of such Lease termination, Tenant shall immediately pay Landlord the then present value of all such accelerated Rent. Landlord, in addition to all other remedies given to Landlord at law or in equity, may by written notice to Tenant, without terminating this Lease, cause Tenant to apply to the DOH to install a manager and/or management consultant and/or a receiver having the necessary approvals from Governmental Authorities, of Landlord's choice, at Tenant's sole cost and expense or to the extent permitted by applicable law, reenter the Leased Premises by summary proceedings or otherwise. In any event, upon a Lease Default, Landlord may require Tenant to consent to a so-called "Change of Ownership" and Landlord may dispossess Tenant upon approval of the Change of Ownership or Certificate of Need by DOH, it being the understanding that under no circumstances is this Lease to be an asset for Tenant's creditors by operation of law or otherwise. In the event of such reentry, Landlord may relet the Leased Premises without being obligated so to do, and in the event of a reletting may apply the Rent therefrom first to the payment of Landlord's cost and expenses, including consultant and/or expert and attorneys' fees and expenses incurred by reason of such Lease Default, and the cost and expense of reletting including, but not limited to, repairs, renovation, or alteration of the Leased Premises and then to the amount of Rent and all other sums due from or payable by Tenant hereunder, Tenant remaining liable for all other sums due from or payable by Tenant hereunder and for any deficiency. Tenant shall also be liable for and indemnify Landlord against all amounts owed to

Medicare, Medicaid, all applicable third-party payor programs, third party payors, or residents, including, but not limited to, any overpayments received by Tenant, relating to the Term. Any and all such deficiencies shall constitute Additional Rent hereunder and shall be payable by Tenant monthly on the date herein provided for the payment of Rent. In addition to the foregoing remedies, Landlord shall immediately be entitled to retain the Security Deposit and draw on and retain proceeds of the Letter of Credit, and thereafter Tenant shall have no further claim, right, title or interest therein to the extent of Landlord's claims only.

Landlord acknowledges that its rights of reentry onto the Leased Premises set forth in this Lease do not confer on Landlord the authority to operate a nursing facility as defined in Article 28 of the Public Health Law on the Leased Premises and agrees that except in the event of a Lease Default Landlord will give the DOH, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of its intent to reenter the Leased Premises or to initiate dispossession proceedings or that the Lease is due to expire at least thirty (30) days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least sixty (60) days before expiration of the Lease.

Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossession proceedings and sixty (60) days prior to the expiration of the Lease, Tenant shall immediately notify by certified mail the DOH, Tower Building, Empire State Plaza, Albany, NY 12237 (or its then current address), of the receipt of such notice or service of such process or that the Lease is about to expire.

(b) Except as provided in this Lease to the contrary, Rent and other sums not paid when due (unless paid within any applicable grace period) shall bear interest from the date when the same are first payable under the terms of this Lease until the same shall be paid at an annual rate of interest equal to the Overdue Rate.

(c) Upon the filing of a petition by or against Tenant pursuant to the Bankruptcy Code, Tenant, as debtor and as debtor-in-possession, and any trustee who may be appointed shall: (i) timely perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (ii) pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Leased Premises an amount equal to the Rent and other charges otherwise due pursuant to this Lease; and (iii) reject or assume this Lease within one hundred twenty (120) days after the filing of such petition under the Bankruptcy Code or within such time period as the Bankruptcy Code may allow. Tenant, as debtor and as debtor-in-possession, and any trustee shall be deemed to have rejected this Lease in the event of the failure to comply with any of the above. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor, in the event of assumption and/or assignment is the prior written consent of any mortgagee in which this Lease has been assigned as collateral security.

(d) In the event of termination of this Lease by reason of any Lease Default by Tenant, or upon the expiration of the Term, then, and in any of such events, Tenant, upon Landlord's written request, shall to the greatest extent permitted by law, transfer to Landlord or its designees or assigns, or cause its Subtenants and/or Affiliates, to transfer to Landlord or its designees or assigns, the following: (i) all federal, state or municipal licenses,

certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements (including non-governmental) and other authorizations which relate to the operation of the Facility; and (ii) the name of the Facility as then commonly known to the general public. Tenant shall also prepare and file all notices required by applicable law in connection with such termination and shall also prepare and timely file all final Medicare and Medicaid cost reports. In the event Tenant fails or refuses to transfer any such licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, other authorization or trade name, then this provision shall constitute an act of assignment by Tenant to Landlord or its assigns without the necessity of any further written instrument. For this purpose, Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to complete or undertake such replacements in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

(e) Landlord shall have the option of taking over the operation of the Facility, or having the operation of the Facility taken over by a designee, in the event of a termination of this Lease for any reason, without Landlord or designee assuming any of Tenant's liabilities or obligations, including Tenant's liabilities and obligations with respect to employees, such as vacation, sick leave, health insurance and pension liabilities and Tenant's obligations under applicable law to offer and provide group health continuation coverage. Landlord shall give Tenant written notice of Landlord's intent to exercise the right set forth above, in which event, upon the approval of the DOH of the Change of Ownership, Tenant shall and shall cause the Subtenant to immediately turn over possession and control of the Facility without any further action having to be taken on the part of Landlord. At the request of Landlord, Tenant shall and shall cause the Subtenant to turn over any or all of inventories, personal property (including computer and telecommunications equipment but excluding any leased equipment) vehicles, and material contracts (including hospital, transfer, vendor, and managed care contracts).

(f) No failure of Landlord to enforce any rights or remedies upon default of Tenant shall prejudice or affect the rights of Landlord upon any subsequent or similar default.

(g) In the event of a Lease Default by Tenant of any of the terms, covenants, conditions or provisions of this Lease, which Lease Default is not cured within any applicable grace or cure period, Landlord shall have the right to invoke any remedy permitted to Landlord at law, in equity or otherwise. All remedies available to Landlord are declared to be cumulative and concurrent and the exercise of one shall not preclude or waive the right to exercise any other. No termination of this Lease and no taking or recovering of possession of the Leased Premises shall deprive Landlord of any of its remedies or actions against Tenant and Tenant shall remain liable for all past or future Rent, including all taxes, insurance premiums and all other charges and Rent payable by Tenant under this Lease, during and for the balance of the Term hereof. The bringing of any action for Rent or other default shall not be construed as a waiver of the right to obtain possession of the Premises.

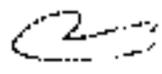
(h) If suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent, or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and breach shall be established, Tenant shall pay to Landlord all expenses,

including reasonable attorney fees, incurred therefor. This subsection shall survive termination of this Lease.

Section 16.2 Facility Operating Deficiencies. On written notice of a request therefor by Landlord to Tenant, upon a Lease Default and for a period of time necessary to fully remedy the Lease Default, Tenant shall engage the services of a consultant, unaffiliated with Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to review the management of the facility for the purpose of making recommendations to remedy the Lease Default. Subject to applicable legal requirements governing confidentiality of patient records, the consultant shall have complete access to the Facility, its records, offices and facilities, in order that it may carry out its duties. Tenant shall cause such consultant to prepare and deliver to Landlord and Tenant a written report of its recommendations within ten (10) days after its engagement. If Tenant shall fail to designate a consultant approved by Landlord as provided above within five (5) days after Tenant's receipt of Landlord's notice, Landlord may designate such consultant by further notice to Tenant. Tenant shall be responsible for payment of all fees and expenses reasonably charged and incurred by the consultant in carrying out its duties. Tenant shall promptly implement any and all reasonable recommendations made by such consultant in order to promptly correct or cure the Lease Default; provided, however, that in no event shall Tenant implement any such recommendations if the same would constitute a violation of applicable legal requirements, violate any rule or regulation of the DOH, or would otherwise cause a Lease Default hereunder (e.g., a transfer or change in use of the Leased Premises), unless Landlord consents in writing to such Lease Default, which consent may be given or withheld in Landlord's sole and absolute discretion. Nothing herein shall impose any liability or obligation on Landlord to (a) request the appointment of a consultant or (b) otherwise remedy the Facility Operating Deficiency(ies) nor shall it deem Landlord an operator of the Facility.

Section 16.3 Receivership.

Tenant acknowledges that one of the rights and remedies available under applicable law for nursing facilities which fail to comply with the conditions of participation for Medicare or Medicaid is to apply to a court of competent jurisdiction for the appointment of a receiver to take possession of the Facility, to collect the rents, issues, profits and income of the Facility and to manage the operation of the Facility. Tenant further acknowledges that the revocation, suspension or material limitation of the certification of the Facility for provider status under Medicare or Medicaid (or successor programs) and/or the revocation, suspension or material limitation of a license relating to the operation of the Facility for its intended use under the laws of the State of New York will materially and irreparably impair the value of Landlord's investment in the Facility. Therefore, in the event of a Lease Default, and in addition to any other right or remedy of Landlord under this Lease, at the request of Landlord, Tenant shall request DOH to, or to the extent permissible under law, Tenant shall, petition any appropriate court, for the appointment of a receiver to take possession of the Facility, to manage the operation of the Facility under Tenant's licenses and certifications, to collect and disburse all rents, issues, profits and income generated thereby and to preserve or replace to the extent possible any such license and provider certification for the Facility or to otherwise substitute the licensee or provider thereof. The receiver shall be entitled to a reasonable fee for its services as a receiver. All such fees and other expenses of the receivership estate shall be added to the



monthly Rent due to Landlord under this Lease as Additional Rent. Tenant hereby irrevocably stipulates to the voluntary appointment of a receiver under such circumstances and for such purposes and agrees not to contest such appointment.

Section 16.4 Tenant's Waiver, Mitigation. In connection with the exercise by Landlord of any of its remedies under this Section 16, including the termination of this Lease, in whole or in part, Tenant waives, to the maximum extent permitted by applicable Laws, (1) any right of redemption, re-entry or repossession, (2) the benefit of any moratorium laws or any laws now or hereafter in force exempting property from liability for rent or for debt, (3) any duty on the part of Landlord to mitigate the damages recoverable from Tenant on account of any Lease Default by Tenant, except that notwithstanding the foregoing or anything in this Lease to the contrary, Landlord agrees to comply with any duty to mitigate damages where applicable Laws do not allow Tenant to waive such right, (4) the right to interpose any counterclaim (other than compulsory counterclaims) in any summary proceeding instituted by Landlord against Tenant in any court or in any action instituted by Landlord in any court for unpaid Rent under this Lease, and (5) any other right provided to Tenant under applicable Laws relating to a breach of or Lease Default under this Lease, including any rights to cure such breach or Lease Default.

ARTICLE XVII

ENTRY AND REIMBURSEMENT RIGHTS OF LANDLORD

Section 17.1 Entry and Reimbursement Rights of Landlord. In addition to those rights set forth in Section 7.2 of this Lease, Landlord reserves the right at all reasonable times during business hours and upon at least twenty-four (24) hours' advance oral notice to go upon and inspect the Facility and every part thereof (subject to applicable Laws pertaining to patient confidentiality and privacy and the confidentiality of medical records). If Landlord shall make any payments or perform any repairs on behalf of Tenant which are Tenant's obligation and which Tenant has failed to make after applicable notice from Landlord, then any reasonable amounts so paid by Landlord are agreed and declared to be Additional Rent, and shall be due and payable to Landlord by Tenant upon submission to Tenant of an invoice, bill, or statement therefor, together with interest charged at the Overdue Rate commencing on the date of such invoice, bill, or statement. Nothing in this Section 17.1 shall impose any liability or obligation upon Landlord.

ARTICLE XVIII

REPRESENTATIONS AND WARRANTIES

Section 18.1 Tenant's Representations, Warranties and Additional Covenants. Tenant represents, warrants and covenants to Landlord and agrees (all of which shall survive the delivery and execution of this Lease) as follows (all of Tenant's representations, warranties, and covenants shall be deemed to include, in addition to that specified herein, the identical warranties, representations, and covenants of all Subtenants, which Tenant agrees to set forth in any Sublease and which are hereby incorporated herein by reference as if set forth in full herein):

(a) Corporate. Tenant is a limited liability company duly formed and validly existing and in good standing under the laws of the State of New York, and has the limited liability company power and authority to own its property and assets and to carry on its business as now being conducted or as will be conducted on and after the Commencement Date.

(b) No Breach of Statute or Contract. The execution, delivery and performance of this Lease by Tenant and any Sublease by a subtenant will not breach any statute or regulation of any Governmental Authority, and will not as of the Commencement Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of Tenant's articles of organization, operating agreement, other material agreements, or any order, writ, injunction, decree, agreement or instrument to which Tenant is a party, or by which it or its property, may be bound.

(c) Authorization of Lease. The execution, delivery and performance of this Lease, and all Subleases, has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Tenant and this Lease constitutes the valid and binding obligation of Tenant, fully enforceable in accordance with its terms.

(d) No Litigation or Adverse Events. Except as set forth on Schedule 1B, (d) attached hereto and incorporated herein, there is no suit, claim, action or legal, administrative, arbitration, or other proceeding or governmental investigation pending or threatened, by or against Tenant, and there exists no event or condition of any character, which could prevent the consummation of the transactions contemplated by this Lease or materially adversely affect Tenant's performance of the terms and conditions hereunder.

(e) Conduct of Business. Subject to the express provisions herein, at all times after the Effective Date, Tenant shall, and cause its subtenants to (i) operate the Leased Premises (after the Commencement Date) and otherwise conduct its/their business in the ordinary course, and in compliance with all statutory and regulatory requirements of any federal, state or local authority, (ii) continue to operate the Leased Premises after the Commencement Date and maintain it in substantially its condition as of the Commencement Date, reasonable wear and tear excepted, including but not limited to repairs and replacements permitted or required under this Lease, and in a lawful manner, (iii) not encumber all or any portion of its assets or properties or the Leased Premises, including without limitation, certificates of need, bed rights, or provider agreements, (iv) preserve the goodwill of the Facility, (v) not take any action from an accounting perspective which would materially adversely affect the reimbursement formula or tax benefits with respect to the Leased Premises or any portion thereof, (vi) utilize the Leased Facility only for the Intended Purpose, (vii) not relinquish or attempt to transfer the location of or sell the skilled nursing facility license, certificate of need approval, Medicare or Medicaid certification or any other licenses, certifications, accreditations, approvals, permits, variances, waivers, provider agreements or other authorizations, (viii) not refuse to admit patients without 30 days' written notice of intent to, and prior written consent of, Landlord, (ix) not dissolve, merge or consolidate with or into any other person or entity, or otherwise change its identity or company or capital structure, or (x) not change its name or its business address.

(f) Continued Existence. At all times on and after the Effective Date, Tenant shall cause to be done all things needed to preserve its rights and franchises and comply with all Laws applicable to it, and to continue to conduct its business in the ordinary course.

(g) Payment of Obligations. At all times on and after the Effective Date, Tenant shall timely pay, and cause its subtenants to timely pay, all of its/their obligations, indebtedness, taxes, charges and impositions, whether or not relating to the Leased Premises or this Lease, as they become due unless contested in good faith and diligently pursued only if permitted under and subject to the terms and conditions of this Lease.

(h) Notice of Default. At all times on and after the Effective Date, Tenant shall promptly notify Landlord of (i) any material default by Tenant relating to any indebtedness or obligation of Tenant, whether or not relating to the Leased Premises or this Lease, and (ii) any material violations by the Facility of any applicable Law.

(i) Compliance with Law. At all times on and after the Effective Date, Tenant shall comply in all respects, and cause its subtenants to comply in all respects, with all applicable Laws, including Medicare and Medicaid conditions of participation, to which it is subject or which are applicable to the Leased Premises and to Tenant's operation of the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility.

(j) Beds and CON. Tenant has been awarded a CON for construction and operation of 160 skilled nursing facility beds for use at the Lease Premises by DOH and such CON may be used in connection with this Lease.

(k) Tenant, on behalf of itself and its Subtenants, makes the Health Care warranties and representations set forth in Schedule 18(k) attached hereto and incorporated herein, to Landlord, its successors and assigns, which warranties and representations shall be true and correct as of Commencement Date and at all times during the Term.

(l) Except for the Subleases of the Leased Premises to the Operators, there are no subleases or sub-subleases or occupancy agreements (other than residence agreements with patients or residents) for any portion of the Leased Premises.

(m) Tenant shall maintain and comply at all times with all O&M Plans (Operation and Maintenance Plans covering the handling, treatment or maintenance of asbestos or Hazardous Materials) relating to the Leased Premises, or that shall be required in the future by Mortgagee or any HUD mortgagee or, where applicable, the Commissioner.

(n) Obligations prior to Commencement Date. In addition to all of Tenant's obligations provided in this Lease, Tenant shall:

(i) as soon as practical after the Effective Date, apply for all and rigorously pursue until obtained all Health Care Licenses;

(ii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain from DOH the maximize total project cost for the Facility approvable by DOH;



(iii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain the highest possible reimbursement rate with respect to the Medicare and Medicaid programs;

(iv) as soon as practical after the Effective Date, apply for and vigorously pursue until obtained provider agreements with third party payors providing reimbursement for skilled nursing facility services in the geographic area of the Facility;

(v) after the Effective Date take all actions requested by Landlord in order for Landlord to finance and complete Landlord's Work.

(vi) as soon as practical prior to the Commencement Date, hire, employ and train a staff adequate to provide services to the residents of the Facility immediately after the Commencement Date;

(vii) as soon as practical prior to the Commencement Date, purchase a sufficient inventory of food, medicines and other perishable items necessary to provide services to the residents of the Facility immediately after the Commencement Date;

(ix) as soon as practical prior to the Commencement Date, purchase and deliver to the Facility all small wares necessary provide services to the residents of the Facility immediately after the Commencement Date;

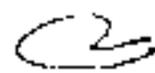
(x) six months after the Effective Date and thereafter every six months until the Commencement Date, deliver to Landlord a detailed projected statement of income and expenses and cash flow for a three year period.

Section 18.2 Representation and Warranties. Landlord hereby represents and warrants to Tenant, all of which shall survive the delivery and execution of this Lease, and agrees, as follows:

(a) No Breach of Statute or Contract. The execution, delivery, and performance of this Lease will not violate any provision of law, any order of any court or other agency of federal or state government or any provision of any indenture, agreement, or other instrument to which Landlord is a party or by which it or any of its properties or assets are bound; conflict with, result in a breach of, or constitute (with passage of time or delivery of notice, or both), a default under any such indenture, agreements or other instrument; or result in the creation or imposition of any lien or other encumbrance of any nature whatsoever upon any of the properties or assets of Landlord.

(b) Authorization of Lease. This Lease has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Landlord and this Lease constitutes the valid and binding obligation of Landlord, fully enforceable in accordance with its terms.

(c) No Litigation or Adverse Events. There is no action, suit, examination, review, or proceeding by or before any governmental instrumentality or agency now pending or, to the knowledge of Landlord, threatened against Landlord, which, if adversely determined,



would materially impact the right of Landlord to carry on the business as contemplated under this Lease.

(d) No Default. Landlord is not in default in the performance, observation, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which it is a party relating to the Leased Premises and which default would have a material adverse effect on the Leased Premises; and

(e) Corporation. Landlord is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of New York and is qualified to do business in the State of New York, and has the limited liability company power and authority to own its properties and assets and to carry on its business as now being conducted.

ARTICLE XIV

OPERATION, MERGER AND CONSOLIDATION RESTRICTIONS

Section 19.1 Intentionally Omitted

Section 19.2 SPE Provisions. At all times during the term of this Lease, Tenant represents, warrants and covenants that Tenant and each Subtenant, and all successors and assigns of Tenant and Subtenants, is, shall be and shall continue to be a "Special Purpose Entity" as defined in Schedule 19.2. The Operating Agreement of Tenant and each subtenant shall include the Special Purpose Entity provisions set forth in Schedule 19.2.

Section 19.3 Injunctive Relief. Notwithstanding anything to the contrary set forth in this Lease, the Parties hereto understand and agree that: (a) each term of Article XIX of this Lease is fully required to protect Landlord's interests, and that no such term confers a benefit on Landlord that is disproportionate to the detriment imposed on Tenant, if any; (b) the remedy at law for any breach by Tenant of Article XIX would be inadequate; (c) the damages flowing from such breach are not readily susceptible to measurement in monetary terms; and (d) Landlord shall be entitled to immediate injunctive relief restraining any breach thereof. Nothing in this Agreement shall be deemed to limit Landlord's remedies at law or in equity for any such breach by Tenant of any term or provision of Article XIX of this Lease.

Section 19.4 Equity Interests. In the event that Tenant or any constituent entity under this Lease is ever a form of entity other than a limited liability company, the term "membership interest" as used in Articles XIX and XX hereof shall be deemed to mean the analogous form of equity ownership interest in such other type of entity, such as capital stock, partnership interest, beneficial interest or the like.

Section 19.5 No Merger or Consolidation. Except as expressly provided elsewhere in this Lease, Tenant shall not sell, or offer for sale, its assets or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity other than selling non-material assets in the ordinary course of business, to any other entity, business or activity involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and

representatives. Except as expressly provided elsewhere in this Lease, Tenant, Subtenants, Guarantor(s) and their Affiliates, shall not sell or offer to sell, assign, transfer, convey, pledge, or encumber its/their membership interests to, or otherwise attempt to merge with or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity, business or activity, whether involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and representatives, or otherwise.

ARTICLE XX

MISCELLANEOUS

Section 20.1 GOVERNING LAW. (a) ALL MATTERS PERTAINING TO THIS LEASE OR THE LEASED PREMISES SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS LEASE, AND THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LANDLORD OR TENANT ARISING OUT OF OR RELATING TO THIS LEASE MAY AT LANDLORD'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF WHITE PLAINS, COUNTY OF WESTCHESTER, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND TENANT WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TENANT HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. TENANT DOES HEREBY DESIGNATE AND APPOINT:

Lizer Joscfovic  
HBL SNE, LLC  
1200 Albany Post Road  
Croton-on-Hudson, New York 10520

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO TENANT IN THE MANNER PROVIDED IN ARTICLE XIII OF THIS LEASE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON TENANT IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE

STATE OF NEW YORK, TENANT (A) SHALL GIVE PROMPT WRITTEN NOTICE TO LANDLORD OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREINAFTER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE, IN THE FORM OF A WRITTEN NOTICE TO LANDLORD, A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN WHITE PLAINS, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR AND NOTIFY LANDLORD IN WRITING OF SUCH SUBSTITUTION.

Section 20.2 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Lease shall not operate as, or be construed to be a waiver of, any subsequent breach of the same or other provision hereof. No waiver shall be effective unless set forth in writing and signed by the party against whom such waiver is asserted.

Section 20.3 Delay Not a Waiver. Neither any failure nor any delay on the part of any party hereto in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or any other document or instrument entered into or delivered in connection herewith or pursuant hereto, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. A waiver of one default with respect to any Person shall not be construed to be a waiver of any subsequent default with respect to such Person or any other Person or to impair any remedy, right or power consequent thereon.

Section 20.4 Force Majeure. Neither party shall be liable nor deemed to be in default (other than monetary defaults) for any delay or failure in performance under this Lease or other interruption of service or employment deemed resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Parties' employees, or any similar or dissimilar cause beyond the reasonable control of either party ("Force Majeure").

Section 20.5 Severability. In the event any provision of this Lease is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Lease so long as the intent of the parties under this Lease can still be effected, which shall remain in full force and effect and enforceable in accordance with its terms.

Section 20.6 Entire Agreement; Amendments. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such Parties are merged into and expressed in this instrument, and any and all prior agreements between such Parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Landlord and Tenant.

Section 20.7 Counterpart Execution; Electronic Execution. This Lease may be executed in any number of counterparts with the same effect as if the Parties hereto had signed the same document. All counterparts will be construed together and shall constitute one lease. Signatures transmitted by email as PDFs shall have the same effect as original signatures.

Section 20.8 Survival of Representations and Warranties. Except as specifically provided otherwise in this Lease, all representations and warranties of Landlord and Tenant shall survive the Term of this Lease.

Section 20.9 Use of Brokers. Landlord and Tenant each represent and warrant to the other that no broker, finder or other person has been involved in regard to this Lease. Landlord and Tenant hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind (including the injured party's reasonable attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of a party to this Lease in connection with the transactions contemplated herein. The provisions of this Section 20.9 shall survive the expiration and termination of this Lease.

Section 20.10 Owner for Federal Tax Purposes. It is hereby agreed between Landlord and Tenant that for federal, state and local income tax purposes Landlord will be the owner of the Leased Premises and Tenant will be the lessee thereof, and each party hereto agrees to characterize this Lease as a lease for federal, state and local income tax purposes and to file all tax returns consistent therewith.

Section 20.11 Extended Certificates. Tenant shall, without charge, at any time and from time to time, within ten (10) days after written request by Landlord or Mortgagee, deliver a written instrument to Landlord or any other person specified by Landlord, duly executed and acknowledged, certifying the following and such other matters as may be reasonably required by Landlord, including without limitation, current financial information relating to Tenant:

- (a) That Tenant has accepted and is in possession of the Leased Premises;
- (b) That this Lease is unmodified and in full force and effect or, if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (c) Whether or not there are then existing any setoffs or defenses in favor of Tenant against the enforcement of any of the terms, covenants, and conditions of this Lease by Landlord and, if so, specifying the same, and also whether or not Landlord has observed and performed all of the terms, covenants, and conditions on the part of Landlord to be observed and performed and, if not, specifying same;
- (d) That no Lease Defaults exist or are continuing; and
- (e) The dates to which Rent and all other charges hereunder have been paid.



**Section 20.12 Confidentiality.** (a) Landlord and Tenant agree to keep all aspects of (but not the existence of) this Lease confidential, and shall not disclose to any person other than the members, managers, owners, directors, officers, employees, agents, advisors, affiliates, brokers, lenders, attorneys or accountants (collectively the "Representatives") of the Parties hereto on a need-to-know basis, or to any Governmental Authority pursuant to regulatory authority, any confidential or proprietary information, knowledge or data concerning the business, affairs, operations, secrets, dealings or finances of the other party furnished directly or indirectly by such other party (collectively referred to as the "Confidential Information"). As used in this Lease, the term "Confidential Information" does not include any information which: (i) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by either party or their Representatives); (ii) was available to either party on a non-confidential basis from a source other than a party to this Lease or its Representatives, provided that such source is not and was not bound by a confidentiality agreement with the party hereto; (iii) has been independently acquired or developed by either party or their Representatives without violating any of the obligations hereunder; (iv) is required by law to be disclosed; or (v) relates to the tax structure, tax strategy or tax planning of this transaction.

(f) In the event that either party or any of the Representatives receives notice of a legal request for disclosure of any of the Confidential Information (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), the party receiving such notice ("Receiving Party") shall promptly notify the other party ("Notified Party") so that the Notified Party may seek a protective order or other appropriate remedy if it chooses to do so. Failure by the Notified Party to take action to seek a protective order or other remedy and to notify the Receiving Party of such action prior to the required disclosure date, shall be deemed a waiver of the provisions of this section. In the event that a protective order or other remedy is not obtained or that the Notified Party waives compliance with the provisions hereof, the Receiving Party shall exercise its best efforts to obtain a confidentiality agreement or protective order concerning the Confidential Information, and in the absence thereof, shall disclose only that portion of the Confidential Information which it is advised by written opinion of counsel is legally required to be disclosed, or which is compelled by court order.

(g) In the event of any breach or threatened breach hereof, Landlord or Tenant shall be entitled to equitable relief, including a temporary preliminary and permanent injunction and specific performance, in addition to all other remedies available to them at law or in equity.

(h) Notwithstanding anything herein to the contrary, Landlord (and each employee, agent, or other Representative of Landlord) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of this Lease, related documents and all materials of any kind (including opinions or other tax analyses) that are provided to Landlord relating to such tax treatment and tax structure. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income tax treatment of the transaction and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of the transaction.

**Section 20.13 Holdover.** If, at the expiration of the Term, or earlier termination of the Lease, Tenant continues to occupy the Leased Premises except during a Reimbursement Period, with Landlord's consent, such holding over shall not constitute a renewal of this Lease, but Tenant shall be a Tenant from month-to-month at 300% of the most recent Rent payable by Tenant hereunder, at Landlord's sufferance, and under the same terms and conditions as were in force and effect at the expiration of the Term (except only as to the Term), and except that in the event Tenant shall continue to occupy the Leased Premises after the expiration of the Term, without a duly executed extension agreement in writing having been entered into by and between Landlord and Tenant, then if Landlord shall suffer any damage, loss, cost or expense as a result of such holdover, then Tenant, in addition to such increased Rent, shall pay the amount thereof to Landlord immediately on demand. The provisions of this Section shall be deemed to be "an agreement expressly provided" otherwise as provided in Section 232-C of the Real Property Law of the State of New York, Holding Over. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the Expiration Date or earlier termination of this Lease, nor shall anything contained herein be deemed to limit Landlord's remedies.

**Section 20.14 Tenant's Waiver of Claim for Physical Injury.** Landlord and Landlord's Indemnitees shall not be liable for, and Tenant waives and indemnifies Landlord and Landlord's Indemnitees against all claims for, damage or injury to person or property sustained by Tenant or any person claiming through Tenant, or otherwise, resulting from any accident or occurrence in, about, or upon the Leased Premises, whether occurring as a result of Landlord's active or passive negligence, or otherwise.

(a) Such waiver shall include, but not be limited to, claims for damage resulting from: (i) any equipment or appliances becoming out of repair or any other capital improvement, replacement, repair or maintenance; (ii) injury done or occasioned by wind; (iii) any defect in or failure of plumbing, heating, or air conditioning equipment, electric wiring, gas, water and steam pipes, stairs, rail or walks; (iv) broken glass; (v) the backing up of any sewer pipe or washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Leased Premises; (vi) the escape of steam or hot water; (vii) water, snow or ice being upon, falling from or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Leased Premises; (viii) the falling of any fixture, plaster, drywall or stucco; and (ix) any act, omission or negligence of trespassers.

**Section 20.15 Binding Effect.** This Lease does not constitute an offer to lease and shall not bind Landlord or Tenant unless and until each such party elects to be bound hereby by executing and delivering to the other party an executed original counterpart hereof.

**Section 20.16 Default by Landlord.** Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within sixty (60) days of when they are due to be performed, except in cases when documents are required or consents needed in less than sixty (60) days in which case failure to render timely shall be deemed to be approval or consent of Landlord (or such additional time as is reasonably required to correct any such default) except for Landlord's default in making timely payment of taxes and interest, in which case Landlord shall be in default when such payments are delinquent or past due. Tenant agrees to give to the

holder of record of any mortgage covering the Leased Premises notice simultaneously with any notice given to Landlord to correct any default of Landlord as hereinabove provided and agrees that the holder of record of any mortgage shall have the right, after receipt of notice of such default, within sixty (60) days after the expiration of Tenant's applicable cure period with respect thereto, to correct or remedy such default before Tenant may take any action under this Lease by reason of such default. Landlord shall also give to the holder of any mortgage copies of any notices of default which it may give or send to Tenant.

**Section 20.17 Liens.** Tenant shall not do or suffer anything to be done whereby the Leased Premises, or any portion thereof, or any interest therein, may be encumbered by any liens of mechanics, laborers, or materialmen, chattel mortgages or any other liens. Tenant shall, whenever and as often as any such liens are filed against the Leased Premises, or any portion thereof, purporting to be for labor or material furnished or to be furnished to Tenant, discharge the same of record within thirty (30) days after the date of filing by payment, bonding or otherwise, as provided by law. In the event of the default of Tenant in procuring this discharge, as aforesaid, of any such lien, Landlord may, with five (5) days prior notice, procure such discharge and the expenses incurred by Landlord in obtaining such discharge shall be paid by Tenant as Additional Rent within ten (10) days after notice from Landlord of the amount thereof.

**Section 20.18 Publicity.** All news releases, publicity or advertising by Tenant or their Affiliates through any media intended to reach the general public which refers to Landlord, or its Affiliates, this Lease or the purchase of the Real Property shall be subject to the prior written approval of Landlord.

**Section 20.19 Trial by Jury.** TENANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS LEASE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TENANT.

**Section 20.20 Construction and Interpretation.** The Parties have each negotiated the terms and conditions hereof and reviewed this Lease carefully. It is the intent of the Parties that each word, phrase, sentence and other part hereof shall be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part hereof against the draftsman, by virtue of being the draftsman, shall not apply.

**Section 20.21 Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than shall be due hereunder, shall be deemed to be other than a payment on account nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be given any effect or be deemed an accord and

satisfaction, and Landlord may accept such checks without prejudice to any other rights or remedies which Landlord may have.

**Section 20.22 Captions and Headings.** The captions and headings set forth in this Lease are included for convenience and reference only, and the words obtained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of, or the scope or intent of, this Lease, or any parts hereof or thereof.

**Section 20.23 Time is of the Essence.** Time is of the essence of each and every term, condition, covenant and warranty set forth herein or in any of the other Lease Documents.

**Section 20.24 Successors and Assigns.** This Lease and the other Lease Documents shall (a) be binding upon Tenant and Tenant's legal representatives and permitted successors and permitted assigns, and (b) inure to the benefit of Landlord and any other person or entity who may now or hereafter hold the interest of Landlord under this Lease and their respective successors and assigns.

**Section 20.25 No Third Party Beneficiaries.** This Lease is solely for the benefit of Landlord, its successors and assigns, and Tenant, and nothing contained herein shall confer upon any person other than Tenant or Landlord or their respective successors and assigns, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein, except only as may be otherwise specifically provided for in this Lease. All conditions to the obligations of Landlord to advance or make available proceeds of insurance or condemnation are imposed solely and exclusively for the benefit of Landlord, its successors and assigns. No other person or entity shall have standing to require satisfaction of such conditions in accordance with their terms, and no other person or entity shall, under any circumstances, be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Landlord at any time, if in Landlord's sole and absolute discretion, Landlord deems it advisable or desirable to do so.

**Section 20.26 Non-Competition and Non-Solicitation.**

Tenant agrees to the following restrictive covenants and agreements which covenants are not severable from this Lease and which are included to protect the value of the Leased Premises. Accordingly, Tenant agrees that it and their Affiliates will not, during the Term of this Lease at any time for a period of two (2) years after the expiration or early termination of this Lease, directly or indirectly, together or alone or in conjunction with any others, engage in the following:

(i) compete with the business conducted at the Facility, and for those purposes will not own, manage, operate, join, control or participate in, or be connected as an officer, employee, partner, director, trustee or otherwise in any manner with a company which owns or operates (or provides consulting and/or management services to any skilled nursing facility located within the Primary Market of the Facility or (ii) any company providing hospice services in the Commonwealth of Massachusetts, or, otherwise lend credit to a person, firm or entity of a type which they prohibited from owning.

(ii) solicit or hire any then current or former (having provided services during the period commencing one year prior to each date of solicitation or hire) employees of the Facility (except for employment at the Facility).

(iii) solicit or cause any then current resident of the Facility to move to another nursing facility unless, except during the Term of this Lease the Facility can no longer provide adequate care for such resident.

Tenant acknowledges and agrees that the remedy at law for any breach or threat of breach of the foregoing agreements will be inadequate and that Landlord shall be entitled to injunctive relief in addition to any rights or remedies available to it for any breach or threat of breach hereof. The foregoing covenants shall be deemed to be severable and if the same be held invalid by reason of length of time or area covered, or both, the Tenant agrees that such length of time or area covered, or either of them, shall be reduced to the extent necessary to cure such invalidity and the provisions hereof shall be enforceable to the fullest extent permitted by law.

**Section 20.27 Subdivision.** If the Leased Premises are in excess of that which is required to operate the Facility in accordance with the Intended Use, Landlord may subdivide the Leased Premises and amend this Lease to include only so much of the Leased Premises as is necessary to operate the Facility in accordance with the Primary Intended Use. If Landlord subdivides the Leased Premises there shall be no change in the Rent payable hereunder. After any such subdivision, Tenant shall have no rights to any land which is no longer part of the Leased Premises and Landlord may sell, lease or develop any land which is no longer part of the Leased Premises. If Landlord elects to subdivide the Leased Premises Tenant shall cooperate with Landlord and take all actions reasonably requested by Landlord to effect such subdivision.

**Section 20.28 Landlord Not in Control; No Partnership.** None of the covenants or other provisions contained in this Lease shall, or shall be deemed to, give Landlord the right or power to exercise control over the affairs or management of Tenant, the power of Landlord being limited to the rights to exercise the remedies referred to in this Lease. The relationship between Tenant, on the one hand, and Landlord, on the other hand, is, and at all times shall remain, solely that of landlord and tenant. No covenant or provision of this Lease is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand. Landlord undertakes or assumes no responsibility or duty to Tenant or to any other person with respect to the Facility or this Lease, except as expressly provided in this Lease; and notwithstanding any other provision of this Lease (a) Landlord shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Tenant or its stockholders, members, or partners and Landlord never intends to ever assume such status; (b) Landlord shall not in any event be liable for any debts, expenses or losses incurred or sustained by Tenant; and (c) Landlord shall not be deemed responsible for or a participant in any acts, omissions or decisions of Tenant or their stockholders, members, or partners. Landlord, on the one hand, and Tenant, on the other hand, disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand, or any sharing of liabilities, losses, costs or expenses.

**Section 20.29 Tenant Cooperation.** Tenant agrees to cooperate with Landlord in providing, and upon request by Landlord or its lender, Tenant shall provide or cause its subtenants to provide, such documents, information, financial reports, and such other items as may be required by Mortgagee in connection with Landlord's loan or loans to acquire the Leased Premises. Tenant agrees to cause its outside counsel to provide updated healthcare opinions required by Mortgagee in connection with the healthcare operations by Tenant or its subtenants at the facility, and if required by Mortgagee, an opinion of counsel as to the due formation of Tenant and its subtenants and the execution by said parties, and Tenant Affiliates, of the Lease, all subleases, all guaranties of the Lease, and any other documents executed by such parties in connection with the loan(s) from Mortgagee to Landlord. Tenant agrees to execute, and cause the subtenants to execute, SNDAs in form and substance required by Mortgagee and by its prospective lender who will be making HUD-insured loans to Landlord. Tenant further agrees to cooperate with Landlord and with its lenders who are processing and will be making HUD Loans to Landlord.

**Section 20.30 Capitalized Terms.** To the extent capitalized terms used herein are not defined, they shall have the same meaning as capitalized terms in the Loan Documents.

**Section 20.31 Affiliate.** The term "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

## ARTICLE XXI

### REMEDIES CUMULATIVE

**Section 21.1** The rights and remedies set forth under this Lease are in addition to all other rights and remedies afforded to Landlord under any of the other documents contemplated under this Lease ("Lease Documents") or at law or in equity, all of which are hereby reserved by Landlord, and this Lease is made and accepted without prejudice to any such rights and remedies. All of the rights and remedies of Landlord under each of the Lease Documents shall be separate and cumulative and may be exercised concurrently or successively in Landlord's sole and absolute discretion.

## ARTICLE XXII

### LIMITATION OF LIABILITY

**Section 22.1 Liability.** No member, manager, officer, shareholder, employee or agent of Landlord or its respective affiliates shall be held to any personal liability, jointly, or severally, for any obligation of, or claim against Landlord under this Lease. All persons dealing with Landlord, in any way, shall look only to the assets of Landlord for the payment of any sum or the performance of any obligations.

Section 22.2 Consequential Damages. Under no circumstances shall Landlord be liable to Tenant or any subtenant or Affiliate of Tenant for any consequential, specified, exemplary or permitted damages.

Section 22.3 Liability Limited to Interest in Premises. Tenant shall look solely to Landlord's interest in the Leased Premises owned by Landlord to satisfy any liability arising under this Lease. It is specifically agreed that no constituent partner in Landlord or officer, director, member, manager or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. Except as otherwise expressly provided herein, in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause.

ARTICLE XXIII

REGULATORY ACTIONS

Section 23.1 Notice of Litigation. (a) Promptly after receipt by Tenant or its Affiliates of notice of the commencement thereof, Tenant shall provide Landlord with notice of all actions, suits, and proceedings before any Governmental Authority affecting Tenant, or its Affiliates or its Subtenants, which, if determined adversely to Tenant, its Affiliates or its Subtenants, could result in a judgment equal to or greater than Fifty Thousand Dollars (\$50,000.00).

(b) Notice of Regulatory Actions. Promptly after receipt by Tenant or its Affiliates of the notice of commencement thereof, Tenant shall provide Landlord with notice of (i) any audit, investigation, claim (excluding adjustments, complaints, and corrective activity in the ordinary course of business), proceeding, settlement, judgment, consent order, or corporate integrity agreement by or imposed by any Governmental Authority, (ii) any suspension, debarment or disqualification of Tenant, its officers and members, or its Affiliates from being a health care provider, government contractor, holder of any health care license or recipient of reimbursement from any third party payor, (iii) any suspension, termination, or revocation of any health care license of Tenant or any or any of Tenant's Affiliates or (iv) any self or voluntary disclosure of any overpayment to a third party payor by Tenant or any of Tenant's Affiliates.

(c) Notice of Settlement Negotiations. Tenant shall provide Landlord with reasonable notice of any and all settlement discussions and/or negotiations (excluding adjustments, complaints and corrective activity in the ordinary course of business) between representatives of Tenant and/or its Subtenants and any Governmental Authority, including without limitation negotiations with respect to any claim, settlement agreement, consent order or corporate integrity agreement between Tenant and its Affiliates and any Governmental Authority ("Settlement Discussions"). In connection with Settlement Discussions, (i) Tenant shall timely provide Landlord with copies of any and all documents that Tenant and/or its Subtenants intends to submit, or that Tenant and/or its Subtenants receives, in connection with any Settlement Discussions, and (ii) Tenant shall advise Landlord as to the status of the Settlement Discussions.

No receipt of any such notice under subsections (a), (b) and (c) shall impose any obligation on Landlord to take any action or to enforce its rights hereunder or otherwise remedy the circumstances leading to such notice.

#### ARTICLE XXIV

##### ANTI-TERRORISM AND ANTI-MONEY LAUNDERING COMPLIANCE

Section 24.1 Compliance with Anti-Terrorism Laws Tenant represents and warrants to Landlord that it is not, and, after making due inquiry, that no person who owns a controlling interest in or otherwise controls Tenant is, (i) listed on the Specially Designated Nationals and Blocked persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (ii) a person (a "Designated Person") either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "Anti-Terrorism Laws". Tenant represents and warrants that it requires, and has taken reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Tenant is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section 24.1 shall not apply to any person to the extent that such person's interest in Tenant is through a U.S. Publicly-Traded Entity. As used in this Lease, "U.S. Publicly-Traded Entity" means a person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person.

Section 24.2 Funds Invested in Tenant. Tenant represents and warrants that it has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in Tenant, to assure that funds invested by such holders in Tenant are derived from legal sources ("Anti-Money Laundering Measures"). The Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq. ("BSA"), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, "Anti-Money Laundering Laws").

Section 24.3 No Violation of Anti-Money Laundering Laws. Tenant represents and warrants to Landlord, to its actual knowledge after making due inquiry, that neither Tenant nor any holder of a direct or indirect interest in Tenant (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties

under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

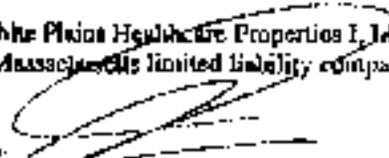
**Section 24.4 Tenant Compliance with Anti-Money Laundering Laws.** Tenant represents and warrants to Landlord that it has taken reasonable measures appropriate to the circumstances (in any event as required by law), to ensure that Tenant is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking.

[SEE ATTACHED SIGNATURE PAGES]

IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

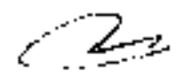
White Plains Healthcare Properties I, LLC,  
a Massachusetts limited liability company

By:   
\_\_\_\_\_  
\_\_\_\_\_, Manager

**TENANT:**

HBL SNF, LLC,  
a New York limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
It: \_\_\_\_\_



IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

White Plains Healthcare Properties I, LLC, a  
Massachusetts limited liability company

By: \_\_\_\_\_, Manager

**TENANT:**

HBL SNF, LLC, a  
New York limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

SCHEDULE 1B(k)

Health Care Representations

Health Care Representations. Tenant, for itself, and for the Subtenants, do hereby represent and warrant to Landlord, its successors and assigns, as of the date of the Lease, that:

(a) All Medicare and Medicaid provider agreements, certificates of need, if applicable, certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by Health Care Authorities (as defined in the Lease) for the legal use, occupancy and operation of the Facility (collectively, the "Health Care Licenses") for the Facility have been obtained by the party required to hold such Health Care Licenses and are in full force and effect, including approved provider status in any approved third-party payor program. Each Subtenant (hereinafter "Operator") owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all such Health Care Licenses and will operate or cause the Facility to be operated in such a manner that the Health Care Licenses shall remain in full force and effect;

(b) The Facility is duly licensed as a skilled nursing facility as required under the applicable laws of the State of New York. The licensed bed capacity of the Facility and the actual bed count operated at the Facility is 160. The Tenant has not applied to reduce the number of licensed or certified beds of the Facility or to move or transfer the right to any and all of the licensed or certified beds of the Facility to any other location or to amend or otherwise change the Facility and/or the number of beds approved by the DOH or other applicable state licensing agency, and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility;

(c) The Health Care License with respect to the Facility (i) has not been and will not be (A) transferred to any location other than the Facility or (B) pledged as collateral security (other than any pledge as collateral security to Tenant's accounts receivable lender approved by Landlord which pledge is subject to the interests of (x) Landlord under the Lease and (y) Mortgagee, including the liens and security interests of the Loan Documents), (ii) is and will continue to be held free from restrictions or known conflicts that would materially impair the use or operation of the Facility as intended, and (iii) is not provisional, probationary, or restricted in any way, except in instances where a Governmental Authority or Health Care Authority has issued a provisional, probationary or restricted license, permit or certification in the ordinary course pending issuance of a final license, permit or certification;

(d) Tenant has or will take any action to rescind, withdraw, revoke, amend, modify, supplement or otherwise alter the nature, tenor or scope of any Health Care

License or applicable provider payment program participation other than non-material alterations effected in the ordinary course of business;

(e) Tenant and the operation of the Facility are in material compliance with the applicable provisions of the Laws and all orders, standards, policies, restrictions or rules of any Health Care Authority having jurisdiction over the ownership, use, occupancy or operation of the Facility, including (i) staffing requirements, (ii) health and fire safety codes including quality and safety standards, (iii) accepted professional standards and principles that apply to the Operator's provision of services at the Facility, (iv) federal, state or local laws, rules, regulations or published interpretations or policies relating to the prevention of fraud and abuse, (v) insurance, reimbursement and cost reporting requirements, government payment program requirements and disclosure of ownership and related information requirements, (vi) requirements of applicable Health Care Authorities, including those relating to the Facility's physical structure and environment, licensing, quality and adequacy of nursing facility care, distributions of pharmaceuticals, rate setting, equipment, personnel, operating policies, and additions of Facility and services, and (vii) any other applicable laws, regulations or agreements for reimbursement for the type of care or services provided by Tenant and/ with respect to the Facility. As used herein, "material compliance" means a level of compliance that would keep Tenant and/ (and the operation of the Facility) free from any final orders or sanctions by any Governmental Authority or Health Care Authority having jurisdiction over the operation of the Facility and would not adversely affect Tenant's and/'s operations, including, but not limited to, its right to receive reimbursement or insurance payments;

(f) Tenant and the Facility are each in material compliance with the requirements for participation in the Medicare and Medicaid programs with respect to the Facility that currently participates in such programs and has a current provider agreement under Title XVIII and/or XIX of the Social Security Act which is in full force and effect. Facility has not had any deficiencies on its most recent survey (standard or complaint) that would result in a denial of payment for new admissions with no opportunity to correct prior to termination. The Facility had not any deficiencies at "level G" or above on its most recent survey (standard or complaint), nor has Tenant been cited with any substandard quality of care deficiencies (as that term is defined in Part 488 of 42 C.F.R.) for the past two consecutive surveys. The Facility has not been designated as a Special Focus Facility (as such term is defined by the Centers for Medicare and Medicaid Services Special Focus Facility Program);

(g) Neither Tenant nor the Facility is a target of, participant in, or subject to any action, proceeding, suit, audit, investigation or sanction by any Health Care Authority or any other administrative or investigative body or entity or any other third party payor or any patient or resident (including, without limitation, whistleblower suits, or suits brought pursuant to federal or state False Claims Acts, and Medicaid/Medicare/State fraud/abuse laws, but excluding medical malpractice claims and other civil liability lawsuits for which the Facility is maintaining insurance coverage in the ordinary course of business) which may result, directly or indirectly or with the passage of time, in the imposition of a fine, penalty, alternative, interim or final sanction, a lower rate

certification, recoupment, recovery, suspension or discontinuance of all or part of reimbursement from any Health Care Authority, third-party payor, insurance carrier or private payor, a lower reimbursement rate for services rendered to eligible patients, or any other civil or criminal remedy, or which could reasonably be expected to have a material adverse effect on Landlord, Tenant, or the operation of the Facility, including the Facility's ability to accept or retain residents, or which could result in the appointment of a receiver or manager, or in the modification, limitation, annulment, revocation, transfer, surrender, suspension or other impairment of a Health Care License, or affect Tenant's participation in the Medicare, Medicaid, or third-party payor program, as applicable, or any successor program thereto, or current rate certification, nor has any such action, proceeding, suit, investigation or audit been threatened;

(h) There are no agreements with residents of the Facility or with any other persons or organizations that deviate in any material adverse respect from or that conflict with any statutory or regulatory requirements. All resident records at the Facility, including patient and/or resident accounts records, are true, complete, and correct in all material respects;

(i) Other than the Medicare, Medicaid, and Veteran Administration programs, Tenant is not a participant in any federal, state or local program whereby any federal, state or local government or quasi-governmental body, or any intermediary, agency, board or other authority or entity may have the right to recover funds with respect to any Individual Property by reason of the advance of federal, state or local funds, including, without limitation, those authorized under the Hill-Burton Act (42 U.S.C. 291, et seq.). Tenant has received no notice, and is not aware of any violation of applicable antitrust laws;

(j) Tenant's private payor, Medicaid, Medicare, and/or managed care company, insurance company or other third-party insurance accounts receivable with respect to the Facility are free of any liens and Tenant has not pledged any of its receivables as collateral security for any loan or indebtedness;

(k) Tenant is not a party to any collective bargaining agreement or other labor contract applicable to persons employed by it at the Facility and there are no threatened or pending labor disputes at the Facility;

(l) Tenant has instituted, and the Facility is operated in material compliance with, a compliance plan which follows applicable guidelines established by Health Care Authorities;

(m) Tenant is in compliance with the Health Care Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder;

(n) There is no threatened or pending revocation, suspension, termination, probation, restriction, limitation, or non-renewal affecting Tenant and/or the Facility or provider agreement with any third-party payor, Medicare or Medicaid;

(o) All Medicare, Medicaid, and private insurance cost reports and financial reports submitted by or on behalf of the Facility are and will continue to be materially accurate and complete and have not been and will not be misleading in any material respects;

(p) The Facility and the use thereof complies in all material respects with all applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements and no waivers of such physical plant standards exist at the Facility;

(q) Any existing agreement relating to the management or operation of the Facility is in full force and effect and is not in default by any party. In the event any management or operating agreement is terminated or in the event of foreclosure or other acquisition, the subsequent operator need not obtain a certificate of need prior to applying for and receiving a license to operate the Facility or prior to receiving Medicare or Medicaid payments, as applicable;

(r) There are no actions, suits, or proceedings at law or in equity by any person or entity, including any Governmental Authority or any Health Care Authority or other agency now pending or threatened against or affecting Tenant and/or the Facility, which actions, suits or proceedings, individually or collectively, if determined against Tenant and/or the Facility, might materially adversely affect the condition (financial or otherwise) or business of Tenant and/or the condition, ownership or operation of the Facility.

SCHEDULE 19.2

"Special Purpose Entity" shall mean a corporation, limited partnership or limited liability company (such entity sometimes referred to herein as the "Company") which at all times on and after the date hereof:

(d) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Leased Premises, entering into this Lease with Landlord, subleasing the Leased Premises to affiliated subtenants; and (ii) transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(e) is not engaged and will not engage, directly or indirectly, in any business unrelated to those activities required or permitted to be performed under the Lease, including pursuant to this definition of "Special Purpose Entity" and Subsection (a) above, as applicable;

(f) does not have and will not have any assets other than those (i) related to the Leased Premises or its partnership interest in the limited partnership or the member interest in the limited liability company that operates the Leased Premises or acts as the general partner or managing member thereof, as applicable, and (ii) incidental personal property necessary for the conduct of its business, as applicable;

(g) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendments of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(h) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(i) has not failed and will not fail to correct any known misunderstanding regarding its separate identity;

(j) has maintained and will maintain its accounts, books and records separate from those of any other person, individual or entity (a "Person") and maintain its bank accounts separate from those of any other Person. To the extent required by law to file a tax return, will file its own tax returns, except to the extent it is required to file consolidated tax returns by law;

(k) has maintained and will maintain its own records, books, resolutions and agreements;

(l) has not commingled and will not commingle its funds or assets with those of any other Person and has not participated and will not participate in any cash management system with any other Person other than pursuant to its insert any credit facilities or accounts receivables financings;

(m) has held and will hold its assets in its own name;

(n) has conducted and will conduct its business in its name;

(o) has maintained and will maintain its financial statements, accounting records and other entry documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(p) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees, if any, in light of its contemplated business operations and in accordance with all Laws;

(q) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(r) has and will have no indebtedness other than (i) liabilities under this Lease or any Sublease (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Leased Premises and the routine administration of Tenant, and (iii) such other liabilities that are permitted under this Lease;

(s) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Lease;

(t) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(u) has allocated and will allocate fairly, reasonably and in accordance with all Laws, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(v) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Tenant or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity;

(w) has not pledged and will not pledge its assets for the benefit of any other Person;

(x) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(y) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(z) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity;

(aa) has not identified and will not identify its partners, members or shareholders, or any Affiliates of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(ab) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (A) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are in compliance with all Laws and no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party and (B) in connection with this Lease;

(ac) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Rent payable under this Lease and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Rent is insufficient to pay such obligation;

(ad) it shall consider the interests of its creditors in connection with all limited liability company actions;

(ae) does not and will not have any of its obligations guaranteed by any Affiliate except obligations under this Lease;

(af) if such entity is a limited liability company, it shall have its own board of directors or board of managers, and shall cause such board to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other corporate formalities;

(ag) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct;

(ah) has not and will not permit any other Person independent access to its bank accounts;

(ii) has caused and will cause all representatives of Tenant to act at all times with respect to Tenant consistently and in furtherance of the foregoing; and

(iii) has not and will not form, acquire, or hold any subsidiary or own any equity interest in any other entity.



2024-04-15/17057-4



# Exhibit 2 to Amended Verified Complaint

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Liza Jozefovic ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

**RECITALS**

A. Landlord has been requested by HBI SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Tenant is owned by Guarantor, and Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recovery against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim.

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease, (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)

an unconditional Letter of Credit, in accordance with the Section 7.1(a)(ii) of the Lease in the amount of \$3,700,000, or (b) \$3,700,000 in cash to secure the full and timely payment and performance of Tenant's obligations under the Lease, (j) an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached as Exhibit 7.1(a) of the Lease or otherwise approved by Landlord and Landlord's lessors in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months, and (k) and released to Landlord all funds in the controlled account number [REDACTED] in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held as an additional Security Deposit by Landlord. After the Guaranty Termination Date, Guarantor shall continue to remain personally liable pursuant to the terms of this Guaranty for (i) all obligations of Tenant under the Lease which arose or accrued on or prior to the Guaranty Termination Date and (ii) any liability of Tenant arising out of a breach of any warranty or representation of Tenant under Lease, and all documents executed by Tenant in connection therewith, (iii) and any liability of Guarantor arising out of a breach of any warranty or representation hereunder.

**4. WAIYERS OF GUARANTOR**

4.1 Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protest, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

4.2 QUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any commercial restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

**If to Landlord:**

White Plains Healthcare Properties I, LLC  
e/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Land LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Bilkow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

HBL SNP, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

8. **CONSENT TO JURISDICTION.** Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. **CERTAIN ADDITIONAL COVENANTS.**

9.1 Financial Delivery. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 18.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. MISCELLANEOUS.

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties herein, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guarantees of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

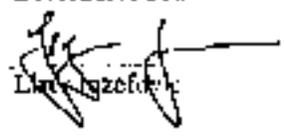
10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:

  
L. M. [unclear]



# Exhibit 3 to Amended Verified Complaint

GUARANTY OF LEASE

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Mark Neuman ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

RECITALS

A. Landlord has been requested by HBL SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. DEFINITIONS. Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. COVENANTS OF GUARANTOR.

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recover against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (ii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

**3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.**

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease; (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)



GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full, however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against, or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

[[to Landlord:

White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Lued LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

HBL SNE, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Mark Neuman

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafria, Esq.

8. CONSENT TO JURISDICTION. Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. CERTAIN ADDITIONAL COVENANTS.

9.1 Financial Deliveries. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

**10. MISCELLANEOUS.**

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation"; and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

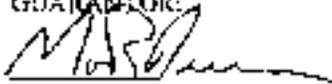
10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:



Mark Neuman

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

[Display Document List with Motion Folders](#)

Sort By: Doc #

#	Document	Filed By	Status
1	<a href="#">SUMMONS + COMPLAINT</a>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
2	<a href="#">EXHIBIT(S)</a> - 1 <i>Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
3	<a href="#">EXHIBIT(S)</a> - 2 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
4	<a href="#">EXHIBIT(S)</a> - 3 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
5	<a href="#">EXHIBIT(S)</a> - 4 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
6	<a href="#">EXHIBIT(S)</a> - 5 <i>Notice of Default</i>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
7	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> <i>Affidavit of service upon defendant HBL SNF Inc</i>	<a href="#">Coleman, W.</a> Filed: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>

#	Document	Filed By	Status
8	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> affidavits of service of summons and complaint - all defendants	<a href="#">Coleman, W.</a> Filed: 10/07/2020 Received: 10/07/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
9	<a href="#">NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
10	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #1) Affirmation of Default of Alfred E. Donnellan	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
11	<a href="#">EXHIBIT(S)</a> - 1 (Motion #1) Complaint <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
12	<a href="#">EXHIBIT(S)</a> - 2 (Motion #1) Affidavit of Service	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
13	<a href="#">EXHIBIT(S)</a> - 3 (Motion #1) Confirmation Notices	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
14	<a href="#">EXHIBIT(S)</a> - 4 (Motion #1) Additional Notice	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
15	<a href="#">ORDER ( PROPOSED )</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
16	<a href="#">BILL OF COSTS</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
17	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
18	<a href="#">RJI -RE: NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
19	<a href="#">ADDENDUM - COMMERCIAL DIVISION (840C)</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
20	<a href="#">COURT NOTICE</a>	Court User Filed: 10/29/2020 Received: 10/29/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
21	<a href="#">ANSWER WITH COUNTER-CLAIM(S)</a>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
22	<a href="#">NOTICE OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020	<b>Processed</b>

	Filed: 11/05/2020 Received: 11/05/2020	<a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
23 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
24 <a href="#">EXHIBIT(S)</a> - A (Motion #2) <i>Email Correspondence</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
25 <a href="#">EXHIBIT(S)</a> - B (Motion #2) <i>Proof of November Rent Payment</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
26 <a href="#">EXHIBIT(S)</a> - C (Motion #2) <i>Filed Answer</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
27 <a href="#">MEMORANDUM IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
28 <a href="#">ORDER ( PROPOSED )</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
29 <a href="#">STIPULATION - WITHDRAWING MOTION/ORDER TO SHOW CAUSE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 11/09/2020 Received: 11/09/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
30 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #1) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
31 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #2) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
32 <a href="#">JOINT ONE PAGE STATEMENT OF FACTS &amp; PARTIES CONTENTIONS</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
33 <a href="#">EXHIBIT(S)</a> - 1 <i>Copy of Pleadings</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
34 <a href="#">PRELIMINARY CONFERENCE ORDER (PROPOSED)</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	*** Pending *** <a href="#">Confirmation Notice</a>
35 <a href="#">EXHIBIT(S)</a> - 1 <i>ADR Attorney Certification for Alfred Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
36 <a href="#">ORDER - PRELIMINARY CONFERENCE</a>	Court User Filed: 11/13/2020 Received: 11/13/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
37 <a href="#">COMPLAINT (AMENDED)</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

	Amended Verified Complaint	Filed: 11/30/2020 Received: 11/30/2020	<a href="#">Confirmation Notice</a>
38	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended and Restated Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
39	<a href="#">EXHIBIT(S)</a> - 2 <i>Jozefovic Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
40	<a href="#">EXHIBIT(S)</a> - 3 <i>Neuman Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
41	<a href="#">EXHIBIT(S)</a> - 4 <i>Jozefovic Security Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
42	<a href="#">EXHIBIT(S)</a> - 5 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
43	<a href="#">EXHIBIT(S)</a> - 6 <i>Notice of Default</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
44	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> <i>Letter to Judge Walsh requesting pre motion conference</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
45	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
46	<a href="#">EXHIBIT(S)</a> - 2 <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
47	<a href="#">EXHIBIT(S)</a> - 3 <i>Compared version of amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
48	<a href="#">ANSWER TO THIRD PARTY COMPLAINT</a> <i>Verified Answer to Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
49	<a href="#">REPLY TO COUNTERCLAIM(S)</a> <i>Verified Reply to Counterclaims</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
50	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 01/11/2021 Received: 01/11/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
51	<a href="#">NOTICE OF MOTION</a> (Motion #3) <i>to file Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
52	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

#	Document	Filed By	Status
	<a href="#">MOTION</a> (Motion #3) <i>Affirmation of Alfred E. Donnellan in Support of Motion to file Amended Complaint</i>	Filed: 01/26/2021 Received: 01/26/2021	<a href="#">Confirmation Notice</a>
53	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>Complaint with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
54	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
55	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Amended Compliant with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
56	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Redline version of Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
57	<a href="#">EXHIBIT(S)</a> - E (Motion #3) <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
58	<a href="#">EXHIBIT(S)</a> - F (Motion #3) <i>Security Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
59	<a href="#">EXHIBIT(S)</a> - G (Motion #3) <i>Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
60	<a href="#">EXHIBIT(S)</a> - H (Motion #3) <i>NY County Action Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
61	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
62	<a href="#">NOTICE OF MOTION</a> (Motion #4) *Corrected*	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
63	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #4) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
64	<a href="#">EXHIBIT(S)</a> - A (Motion #4) <i>Complaint</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
65	<a href="#">EXHIBIT(S)</a> - B (Motion #4) <i>Answer</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
66	<a href="#">EXHIBIT(S)</a> - C (Motion #4) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

- 67 [EXHIBIT\(S\)](#) - D (Motion #4)  
Lease  
**Redacted** per 22 NYCRR §202.5(e)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 68 [EXHIBIT\(S\)](#) - E (Motion #4)  
Temporary Certificate of Occupancy  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 69 [EXHIBIT\(S\)](#) - F (Motion #4)  
AJA Form 0704  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 70 [EXHIBIT\(S\)](#) - G (Motion #4)  
NYSDOH Communication  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 71 [MEMORANDUM OF LAW IN SUPPORT](#) (Motion #4)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 72 [LETTER / CORRESPONDENCE TO JUDGE](#)  
[Donnellan, A.](#) **Processed**  
Filed: 02/04/2021 [Confirmation Notice](#)  
Received: 02/04/2021
- 73 [MEMORANDUM OF LAW IN OPPOSITION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021
- 74 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021
- 75 [EXHIBIT\(S\)](#) - A (Motion #3)  
Collateral Assignment  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021

# Exhibit 4 to Amended Verified Complaint

**COLLATERAL ASSIGNMENT AND PLEDGE  
OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT**

**THIS ASSIGNMENT** made as of August 11, 2017, by Lizer Jozelovic, an individual having an address at 53 Mariner Way, Monsey New York 10952 (the "Assignor") to Howard Fensterman as nominee for White Plains Health Care Properties LLC, a Massachusetts Limited Liability Company (the "Assignee") with reference to the following facts.

**WHEREAS**, HBL-SNF a New York Limited Liability Company ("Operator/Tenant) an entity controlled by Assignor had entered into a development agreement with WHITE PLAINS HEALTHCARE PROPERTIES I, LLC (the "Developer") dated November 19, 2015 (the "Agreement") which was amended by and between the Parties by that certain first Amendment to the Development Agreement (the "Amendment") dated as of July 12, 2017.

**WHEREAS**, the Development Agreement among other things obligated the Tenant to enter into a Lease with Developer in return for the Developer, developing, designing, financing and Building a 160 Bed Skilled Nursing Home for Tenant in White Plains New York; and

**WHEREAS** the Development Agreement obligated the Tenant to obtain CON approval to build such 160 Bed Skilled Nursing Home for Tenant in White Plains New York and to deliver to Developer such documents as are reasonably requested by Developers lenders; and

**WHEREAS**, the Tenant has obtained all CON approvals necessary to construct the Skilled Nursing Home and the Developer has obtained all zoning and building department of approvals and a Construction Loan; and

**WHEREAS**, in or about November 2015 in consideration of Howard Fensterman and/or CCC Equities assigning all mortgages held by them on property owned by Waterview Acquisition I, LLC agreed that he would pre-pay Two Million Two Hundred Thousand Dollars to White Plains Healthcare Properties and would additionally establish a joint signature account in JP Morgan Bank into which the sum of One Million Six Hundred Thousand Dollars was deposited; and

**WHEREAS**, The Lease requires the sum of 1.6 Million Dollars to be delivered to Landlord at least 60 days prior to the Commencement date of the Lease as additional security for the Tenants faithful performance of the terms and conditions of the Lease; and

**WHEREAS**, Section 10.2 of the Loan Agreement by and between Developer and its Construction lender restates the language of the Lease and Developer has undertaken to ensure that the 1.6 Million Dollars on deposit with JP Morgan shall be delivered according to the terms and provisions of the Lease; and

**WHEREAS**, the Sums in the JP Morgan Account entitled HBL, SNF, LLC, Account Number [REDACTED] have been transferred to two JP Morgan Accounts entitled Waterview Acquisition I, LLC Account Number [REDACTED] and Account Number [REDACTED] in which Howard Fensterman is not a signatory and the parties want to enter into this agreement by which Howard Fensterman will be added as a signatory to such account under terms and conditions set forth below; and

WHEREAS, Tenant and Assignor have promised to add Howard Fensterman as a signatory to such account so as to ensure that no withdrawals may be made so as to reduce the amount of the account below 1.6 Million and so as to ensure that when required 60 days prior to the commencement date the money in the account or equivalent shall be delivered as additional cash security for the lease; and;

WHEREAS in order to secure the promises made by Assignor concerning such account Assignor has agreed to deliver to Assignee this Assignment; and the Assignor desires to pledge to Assignee all of his membership interest in Waterview Acquisition I, LLC (the "Company"), in order to secure the promises made herein and in the Lease and Security Agreement delivered to the Construction Lender;

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignee and the Assignor hereby agree as follows:

1. As collateral security for the Borrowers' obligations under the Lease, the Security Agreement, the Loan, and the Development Agreement the Assignor hereby pledges and assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member in the Company (the "Collateral").

2. Upon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the interest in the Company assigned to the Assignee pursuant to Paragraph 1 hereof shall be automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect. Notwithstanding the foregoing, the Assignee hereby agrees to execute any document reasonably required for the purpose of evidencing the reassignment of such interest and the termination of this Assignment.

3. The Assignor represents, covenants and warrants that he is the legal and beneficial owner of the Collateral and has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in the Company and that there are no current liens or encumbrances that exist as of the day of the execution of this assignment.

4. The Assignor agrees not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

5. The Assignor covenants and agrees not to voluntarily withdraw as the managing member of the Company without the prior written consent of Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

6. The covenants provided for in this Assignment shall be binding upon the

successors and assignees of the parties hereto.

7. This Assignment shall be governed by the laws of the State of New York.

8. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument in writing duly signed by or on behalf of the Assignor or Assignee.

9. Assignor represents and warrants that he has a 71 % membership interest in the Company and that he is manager thereof.

10. In accordance with the laws of the State of New York and as part of the consideration for the making of the Loan, Assignor consents to the jurisdiction of any local, state or federal court located within New York and further consents that all service of process may be made by registered mail to his address set forth below and service so made shall be deemed completed five (5) days after the same shall have been mailed.

11. Assignor covenants and agrees to execute such additional documents and to take such further actions as may be reasonably required to carry out the provisions and intent of this Assignment including, without limitation, executing a financing statement or statements and continuations thereof. In addition, Assignor grants to Assignee a power of attorney coupled with an interest to effectuate the terms of the foregoing sentence and to file all continuations, renewals or amended financing statements without the signature of Assignor.

13. Should Assignor violate the terms and provisions concerning the maintenance of the account as set forth in the resolution of Waterview Acquisition I, LLC annexed hereto as Exhibit A the Assignee shall have:

(a) The right to sell the Collateral in the State of New York at one or more public or private sales at such price and on such terms as Assignee in its discretion accepts, for cash, upon or for future delivery. Upon any such sale, the Assignee shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral. Such purchaser at any such sale shall hold the Collateral sold absolutely free from any claim or right on the part of the Assignor, and the Assignor hereby waives (to the extent permitted by law) all rights of redemption, stay or appraisal which he has or may have under any rule of law or statute now existing or hereafter adopted. The Assignee shall give the Assignor twenty-one (21) days' written notice by registered or certified mail, postage prepaid, return receipt requested (which Assignor acknowledges is reasonable and sufficient), of the Assignee's intention to make any such public or private sale. Such notice, in the case of public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places in the State of New York as the Assignee may fix in the

notice of such sale. The Assignee shall not be obligated to make any sale of the Collateral if it shall determine not to do so, regardless of the fact that notice of such sale of the Collateral may have been given. The Assignee may, upon one day's written notice, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place within in the State of New York to which the same was so adjourned. In case sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Assignee until the sale price is paid by the purchaser or purchasers thereof, but the Assignee shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold, and, in case of any such failure, such Collateral may be sold again upon like notice. As an alternative to exercising the power of sale herein conferred upon it, the Assignee may proceed by a suit or suits at law or in equity to foreclose this Assignment and to sell the Collateral, or any portion thereof, pursuant to a judgment or decree of a court of competent jurisdiction;

(b) such other rights with respect to the Collateral as shall be afforded to secured parties by the Uniform Commercial Code of the State of New York including, but not limited to, the right to setoff; and/or

(c) to apply any proceeds of any disposition of the Collateral to the payment of the cash security required under the terms and provisions of the lease and reasonable expenses of the Assignee in connection with the exercise of its rights or remedies, including reasonable fees and expense of attorneys, and any balance shall be paid to such party as shall be entitled thereto pursuant to law.

13. The Assignor hereby waives any right to require that the Assignee proceed against any real or personal property or any guaranty given as security for the Note, whether or not existing or hereafter given, before exercising its rights and remedies with respect to the Collateral.

14. This Agreement may be executed in counterparts, each of which, when taken together, shall be construed as one and the same instrument.

15. All notices, demands and other communications provided for herein shall be deemed received upon personal delivery or delivery by national overnight delivery service, or three (3) business days following deposit in the U.S. mail, postage prepaid, first class registered or certified,

to Assignor or assignee at the following addresses:

If to Assignor:  
Liner Jozefovic  
53 Mariner Way  
Monsey, New York

With a copy to:  
Michelman & Robinson, LLP  
800 Third Avenue  
New York, New York  
Attention: Mark H. Zafrin, Esq.

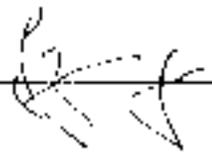
If to Assignee:  
Howard Fensterman  
C/o Abrams, Fensterman et al  
3 Dakota Drive  
Suite 300  
Lake Success, New York 11042

IN WITNESS WHEREOF, Assignor has duly executed this Assignment, as of the day and year first written above.

  
Lizer Jozefovic

The Company hereby acknowledges receipt of this Assignment by Assignor.

WATERVIEW ACQUISITION I, LLC

By: 

# Exhibit 5 to Amended Verified Complaint

**HBI-SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520**

November 20, 2019

**White Plains Healthcare Properties, I, L.L.C.  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William Nicholson**

**Re: Letter of Intent  
Premises: 116-120 Church Street  
White Plains, New York**

Dear Mr. Nicholson

This Letter of Intent ("LOI") outlines our proposal for White Plains Health Care Properties, I, L.L.C (the "Contributor") to transfer the premises known as 116-120 Church Street, White Plains New York (the "Premises") to a Delaware Statutory Trust where we would jointly hold the beneficial interests in the Trust on the terms and conditions set forth below. The Building a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Facility") had been constructed pursuant to a Development Agreement dated November 19<sup>th</sup>, 2015 and for which we had simultaneously entered into that certain operating lease by and between you as Landlord and us as Tenant/Operator, (the "Lease").

- 1) **Basic Transaction:** (the "Transaction"): Contributor shall contribute premises 116-120 Church Street White Plains, New York to a newly formed Delaware Statutory Trust (the "Trust") formed by the parties. This transaction shall be memorialized by a contribution agreement in substantially the form annexed hereto as Exhibit A. The Contribution shall be governed by IRC Sec. 721. The agreed upon cost and fair market basis shall be \$67,345,348.00
  - a) Lizer Jozefovic and Mark Neuman will acquire from the Trust by a Purchase Agreement 77.50 Percent of the Beneficial Interests in the Trust and redemption of a portion of the Beneficiaries' interest for a purchase price of \$52,200,000.00 paid as follows:
    - i) By a down payment: (the "Down Payment") not to be held in escrow, but to be made upon the execution and delivery of this LOI of \$2,200,000.00 by wire transfer to the account of White Plains Healthcare Properties I, LLC according to the wire instructions annexed hereto.
    - ii) By the Trust obtaining a new first mortgage of \$51,000,000.00 to pay the balance of the Purchase Price and cover closing costs to be used as follows;

- (1) To pay the first Mortgage held by Security Benefit Life Insurance in the approximate amount of \$39,226,253 plus accrued interest and fees.
  - (2) To pay the loan encumbering the membership interests of the Contributors by Bradford Allen in the approximate amount of \$9,770,963 plus accrued interest and fees;
  - (3) By the Trust making a non-refundable down payment of \$2,200,000.00
  - (4) To pay the costs of the financing.
- b) Lizer Jozefovic and Mark Neuman shall be the A Beneficiaries of the trust holding a 77.50% Beneficial interest, and the present members of the Contributor or their designees shall be the B Beneficiary with a 22.5% equity position.
  - c) The A Beneficiaries shall be the personal guarantors of the new financing in the amount of Fifty-One Million (\$51,000,000.00) Dollars. The Transaction is to close thirty (30) days after Buyer has received approval for the Financing set forth in paragraph 1(a) ii). The Contribution Agreement shall call for a purchase price equal to Transferors cash basis in the property and shall not result in a taxable event for Contributor;
  - d) The Financing shall be an obligation of the Trust secured by a first mortgage loan on the Facility and the Premises.
  - e) Lizer Jozefovic and Mark Neuman shall act as the Personal Guarantors and shall be obligated if necessary, to secure additional personal guarantors to ensure that none of the B beneficiaries shall have any obligation to guarantee the Financing. Any additional guarantors on the Financing shall also execute and deliver a personal guaranty of Tenant's obligations to Landlord on the Lease. All guaranties on the Lease shall be full unlimited personal guarantees.
  - f) The Financing shall bear interest at a constant rate of no more than 7% per annum with Principal and Interest paid on an amortization schedule of 35 years and shall be subject to the reasonable approval of the Contributor, which consent shall not be unreasonably withheld or delivered without cost to the Tenant Borrower.
  - g) Formal Contracts: The Parties intend that additional agreements including the Contribution Agreement, Redemption Agreement and Trust Agreement (the Formal Contracts") shall be complete as of November 22nd, 2019, and absent execution of Formal Contracts this L.OI shall govern provided the Down Payment is received in good funds by Contributor upon execution of this L.OI, and in no event later than the end of business November 22, 2019. In the event Tenant defaults in the payment of rent on the Lease and such default continues for five (5) days, Contributor shall have the right to terminate this L.OI and all Formal Contracts.
  - h) Closing: The Closing of the Transaction ("Closing") will occur at the offices of the First Mortgagee Bank's counsel or such other location within the State of New York as may be agreed upon by the Parties thirty (30) days after receipt by the Trust of approval for

the Financing but no later than April 1st, 2020. If the Tenant has a commitment letter on April 1<sup>st</sup>, 2020 that is in the process of closing or if the closing is delayed by a title issue, the closing date shall be automatically extended for another Ninety-Days. If the closing does not occur by such date, time being of the essence, this L.OI and the Formal Contracts shall be terminated and no party shall have any rights with respect thereto. The parties shall remain as Landlord and Tenant pursuant to the existing Lease until such time as the Transaction closes. The Lease may be amended as provided herein but only if and when such amendments are approved by Contributor's existing Lender.

- 2) **Structure of the Trust:** The Contributor and Tenant have agreed to create a Trust as a "statutory trust" in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. 3801 and enter into a Trust Agreement which shall constitute the "governing instrument" of the Trust. Each party will become a Beneficiary and will transfer certain sums of money and/or property to the Trust in exchange for a beneficial interest in the Trust as set forth above;
  - a) The Trust shall be a special purpose entity which is being formed solely for the purpose of acquiring the Trust Property from the Contributor and maintaining, improving, building upon, and leasing the Trust Property for use as a skilled nursing facility and all and such other activities incident or appropriate to the preceding
  - b) Simultaneously upon the closing of the transaction, the existing lease shall be modified only as set forth herein.
  - c) The trust shall be permitted to have only the following liens on the Trust Property and no other:
    - i) A Mortgage in the amount of Fifty-One Million (\$51,000,000.00) Dollars (the "First Mortgage") the terms of which shall be acceptable to the Department of Health and the Contributor.
    - ii) The Trust will designate Howard Fensterman and William Nicholson as the Administrative Trustees of the B interests.
      - (1) The Trust Agreement shall provide that Howard Fensterman and William Nicholson as the B beneficiaries Administrative Trustees shall have the sole authority to all issues governing administering and enforcing the terms of the Lease including the collection and distribution of rent.
      - (2) Lizer Jozefovic shall be responsible as the overall Administrative Trustee for all other matters concerning the building including but not limited to repairs, maintenance, and operation of the building. Any Trustee may be removed for cause including misconduct, bad faith, fraud or gross negligence.
      - (3) Except as otherwise provided in a Trust Agreement to be executed and notwithstanding any provision of the Act that otherwise so empowers the Trust, neither the Beneficiaries nor any Trustees nor any other Person shall be authorized or empowered, nor shall they permit the Trust, to take any of the following actions

without the prior unanimous written consent of all of the Beneficiaries:

- (a) Make any arrangements to reduce, modify, or forbear on the payment of rent by the Tenant.
- (b) Guarantee any obligation of any Person, including any Affiliate;
- (c) engage, directly or indirectly, in any business other than the actions required or permitted to be performed hereunder;
- (d) incur, create or assume any indebtedness;
- (e) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person;
- (f) To the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of their Interests subject to obtaining any approvals required under this Trust Agreement other than a sale of the interests to qualified purchasers under a syndicated offering of the B interests. The cost of such syndication shall not be charged to the B Beneficiaries and all monies derived therefrom and due hereunder shall be net of the costs of the syndication.
- (g) allow any business to be conducted on the Property other than the operation of a skilled nursing facility and ancillary uses;
- (h) own any other property or engage in any business other than owning and leasing the Trust Property for use as a skilled nursing facility;
- (i) take any action to consolidate or merge the Trust with or into any Person;
- (j) sell all or any portion of or any interest in the Trust Property;
- (k) grant an option to lease all or any portion of the Trust Property for a term (with all extension periods) ending on or after the 45th Anniversary Date;
- (l) amend, terminate or waive any material provisions of any lease for all or any portion of the Trust Property;
- (m) enter into any agreement with any Person giving any Person any rights with respect to the Trust Property that extend beyond the 45th Anniversary Date or which are not terminable without penalty on less than 90 days' notice;
- (n) encumber the Trust Property with any mortgages or another lien, easement, covenant or restriction other than the First Mortgage, or a HUD Mortgage to refinance the debt contemplated by this Agreement, at such time as HUD regulations shall allow;
- (o) modify the Trust Agreement or the Trust's certificate of trust in any manner, issue additional Interests in the Trust to any Person, or modify the rights and privileges of the Interest owners;
- (p) institute proceedings to have the Trust be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Trust or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrate (or other similar official) of the Trust or a substantial part of its property;
- (q) make any assignment for the benefit of creditors of the Trust;

- (r) ~~admit in writing the Trust's inability to pay its debts generally as they become due;~~
  - (s) ~~take action in furtherance of any of the foregoing actions; or dissolve or liquidate the Trust.~~
- iii) The 22.5% of the Trust Owned by the B Beneficiaries interest shall be subject to a **Redemption Agreement** where the B interests shall be sold to the A interests or their designees, assigns or transferees, over five years for a total price of \$19,800,000.00 in four tranches each representing interests of 5.625% each
- (1) Tranche one on or before August 1, 2020 in the amount of \$3,786,250.00
  - (2) Tranche two on or before August 1, 2021 in the amount of \$3,786,250.00
  - (3) Tranche three on or before August 1, 2022 in the amount of \$3,786,250.00
  - (4) Final Tranche by August 1, 2023 in the amount of \$8,441,250
- iv) Any purchase of the membership interests shall be a purchase of Beneficial Interests from the B Beneficiaries and shall reduce the Priority Return proportionate to the payments as a percentage of the total remaining price of \$19,800,000, which is the balance after payment of the non-refundable Down Payment.
- v) The A Beneficiaries shall prepare at their sole cost and expense of the A Beneficiaries a Private Placement Memorandum for the Sale of Membership interests in the Trust by a Broker Dealer who specializes in sales of marginal interests in Delaware Statutory Trusts to individuals and other entities who have to designate property as target property in connection with 1031 Exchanges of Property. The A Beneficiaries shall have the right to designate a portion of their membership interests as C interests for the purpose of selling them as part of the same syndication, provided that (1) there is no change in control of the A Beneficiaries or the Tenant entity.
- vi) The B Beneficiaries will be entitled to a priority return ( the "Priority Return") equal to all available rental and other income over and above the payment of the P&I on the New First Mortgage which shall in no event be less than \$2,000,000 per year (as adjusted by periodic redemptions) and shall be paid to the B Beneficiaries as a Priority Return until such time as they have been fully redeemed pursuant to the Redemption Agreement.
- vii) The Trustee shall deposit all rents and other funds collected from the operation of the Real Estate in the bank designated by the first mortgagee (the "Operating Account") which shall be subject to both a Deposit Account Control Agreement and Deposit Account Instruction Agreement. The Trust shall maintain books and records of the funds from the Real Estate deposited in such account, interest earned thereon, and withdrawals therefrom. The Trustee shall pay from the Operating Account the operating expenses of the Real Estate (other than those paid by a tenant of the Real Estate as set forth in its lease) and any other payments relative to the Real Estate as required by this the Trust Agreement.

viii) The Trustee shall be responsible for receiving all cash from the Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust Agreement. The Trustees shall furnish quarterly and annual reports to each of the Beneficiaries as to the amounts of rent received from the Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficiaries.

ix) To the extent permitted by the Internal Revenue Code depreciation, which shall be calculated on a straight-line depreciation method shall be allocated as follows: a) first to the B Beneficiary to the extent necessary to shelter the Priority return from taxes and b) second to the beneficiaries, pro rata, in accordance with the ownership interests.

3) **Condition of Property and Title:** Contributor shall give, and the Trust and the Trust shall accept, a good and marketable title which any National Title Insurance Company (the "Title Company"), will approve and insure at standard rates, free and clear of all liens, hypothecations, mortgages, easements, and encumbrances, except for the Permitted Exceptions.

i) The Premises is being contributed subject to the following exceptions to the title (the "Permitted Exceptions"):

- (1) Zoning and building regulations, restrictions and ordinances now or hereafter adopted or imposed by any governmental or quasi-governmental body having or asserting jurisdiction over the Premises or any part thereof;
- (2) Future Real Estate taxes, assessments, water charges, sewer rents or other charges not yet due and payable (subject to apportionment as provided herein) and certified, confirmed or ratified assessment liens and pending assessments, if any;
- (3) The state of facts shown on an updated as built survey prepared originally prepared and revised to be an as built survey, (the "Survey") and such additional state of facts which said survey would show or reveal provided such additional state of facts do not render title unmarketable;
- (4) Any state of facts a physical inspection of the Premises would reveal;
- (5) Exceptions permitted by the Title Company (as defined herein) (the "Title Exceptions");

4) All payments made to purchase any portion of the B Beneficiaries 22.5% interest shall also act to proportionally reduce the amount of Priority Return paid to the B beneficiaries under the Trust and the proportionate difference shall be paid to the A Beneficiaries or whoever purchases the B Beneficiaries interests as the case may be.

a) **Distributions:** Provided that all required payments set forth herein have been made by the Tenant, During the interim period prior to the purchase of the premises Tenant may pay Management Fees so long as (i) the amount of such Management Fees paid in any twelve-month period shall not exceed five percent (5%) of Tenants' gross revenues for such period

and (ii) there shall not then exist, and/or the paying of such Management Fees shall not cause there to exist, a Default or Event of Default under the Lease the first mortgage on the property or the Tenant's Working Capital Loans, (iii) the Initial Payment, the payment of Rent, and all other payments set forth herein have been made by the Buyer/Tenant. Upon the occurrence of an Event of Default, Tenant shall not pay Management Fees. The Tenant will make no distributions to its shareholders, officers, affiliates, or any related party unless the Down Payment, the payment of Rent is current, and.

- 5) **Confidentiality and Disclosure:** Tenant and Contributor shall each maintain the confidentiality of all confidential and non-public information supplied by the other. If this Transaction is not consummated, each party shall return all documents obtained to the other. Except as required by law, without the prior written consent of the other party, neither Tenant nor Contributor will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this Letter of Intent. If a party is required by law to make any such disclosure, the parties shall consult with each other and seek to agree upon appropriate language for such disclosure. The Tenant acknowledges that Contributor will be unable to furnish any patient health information unless such disclosure complies specifically and completely with all terms, conditions, regulations, and guidelines in HIPAA.
- 6) **Interim Operation:** Subject to the approval in writing of Contributor's existing Lender, the parties will enter into an amendment of the Lease as follows to allow for the operation of the facility before the closing.
  - a) **Commencement Date:** The Commencement Date according to the Lease shall be September 30, 2019.
  - b) **Rent:** An initial rent payment of \$509,000.00 has been paid receipt of which is on account toward the rental period from September 30, 2019 to October 31, 2019 (the "October 2019 Rent") leaving a balance of \$13,735 for October 2019 Rent. November 1, 2019, to November 30, 2019 (the "November 2019 Rent") shall be postponed until November 18, 2019 and shall be paid by Tenant on that date. The next rental payment shall be the December monthly rent amount outlined in the Lease - \$506,097 which shall be paid on December 5, 2019. Also, the Tenant will reimburse the Landlord for their municipal maintenance escrow and utility deposits of \$5,500 and \$60,356, respectively. Such reimbursement payment shall be made on or before December 5<sup>th</sup>, 2019. Upon receipt of the \$60,356 for the utility deposits from the Tenant, Landlord will direct any refund from the Utility companies to the Tenant, or otherwise pay such refund over to the Tenant forthwith provided Landlord has previously received those funds from the Tenant.
  - i) The following amounts are in dispute, and neither party will be obligated to waive their rights and positions by the signing of this agreement. The landlord has demanded the following sums due to their Lender.

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- (1) Late and Default Interest costs of \$201,997.34 for September 2019 and October 2019,
  - (2) \$19,000 of Late Fees for November 2019,
  - (3) \$5,061 per day for Default Interest premium during November 2019.
- ii) The A Beneficiaries and the B Beneficiaries shall jointly negotiate with the Contributor's current Lenders to effectuate the best possible settlement of these late costs (the "Late Costs"). The amounts if any remaining after such joint negotiation will be paid by the 77.5% by the Buyer and 22.5% by the Contributor (provided the Initial Payment, the payment of Rent and all other payments set forth herein are made timely) from Financing proceeds. If not available from the Financing proceeds the Tenant shall pay all Late Costs.
- c) Security Deposit/ Guaranty: Section 7.1(a)(i) the Lease shall be amended to provide that Tenant shall enter into a Deposit Account Control Agreement with Metropolitan National Bank which can only be revoked with the consent of both parties, which shall provide that each month, the Tenant's Lender shall draw on the loan amount first to pay rent to the Landlord, notwithstanding the adequacy of any accounts receivable borrowing base calculations. This Document shall be part of the Closing Documents on the Tenant's first initial Term Loan and shall be delivered in full effect by December 1, 2019.
- d) Section 7.1(a)(ii) of the Lease shall be amended to provide that the obligation for the Security Deposit shall initially be reduced to 2,000,000 dollars.
- i) The sum shall be paid by Tenant as follows: (a) Provided that the Contributor has obtained a permanent Certificate of Occupancy the Tenant shall draw the initial \$1,000,000.00 from its credit line on or no later than December 1, 2019. (b) Landlord shall obtain a release of the lien of its Lender on the FF&E, upon delivery of free and clear title to the FF&E the Tenant will enter into a reverse lease and obtain at least \$1,000,000.00 which shall be paid on account of the Security Deposit no later than April 1, 2020.
  - ii) Also, Tenant shall pay the sum of \$40,000 per month commencing January 1, 2020 to be treated as additional rent until there is a total \$3,700,000 posted as Security Deposit under 7.1(a)(i).
- e) Section 7.1(a)(iii) of the Lease shall be amended to provide that instead of delivering the sum of \$1,600,000 in cash, the parties shall enter into a blocked account agreement wherein and whereby account number [REDACTED] in JP Morgan Chase Bank NA prohibiting any liquidation of that account until the Second Payment is paid. Such account shall be not be posted as collateral security to Landlord's Lender provided the Initial Payment has been made in full, and all payments of Rent are current and the Tenant is not otherwise in Default, except that the Landlord shall have a security interest in such account under a DAISA, which allows the Landlord to demand the liquidation of such account to pay any defaults under the lease.

- f) **Working Capital:** Section 7.7 of the Lease shall be amended to suspend the requirement for providing the working capital account. The Tenant shall be obtaining a single working capital line for \$8,000,000.00 no later than December 1, 2019.
- g) **Right of First Refusal and Option to Purchase:** The Tenant's rights with respect to the right of first refusal and option to purchase under Sections 3.7 and 3.7 of the Lease will be suspended pending payment in full of the Security Deposits required by Section 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) of the Lease as amended, the payment of the Initial Payment, the working capital required by Section 7.7 of the Lease and Tenant being in full compliance with the Lease.
- h) **Insurance:** Tenant shall obtain property insurance, effective as of September 30, 2019, and (2) provide the property insurance, and all other insurances required by the Lease by November 19, 2019, effective retroactively back to September 30, 2019.
- i) **Real Estate Taxes:** Real estate taxes shall be prorated as of September 30, 2019 and the Tenant's portion shall be paid to the Landlord no later than December 1, 2019, plus any late charges which the City of White Plains may impose.
- j) **Utilities:** Tenant shall pay actual costs of utilities incurred at the property covering the rental period from September 30, 2019 (prorated as the utility company billing periods may require) forthwith upon presentation of invoices for the same from the Landlord, no later than December 1, 2019.
- k) **Punchlist:** The punch list and all other developer obligations are deemed complete except for.
  - i) The White Plains Outstanding Punchlist November 5, 2019 (the Remaining Punchlist), the value of which is has been determined by the Architect and agreed herein to be \$3,800.
  - ii) The Electric Blinds in rooms (the "Suspended Work") the value of which is agreed herein to be \$35,000.
  - iii) Provided the Initial Payment is made by November 15, 2019 and provided there are no other Defaults by the Tenant, Landlord shall complete the Remaining Punchlist and the Suspended Work to the approval of the Architect, within 45 days from the date of the Contributor's receipt of the Initial Payment. Should Landlord not do so, then the Tenant may credit the agreed values of any uncompleted Punchlist or Suspended Work from the February, 2020 Rent payment, and the Landlord's Work under the Lease and Development Agreement shall be deemed complete.

Security: Tenant shall assume all property security obligations as of November 11, 2019.

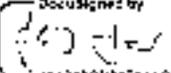
Upon the closing of the purchase of the premises by the Trust, the Trust shall take an assignment of the lease as amended above.

- 7) **Exclusivity:** In consideration of (1) the Initial Payment, (2) the payment of Rent as set forth herein, and (3) Tenant's efforts in pursuing the Transaction, Contributor agrees that (1) until the termination of this Letter of Intent, or execution of the Formal Contracts and (2) provided the payment of the Initial Payment and the payment of Rent as set forth herein is made, and (3) all other obligations of the Tenant set forth herein, Contributor will not permit any of its affiliates to, and will not authorize or permit any officer, director, employee, counsel, agent, investment banker, accountant, or other representative of any of them, directly or indirectly, to: (a) initiate contact with any person in an effort to solicit any proposal (other than that contemplated by this Letter of Intent for the acquisition (directly or indirectly, by sale of stock or assets, or by merger or consolidation or otherwise) of the operation of the Real Estate, or any of the Assets, or any other business combination or financing transaction involving such business (a "Proposal"); (b) cooperate with, or furnish or cause to be furnished any non-public information concerning the operation of the Real Estate, to, any person in connection with any Proposal; (c) negotiate or enter into discussions with any person with respect to any Proposal; or (d) enter into any agreements or understanding with the intent to effect a Proposal. Contributor will immediately give written notice to Tenant of the details of any Proposal of which Contributor becomes aware. Contributor will, and will cause its officers, directors, affiliates, agents, and representative to, terminate all discussions regarding a Proposal, other than those with Tenant and its representatives concerning the Transaction, and represents that neither it nor any of its officers, directors, affiliates, agents, or representatives have entered into any executory agreements or accepted any commitments concerning any Proposal other than the Transaction provided that (1) this LOI or successor Formal Contracts has not terminated, and (2) the payment of the Initial Payment, the payment of Rent as set forth herein have all been paid and are current, and (3) all other obligations of the Tenant set forth herein are not in Default and are current.
  
- 8) **Waiver of Claims:** Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the Lease, (3) any claims related to the Cost Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.
  
- 9) **Expenses:** Tenant and Contributor shall each be responsible for their respective accounting, legal, advisory, and other costs and expenses in connection with the Transaction. Tenant shall reimburse Contributor for its legal, advisory and other costs and expenses in connection with the Transaction and the Termination of the Lease. Reimbursement for such legal and transaction fees shall not to exceed \$125,000 and may be made from the proceeds of the Closing, provided the Closing occurs and the Contributor's existing 1<sup>st</sup> Mortgage Loan and Mezzanine Loan are paid off from the proceeds of the Financing by March 31, 2020, and (2) the Initial Payment is made as set forth herein above, and (3) the Tenant is not in default under this LOI or the successor Formal Contracts. Otherwise the \$125,000 cap shall expire and the Tenant shall pay the Contributor all such costs incurred after September 30, 2019.

10) **Letter of Intent:** This LOI represents a statement of all of the terms, conditions, representations, warranties, indemnities, covenants, and other provisions that would be contained in the definitive documentation for the proposed transactions. This LOI shall constitute a binding agreement upon payment of the or any of their respective affiliates will have any legal obligation under this LOI unless and until one or more subsequent definitive written agreements are mutually executed and delivered by each of Contributor and Buyer. No past, present, or future action, course of conduct, or failure to act relating to the transactions referenced in this LOI or relating to the negotiation of the terms of such transactions will give rise to or serve as the basis for any obligation or other liability on the part of Contributor or Buyer or any of their respective affiliates. [ These changes should be rejected]

11) **Governing Law:** This Agreement shall be governed by and construed by the internal laws of the State of New York, Venue shall be in Westchester County without application of its conflicts of law rules. If you agree with the preceding, please sign and return one copy of this Letter of Intent.

**HBL-SNF, LLC**

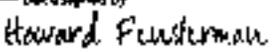
DocuSigned by  
  
 Lizer Jozelovic

**ACKNOWLEDGED AND AGREED**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

DocuSigned by  
  
 By: \_\_\_\_\_  
 Name: William A. Nicholson  
 Title: Manager

**Accepted and Agreed**

DocuSigned by  
  
 \_\_\_\_\_  
 Howard Fensterman

# Exhibit 6 to Amended Verified Complaint

**DEI.BELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP**

Alfred E. Donnellan  
Partner  
aed@ddw-law.com

CONSELLORS AT LAW  
THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601  
(914) 681-1200  
FACSIMILE (914) 684-0288

Commercial Office  
1111 SUMNER STREET  
STAMFORD, CT 06905  
(203) 391-0000

January 7, 2020

**BY EMAIL** lizerj@watersedgeusa.com  
**BY FEDERAL EXPRESS**

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**NOTICE OF DEFAULT  
AND LANDLORD'S ELECTION TO TERMINATE LEASE AND  
ACCELERATE ALL RENTS DUE FOR THE BALANCE OF THE LEASE TERM**

**PREMISES: 116-120 Church Street, White Plains, New York ("the Leased Premises")**

Mr. Josefovic:

We are attorneys for your Landlord, White Plains Health Care Properties I, LLC.

**PLEASE TAKE NOTICE**, that HBL SNF, LLC ("HBL") is in material violation of the provisions of its November 19, 2015 Lease, for the above referenced premises ("the Lease"), and the November 20, 2019 Letter of Intent (the "LOI"), the terms of which are in full force and effect (the "LOI"), and is in **DEFAULT** thereof, as follows:

1. **Lease Section 3.2, and LOI Para 6) d) ii) - Payment of Rent:** HBL has failed or refused to pay the following Rent:
  - a. Rent due for Sept. 30, 2019 - Dec. 31, 2019, totaling \$10,831.79.
  - b. Additional Rent due for Jan. 01 - 31, 2020, due Jan. 1, 2020, totaling \$40,000.00.
  
2. **Lease Section 4.2, and LOI Para 6) b) - Payment of Real Estate Taxes:** HBL has failed to pay the following Real Estate Tax payments:
  - a. Real Estate Taxes for the period 07/01/19 - 12/31/19, specifically the Tenant's prorated portion thereof, (exclusive of late fees, costs, penalties and interest per municipal regulations and per the Lease), totaling \$61,456.39.
  - b. Real Estate Taxes for the period Jan. 01, 2020 - June 30, 2020 totaling \$121,587.12

HBL SNF, LLC

Attn: Lizer Josefovici

January 7, 2020

Page 2

- 3. LOI Para 6) b) and Lease Section 5.2 – Payment of Utility Deposits and Municipal Maintenance Escrows: HBL has failed to pay the following Utility Deposits and Municipal Maintenance Escrows:
  - a. Utility Deposits totaling \$60,356.10
  - b. Municipal Maintenance Escrows totaling \$5,500.00
  
- 4. Lease Section 4.1, LOI Section 6) j) - Utility Charges: HBL has failed to pay the following Utility Charges:
  - a. ConEdison invoice paid by the Landlord to avoid power shutoff, in the amount of \$2,972.84.
  
- 5. Lease Article VI, including Section 6.2; LOI Para 6) h) – Delivery of Insurance Certificates:
  - a. HBL has failed to deliver certificates of insurance to Landlord in accordance with Article VI and Section 6.2 of the Lease.
  
- 6. Lease Section 7.4 (g) and (i) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility.
  - b. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider updated reimbursement rate sheets for the Facility.
  
- 7. Lease Section 7.4 (a) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required financial reporting required under the Lease.
  
- 8. Lease Section 7.4 (B) (vi) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required written reports providing an operational overview of significant events and circumstances at the Facility during each prior month of the Term of the Lease.
  
- 9. Lease Section 7.1(a)(ii), as amended by LOI Para 6) d) i) – Security Deposit:
  - a. HBL has failed or refused to deliver to the Landlord by December 1, 2019 the security deposit of \$1,000,000.00, to secure full and timely payment and performance of Tenant's obligations under the Lease.
  
- 10. Lease Section 7.1(a)(iii), as amended by LOI Para 6) e) – Additional Security Deposit:
  - a. HBL has failed to deliver the blocked account agreement prohibiting any liquidation of the of \$1,600,000.00 held by JPMorgan Chase Bank, N.A. in the controlled account number [REDACTED]
  
- 11. Lease Section 4.1, 3.2 (c), and 9.1 (b) – Payment of Late Fees and Costs:
  - a. HBL has failed to pay late fees and costs related to the above failures to pay its obligations under the Lease and the LOI in the timeframes required thereunder, as set forth in the attached accounting, totaling \$23,425.09

**IDL SNF, LLC**  
Attn: Lizer Josefovic  
January 7, 2020  
Page 3

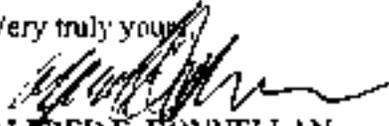
A true and accurate accounting of the amounts due and owing under the Lease and the LOI is attached herewith.

By reason of the aforementioned material Defaults under the Lease and the LOI, the Landlord hereby exercises its right under Section 16.1 of the Lease to terminate the Lease as well as Tenant's right of possession of the Leased Premises, effective January 13, 2020 at 5.00 PM NYC time.

**PLEASE TAKE FURTHER NOTICE**, that, in accordance with Section 16.1 of the Lease, all rent for the balance of the term of the Lease is accelerated, and pursuant to said lease provision, HBL is obligated to pay the Landlord \$84,073,989.91, being the present value of such accelerated rent, discounted at the rate of 6% per annum.

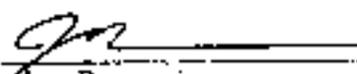
Landlord reserves all other rights and remedies at law or in equity as against the Tenant, all guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.

Landlord further reserves all rights arising from the Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 ("the Pledge"), including but not limited to all rights to enforce the Pledge through a private or public sale of the assignor's interest in Waterview Acquisition I, LLC or through a judicial foreclosure of the assignee's security interest therein.

Very truly yours,  
  
ALFRED E. DONNELLAN

**AUTHORIZED AND APPROVED:**

White Plains Health Care Properties I, LLC

  
Joshua Roccapriore  
Authorized Representative

cc: By Email (lizerj@watersedgeusa.com) & Federal Express  
Lizer Josefovic, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

HDL SNF, LLC

Attn: Lizer Josefovic

January 7, 2020

Page 4

By Email (markn@epicmgt.com) & Federal Express

Mark Neuman, Quarantor, Individually  
22 Lyncrest Drive  
Monsey, NY 10952

By Email (mzafrin@mrlp.com) & Federal Express

Michelman & Robinson  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
Attn: Mark Zafrin, Esq.

By Federal Express

Gerald Neuman, Individually  
c/o HDL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

**WHITE PLAINS HEALTH CARE PROPERTIES I, L.L.C.**

**THE CONGRESS COMPANIES**

General Contractors, Construction Managers, Property Managers, Development Services  
90876th  
West Kennedy Executive Center  
1 Douglas Street  
Westbury, MA 01981  
Phone: 508-535-6100  
Fax: 508-535-6701

7-Jan-19

**NOTICE OF AMOUNTS AND DELIVERABLES DUE UNDER LEASE & LOI of 11/20/19**

Gentlemen: Pursuant to the Lease and the LOI dated November 20, 2019, the following are due:

	<u>AMOUNTS PAYABLE</u>	<u>Due Date</u>	<u>Am't Due</u>	<u>Amounts Paid</u>	<u>Am't Past Due</u>
1	Rent January, 2020 (See Note 1 Below)	01/01/20	\$ 546,098.50	\$ 608,098.50	\$ 40,000.00
2	Rent 9/30/19 - 11/30/19	12/01/19	\$ 10,831.79	\$ -	\$ 10,831.79
	<b>SUBTOTAL RENT AND ADDITIONAL RENT:</b>		<b>\$ 556,930.29</b>	<b>\$ 608,098.50</b>	<b>\$ 50,831.79</b>
3	RE Taxes 7/1/19-12/31/19, Tenant portion: 09/30/19-12/01/19	12/01/19	\$ 61,456.39	\$ -	\$ 61,456.39
4	RE Taxes for the period 1/1/20 - 03/31/20	12/01/19	\$ 121,587.12	\$ -	\$ 121,587.12
	<b>SUBTOTAL REAL ESTATE TAXES</b>		<b>\$ 183,043.51</b>	<b>\$ -</b>	<b>\$ 183,043.51</b>
5	Utility Deposits	12/01/19	\$ 60,356.10	\$ -	\$ 60,356.10
6	Municipal Deposits	12/01/19	\$ 5,500.00	\$ -	\$ 5,500.00
7	Con Edison Electric Invoice	12/17/19	\$ 2,972.64	\$ -	\$ 2,972.64
	<b>Subtotal</b>		<b>\$ 68,828.94</b>	<b>\$ -</b>	<b>\$ 68,828.94</b>
	<b>TOTAL RENT, RE TAXES, &amp; OTHER</b>		<b>\$ 808,800.74</b>	<b>\$ 608,098.50</b>	<b>\$ 200,702.24</b>
8	Security Deposit 1st payment	12/01/19	\$ 1,000,000.00	\$ -	\$ 1,000,000.00
	<b>TOTAL AMTS DUE EXCLUDING LATE FEES &amp; COSTS</b>		<b>\$ 1,808,800.74</b>	<b>\$ 608,098.50</b>	<b>\$ 1,200,702.24</b>
9	Interest on past due real estate taxes on a per-diem basis:	12/15/19	\$ 3,039.68	\$ -	\$ 3,039.68
10	Late Fees of 5% on Items 1,2,3,5,6,7	12/15/19	\$ 9,055.86	\$ -	\$ 9,055.86
11	Interest on Items 1,2,3,5 & 6 at the Overdue Rate (Prmt+5%)	12/15/19	\$ 11,329.55	\$ -	\$ 11,329.55
	<b>TOTAL LATE FEES AND COSTS</b>		<b>\$ 23,425.09</b>	<b>\$ -</b>	<b>\$ 23,425.09</b>
	<b>TOTAL AMOUNTS DUE</b>		<b>\$ 1,832,225.83</b>	<b>\$ 608,098.50</b>	<b>\$ 1,224,127.33</b>

**ADDITIONAL NOTICE OF ITEMS DUE: As required per the Lease and LOI, please provide the following:**

- Notice is hereby made to that Jan. 2020 & all subsequent Rent shall be due in the amount of: \$546,098.50, calculated as: \$506,098.50 rent plus \$40,000.00 additional rent 2nd Notice
- Notice is hereby made to provide all Medicare and Medicaid provider Agreements and rates. 2nd Notice
- Notice is hereby made to provide Annual Budget, Capital Expenditures, Operating Budget, Annual Financial Reporting, monthly Financial reporting Financial Reporting, Variance Reporting, Unaudited Financial Reports
- Notice is hereby made to provide per a written report of significant events at the facility including: Copies of all documents, reports, licenses and certificates from NY DOH pertaining to the Operations of the Facility 2nd Notice
- Notice is hereby made to provide Evidence of Insurance, including all required coverages under the lease, and all additional insureds. 2nd Notice

RECEIVED

RECEIVED  
WESTCHESTER COUNTY CLERK  
100 BELMONT AVENUE  
YONKERS, NY 10596

SHIP DATE: 01/20/21  
ACT WT: 0.15 LB  
CAD: 114015709WVS0000

BILL SENDER

MR. MARK NEUMAN  
MR. MARK NEUMAN  
22 LYNCREST DR  
MONSEY NY 10952

MONSEY NY 10952

REF: 21SC03: WVT: 14225



7794 9844 8443

WED - 08 JAN 8:00P

STANDARD OVERNIGHT

RES

EH PSBA

10952  
SWF  
NY-US



COPY

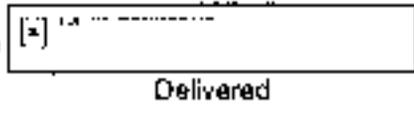
**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 1:37 PM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498448443 Delivered

# Your package has been delivered

Tracking # 779498448443

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 1:34 pm
<b>Ship to:</b> Marisa Warshaw DelBull, Deane lan Wegarten West White Plains, NY 10601 US	<b>Delivered to:</b> Mr. Mark Neuman Mr. Mark Neuman 22 LYNCREST DR MONSELY, NY 10952 U.S.



Delivered

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498448443

**Status:** Delivered 01/08/2020 1:34 PM  
 PD Signed for By: Signature not required

**Reference:** 0151960-001 MW 1/7/2020

**Signed for by:** Signature not required

**Delivery location:** MONSELY, NY

**Delivered to:** Residence

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx Envelope

**Number of pieces:** 1

**Weight:** 0.57 lbs.

**Special handling/Services:** Deliver Weekday  
Residential Delivery

**Standard transit:** 1-8-2020 by 8:00 am



**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 10:37 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498363223 Delivered

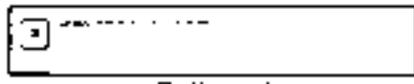
**Your package has been delivered**

Tracking # 779498363223

Ship date:  
Tue, 1/7/2020

Delivery date:  
Wed, 1/8/2020 10:35 am

Marisa Warshaw  
Do Boilo Donnolan Wegarden  
Wise  
White Plains, NY 10601  
US



Delivered

Mr. Lizer Josefovic.  
Guarantor, Ind  
Mr. Lizer Josefovic, Guarantor,  
Ind  
53 Manor Way  
MONSEY, NY 10952  
US

**Shipment Facts**

Our records indicate that the following package has been delivered:

**Tracking number:** 779498363223  
**Status:** Delivered: 01/08/2020 10:35 AM Signed for By: Signature not required  
**Reference:** 01810ev-001 MW 1/7/2020  
**Signed for by:** Signature not required  
**Delivery location:** Monsey, NY  
**Delivered to:** Res. person  
**Service type:** FedEx Standard Overnight®  
**Packaging type:** FedEx® Envelope  
**Number of pieces:** 1  
**Weight:** 0.50 lb.  
**Special handling/Services:** Deliver Weekday  
Residential Delivery  
**Standard transit:** 1/8/2020 by 8:00 pm

NYSCEF DOC. NO. 43



**EHANIA**

NYLUS SWF 10520

7794 9823 5404

WED - 08 JAN 3:00P  
STANDARD OVERNIGHT



MR. LIZER JOSEFOVIC  
HBL SNF, LLC  
1780 ALBANY POST RD  
CROTON ON HUDSON NY 10520

RECEIVED  
WHITE PLAINS, NY 10607  
UNITED STATES JLS

SHIP DATE 01JAN21  
ACTWGHT 0.15 LB  
CADD 11407578664500000  
BILL SHIPPER

COPY

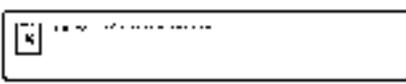
**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:33 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498235404 Delivered

# Your package has been delivered

Tracking # 779498235404

Ship date: <b>Tue, 1/7/2020</b>	Delivery date: <b>Wed, 1/8/2020 9:27 am</b>
Marisa Warshaw	Mr. Clizer Josefowic
DelBela Donnellan Wegman	HEI, SNE, LLC
Yaso	1280 ALBANY POST RD
White Plains, NY 10601	CROTON ON HUDSON, NY
US	10520
	JS



**Delivered**

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498235404

**Status:** Delivered 01/08/2020 09:27 AM Signed for By: Signature Release on file

**Reference:** 0181990-001 MW 1/7/2020

**Signed for by:** Signature Release on file

**Delivery location:** CROTON ON HUDSON, NY

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 5:00 pm

Please do not rely solely on this message. This email was sent from an unattended mailbox. The report was generated on approximately 9:32 AM CST on 01/08/2020.

As always, we appreciate your business.

ORIGIN: NESA 21-22623-SM  
DELIBELLO, DOMINIC M  
1 KILBUCKTON AVE

SHIP DATE: 01/03/21  
ACT WT: 0.3 LB  
CAL: 19475, 19475, 19475

WHITE PLAINS, NY 10622  
UNITED STATES US

BILL SENDER

TO MR. GERALD NEUMAN  
CIO HBL SNF, LLC  
1280 ALBANY POST RD

11/30/2020 11:20:00 AM

COPY



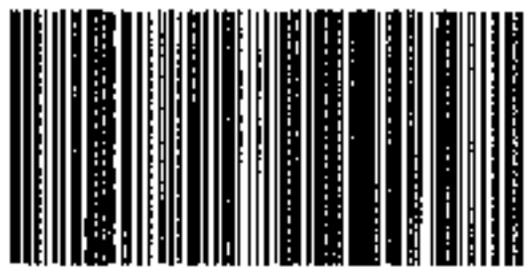
WED - 03 JAN 3:00P

STANDARD OVERNIGHT

7794 9862 7521

EH ANIA

10520  
NY-US SWF



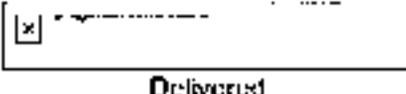
**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498627521 Delivered

# Your package has been delivered

Tracking # 779498627521

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 9:27 am
<b>Ship to:</b> Marisa Warshaw DelBelto Donnellan We... Wisc White Plains, NY 10601 US	<b>Delivered to:</b> Mr. Gerald Neuman ... 1782 A. BANY POST RD CROTON ON HUDSON, NY 10500 US



## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498627521

**Status:** Delivered: 01/08/2020 09:27 AM Signed For By: Signature Release on file

**Reference:** 0181980-001 MW 1/7/2020

**Signed for by:** Signature Release on file

**Delivery location:** CROTON ON HUDSON NY

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/6/2020 by 3:00 pm

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MARK ZAFRIN, ESQ.  
MICHELMAN & ROBINSON  
800 3RD AVE  
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NEW YORK NY 10022

SHIP DATE: 07 JAN 20  
ACTING: 0.18 LB  
CDD: 114015705W5003200

BILL SENDER

MARK ZAFRIN, ESQ.  
MICHELMAN & ROBINSON  
800 3RD AVE  
24TH FLOOR  
NEW YORK NY 10022

NY 07102-0001

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20200107095



7794 9653 9658

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STANDARD OVERNIGHT

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**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498539658 Delivered

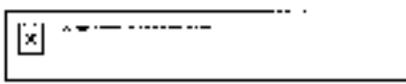
# Your package has been delivered

Tracking # 779498539658

Ship date:  
Tue, 1/7/2020

Delivery date:  
Wed, 1/8/2020 9:27 am

Marisa Warshaw  
Dolbeide Donnellan Weingarten  
Wise  
White Plains, NY 10604  
US



Delivered

Mark Zafra, Esq.  
Madden & Robinson  
5th Floor  
800 BLDG AVE  
NEW YORK, NY 10022  
US

## Shipment Facts

Our records indicate that the following package has been delivered

Tracking number:	779498539658
Status:	Delivered: 01/08/2020 09:27 AM SIGNED for By: E. ELAINE
Reference:	0181060291 MW 1/7/2020
Signed for by:	E. ELAINE
Delivery location:	NEW YORK, NY
Delivered to:	Receptionist/ Front Desk
Service type:	FedEx Standard Overnight®
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb
Special handling/Services:	Deliver Weekday
Standard transit:	1/8/2020 by 3:00 pm

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Alfred E. Donnellan  
Partner  
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December 4, 2020

**VIA NYSCEF**

Hon. Gretchen Walsh  
Supreme Court, Westchester County  
111 Dr. Martin Luther King, Jr. Blvd.  
White Plains, New York 10601

**Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC, Lizer  
Jozefovic a/k/a Lizer Jozefovic and Mark Neuman, Index No. 60278/2020**

Dear Justice Walsh:

We represent plaintiff White Plains Healthcare Properties I, LLC (“WHP Properties”), in connection with the above referenced action. We write pursuant to Your Honor’s Commercial Division Rules to respectfully request a pre-motion conference to seek leave to amend the complaint.

On November 30, 2020, our office filed an amended complaint on behalf of WHP Properties. (Exhibit 1). Counsel for defendants contacted us on December 2, 2020 to point out that plaintiff’s time to amend the complaint as of right expired the day before Thanksgiving on November 25, 2020 and requested that WHP Properties withdraw its amended complaint. (Exhibit 2). It appears that due to a clerical error the amended complaint indeed was filed thirty days instead of twenty days after the defendants’ answer was filed on NYSCEF. Our office has agreed to withdraw the amended complaint and instead seek leave from this Court to amend.

There certainly is no prejudice to defendants for any delay in filing the amended pleading. While plaintiff’s deadline to amend the complaint may have expired on November 25, 2020, the amended complaint was filed promptly the Monday after the Thanksgiving holiday weekend. (*See generally*, GCL § 25-a). Additionally, the amendment mainly adds a cause of action against Lizer Jozefovic individually for HBL SNF, LLC’s (“HBL”) breach of the same provisions in the Lease agreement as alleged in the original complaint. (Exhibit 3, redline version). Jozefovic pledged his interest in a certain entity as security to ensure HBL’s compliance with the Lease and the amended complaint seeks to enforce the pledge agreement. Because the facts supporting WHP Properties’ claims against Jozefovic individually are based on the same breaches of HBL’s obligations under the Lease, there is no surprise to any of the defendants in connection with the facts alleged that support the new claims. Finally, this action is at the pleading stages and no discovery has taken place. With the liberal legal standard to grant leave to amend pleadings, WHP Properties’ request should be granted. *Yong Soon Oh v. Hua Jin*, 124 A.D.3d 639, 640 (2d Dept. 2015) (“[I]n the absence of prejudice or surprise to the opposing party, leave to amend pleadings should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit.”).

HON. GRETCHEN WALSH  
DECEMBER 4, 2020  
PAGE 2

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Jozefovic opposes the amended complaint on the basis that he instituted an action in Supreme Court, New York County (Index No. 655549/2020) seeking declaratory judgment regarding WHP Properties' rights to enforce the pledge agreement (Action No. 2). However, Jozefovic's argument is unavailing because: Action No. 2 was filed after this action was commenced in Westchester; venue for Action No. 2 is improper because the only connection to New York County is the place of business of a nominal party; and, WHP Properties already moved to change venue and consolidate Action No. 2 with this action, and its motion is scheduled for oral argument on December 14, 2020 before Hon. Nancy Bannon, J.S.C.

The standard to grant leave to amend a pleading is met here and WHP Properties respectfully requests a conference to address this application.

Very truly yours,

/s/ Alfred E. Donnellan

Alfred E. Donnellan

cc: All Counsel via NYSCEF

# Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

<p>WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, Plaintiff.</p> <p>-- against --</p> <p>HBL SNF, LLC, LIZER JOZEOFVIC A/K/A LIZER JOZEOFVIC and MARK NEUMAN, Defendants.</p>
---

Index No. 60278/2020

**AMENDED VERIFIED  
COMPLAINT**

Plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties"), by its attorneys, DeBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, for its amended verified complaint against defendants, HBL SNF, LLC ("HBL"), Lizer Jozefovic a/k/a Lizer Jozefovic ("Jozefovic") and Mark Neuman ("Neuman"), alleges:

**NATURE OF THE CASE**

1. This action concerns HBL's material default of its obligations under an amended and restated operating lease dated as of November 19, 2015 (the "Lease"), by which WPH Properties leased to HBL a brand new, state-of-the-art, 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York.

2. WPH Properties had constructed the nursing facility and entered into the Lease with HBL, dated November 19, 2015. The Lease was amended and restated in 2017. It provided that HBL would operate the facility for 30 years. The Lease commenced on September 30, 2019. HBL took possession of the facility on September 30, 2019. By the end of October 2019, HBL had

defaulted.

3. On January 7, 2020, WPH Properties served notice of default and elected to terminate the Lease and accelerate all rents due. This action seeks to recover from HBL the Rent it owes and the other damages its defaults have caused and to enforce the unconditional guaranties of HBL's performance under the Lease given by Neuman and Jozefovic.

PARTIES AND VENUE

4. WPH Properties is a limited liability company duly organized and existing under the laws of the State of Massachusetts, with its principal place of business at 2 Bourbon Street, Suite 200, Peabody, Massachusetts. WPH Properties is duly authorized to do business in the State of New York.

5. HBL was and is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 537 Route 22, Purdys, New York.

6. Jozefovic is an individual residing at 53 Mariner Way, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

7. Neuman is an individual residing at 22 Lyncrest Drive, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

8. Pursuant to CPLR § 503(a), venue is properly designated in Westchester County based on the residences of WPH Properties and HBL, because a substantial part of the events giving rise to the claim occurred in Westchester County and because HBL and WPH Properties agreed in the Lease that any action or proceeding arising out of the Lease be brought in Westchester County. Lease § 20.1(b).

**FACTS**

9. WPH Properties is and was at all relevant times the owner of the real property known as 116-120 Church Street, White Plains, New York (the "Real Property").

10. WPH Properties constructed a brand new, state-of-the-art, 160-bed skilled nursing facility on the Real Property.

**THE LEASE**

11. In 2017, WPH Properties, as landlord, and HBL, as tenant, entered into the amended and restated Lease, dated as of November 19, 2015, under which WPH Properties leased to HBL the Real Property and the improvements to be constructed on the Real Property, together with other assets, all as defined in Section 2.1 of the Lease (the "Facility"). A true and accurate copy of the Lease is annexed to this complaint as Exhibit 1 and is incorporated into this complaint by reference.

12. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019.

13. HBL entered into possession of the Facility on September 30, 2019.

14. The Lease provided for a term of 30 years, with three 10-year options to the tenant, unless sooner terminated. Exhibit 1, Lease, § 3.1.

15. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 (the "Fixed Rent"). Exhibit 1, Lease, § 3.2.

16. The Lease also obligated HBL to pay WPH Properties other amounts which are defined as "Additional Rent." Fixed Rent and Additional Rent are referred to collectively as "Rent."

17. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Premises during the Term. Exhibit 1, Lease, § 4.1.

18. The Lease obligated HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit 1, Lease, § 4.2.

19. The Lease obligated HBL to keep the Premises in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses relating to the Premises. Exhibit 1, Lease, § 5.2.

20. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit 1, Lease, § 7.1.

21. A true and accurate copy of the Jozefovic Guaranty is annexed to this complaint as Exhibit 2.

22. A true and accurate copy of the Neuman Guaranty is annexed to this complaint as Exhibit 3.

23. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

24. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Jozefovic without the necessity of any notice of

nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Jozefovic expressly waived.

25. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

26. The Neuman Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

27. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an agreement by Capital Funding Group by which Capital Funding Group agreed to allow HBL to draw down on its credit line each month so as to enable Capital Funding Group to pay the Fixed Rent each month directly to WPH Properties on the commencement date and for the following 11 months. Exhibit 1, Lease, § 7.1.

28. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease. Exhibit 1, Lease, § 7.1.

29. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, \$1,600,000 as an additional security deposit. Exhibit 1, Lease, § 7.1.

30. The Lease obligated HBL to provide WPH Properties all reports, statements and

inspections as defined in the Lease, including all Medicare, Medicaid and other provider agreements and reimbursement rates for the Facility, updated reimbursement rates, financial reporting and written reports providing an operational overview of significant events and circumstances on a monthly basis, Exhibit I, Lease, § 7.4.

31. The Lease obligated HBL to maintain working capital accounts in specified amounts, Exhibit I, Lease, § 7.7.

32. The Lease provides that HBL will be in default of the Lease if, among other things, (i) HBL fails to pay any installment of Rent within five days of the date when Rent was due; (ii) HBL defaults in the prompt and full performance of any other of its obligations and fails to correct that failure within 30 days of receipt of written notice from WPH Properties of the default; (iii) HBL fails to give WPH Properties timely notice or timely deliver copies of documents as required by Section 7.4 of the Lease; (iv) HBL defaults or breaches the provisions of Section 7.4(b); (v) a Guarantor defaults beyond expiration of any applicable cure period; or (vi) any governmental authority assesses a fine or penalty against HBL in an amount in excess of \$75,000, Exhibit I, Lease, § 16.1.

33. WPH Properties performed all of the conditions on its part required by the Lease.

34. The Lease provides in Section 16.1 that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent.

35. Section 16.1 of the Lease also provides that upon the occurrence of a default, and in addition to all of the other remedies provided for in the Lease, WPH Properties is immediately

entitled to retain the security deposit required by Section 7.1 of the Lease and HBL has no further claim, right, title or interest therein to the extent of WPH Properties' claims.

36. Section 16.1 of the Lease also provides that upon the occurrence of a default and the commencement of an action for Rent or for any other amount due under the Lease, HBL must pay to WPH Properties all of the expenses, including reasonable attorneys' fees, incurred by WPH Properties to enforce the Lease.

37. In addition, under the terms of the Lease, HBL's continuation in occupancy after termination does not constitute a renewal of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 201.13.

**THE JOZEFOVIC SECURITY AGREEMENT**

38. On August 11, 2017 Jozefovic executed a Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Jozefovic Security Agreement"), assigning to WPH Properties' nominee a first and superior security interest in Jozefovic's interest in Waterview Acquisition I, LLC (the "Jozefovic Waterview Collateral") in order to secure the obligations under the Jozefovic Security Agreement and under the Lease. A true and accurate copy of the Jozefovic Security Agreement is annexed to this complaint as Exhibit 4.

39. The Jozefovic Security Agreement provides that Jozefovic has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of the Jozefovic Waterview Collateral. Exhibit 4, Jozefovic Security Agreement § 3

40. The Jozefovic Security Agreement further provides that Jozefovic agrees not to subsequently further amend or voluntarily permit the amendment of the Waterview Acquisition I,

LLC Operating Agreement that would in any manner materially adversely affect the Jozefovic Security Agreement and or the rights of WPH Properties. Exhibit 4, Jozefovic Security Agreement § 4

41. On September 15, 2020 WPH Properties duly perfected its security interest with respect to the Jozefovic Waterview Collateral by filing a UCC financing statement.

42. Upon information and belief, in or around December 2019, Jozefovic assigned the Jozefovic Waterview Collateral to Metropolitan Commercial Bank ("MCB") to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

43. Upon information and belief, to effectuate Jozefovic's assignment of the Jozefovic Waterview Collateral to MCB, Jozefovic agreed to and voluntarily permitted the amendment of the Waterview Acquisition I, LLC Operating Agreement.

44. Jozefovic breached his obligations under the Jozefovic Security Agreement by agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and assigning the Jozefovic Waterview Collateral to MCB.

45. Jozefovic further breached the Jozefovic Security Agreement by failing to take all of the necessary steps to add Howard Fensterman, a principal of WPH Properties, as a co-signatory to the JP Morgan Chase accounts identified therein as required by the Jozefovic Security Agreement.

46. Jozefovic and HBL breached their obligation to post the \$1,600,000 additional security deposit required by the Jozefovic Security Agreement and the Lease.

47. Jozefovic's moving of funds into a separate account that he controls does not satisfy the obligation to post the \$1.6 million additional security deposit as required by the Jozefovic

Security Agreement and the Lease.

48. Jozefovic's and HBL's failure to satisfy the obligation to post the \$1.6 million additional security deposit constitutes a breach of the Jozefovic Security Agreement and a breach of the Lease.

49. The Jozefovic Security Agreement provides that Jozefovic pledges, assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member of Waterview Acquisition I, LLC to WPH Properties in order to secure the obligations under the Jozefovic Security Agreement and under the Lease

50. Pursuant to the remedies granted to WPH Properties under the UCC and the Jozefovic Security Agreement, in the event of a default, WPH Properties is entitled, among other remedies, to dispose of the Jozefovic Waterview Collateral at a public sale.

51. Jozefovic breached the Jozefovic Security Agreement and materially and adversely affected the Jozefovic Waterview Collateral and the rights of WPH Properties by (i) agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and (ii) assigning the Jozefovic Waterview Collateral to MCB to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

52. As a result of Jozefovic breaching the Jozefovic Security Agreement by amending the operating agreement and assigning the Jozefovic Waterview Collateral to MCB, any purchaser of the Jozefovic Waterview Collateral at public sale by WPH Properties will purchase the Jozefovic Waterview Collateral subject to MCB's senior security interest in the collateral.

53. Jozefovic's breach of the Jozefovic Security Agreement therefore has caused WPH Properties damages in the amount of \$3,000,000, the amount of Jozefovic's obligation to MCB

secured by Jozefovic's illicit assignment of the same collateral to MCB.

**HBL BREACHED ITS OBLIGATIONS UNDER THE LEASE**

54. HBL failed to perform its obligations, materially defaulting under the Lease, almost immediately after taking possession of the Premises.

55. HBL failed to pay Rent as required by the Lease.

56. HBL failed to pay real estate taxes as required by the Lease.

57. HBL failed to pay utility deposits as required by the Lease.

58. HBL failed to pay municipal maintenance escrows as required by the Lease.

59. HBL failed to pay utility charges as required by the Lease.

60. HBL failed or refused to deliver certificates of insurance as required by the Lease.

61. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility, as required by the Lease.

62. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider updated rate sheets, as required by the Lease.

63. HBL failed to deliver to WPH Properties the required financial reporting, as required by the Lease.

64. HBL failed to deliver to WPH Properties the required written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease, as required by the Lease.

65. HBL failed or refused to deliver to WPH Properties the security deposits, as required by the Lease.

66. HBL failed to deliver and maintain the required credit line in an amount equal to

12 months' rent, as required by the Lease.

- 67. HBL failed to have and maintain the working capital account required by the Lease.
- 68. HBL failed to pay late fees and costs, as required by the Lease.

**THE LETTER OF INTENT**

69. After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease, despite HBL's default.

70. On November 20, 2019, WPH Properties and HBL entered into a Letter of Intent (the "LOI") in which WPH Properties and HBL agreed that WPH Properties would sell the Facility for \$73,000,000 to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties or its designees would have a 22.5 percent interest.

71. A true and accurate copy of the LOI is annexed to this complaint as **Exhibit 5**.

72. The LOI provides for the Lease to be amended to require that HBL pay the November 2019 rent by November 15, 2019, the December rent by December 5, 2019 and all real estate taxes and utility payments by December 1, 2019, that by December 5, 2019 HBL reimburse WPH Properties for \$65,856 in municipal and utility deposits, that HBL enter into a Deposit Account Control Agreement with MNB requiring MNB to draw on the account first to pay the rent.

73. The LOI further provides for the Lease to be amended so that the \$3,700,000 security deposit required by Section 7.1(a)(ii) is reduced to \$2,000,000, \$1,000,000 of which was required to be paid by HBL on or before December 1, 2019 or the date on which WPH Properties obtained a permanent certificate of occupancy for the Facility (which was granted on November 14, 2019), whichever was later, and the balance of which was required to be paid on April 1, 2020.

which was the Closing date required by the LOI.

74. In addition, the LOI provides for the Lease to be amended so that in lieu of providing the additional \$1,000,000 in security required by Section 7.1(a)(iii) of the Lease, HBL would be required to enter into an agreement with JP Morgan Chase Bank prohibiting liquidation of that account until the second \$1,000,000 in security required by the LOI had been paid.

75. The LOI also provides for the Lease to be amended to require HBL to obtain a single working capital line of credit in the amount of \$8,000,000 by December 1, 2019.

76. HBL defaulted and breached its obligations under the LOI by failing to pay rent, failing to pay the municipal and utility payments to WPH Properties, failing to pay the real estate taxes and utility payments, failing to enter into the Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank, by failing to pay the first \$1,000,000 security deposit as required by the LOI and by failing to obtain the \$8,000,000 working capital credit line, and by failing to meet the required Closing date of April 1, 2020.

77. WPH Properties performed all conditions on its part required by the LOI.

78. Solely as a result of HBL's breach of the LOI, WPH Properties did not sell the property to the Delaware Statutory Trust, causing damage to WPH Properties, and WPH Properties incurred interest and late charges on its loans, all of which are the direct result of HBL's breach of the LOI.

**NOTICE OF DEFAULT, TERMINATION OF THE LEASE AND ACCELERATION OF RENT**

79. On January 7, 2020, while the LOI was in effect, WPH Properties served a "Notice of Default And Landlord's Election To Terminate Lease And Accelerate All Rents Due For The Balance of the Lease Term" upon HBL (the "Notice of Default").

80. A true and accurate copy of the Notice of Default is annexed to this complaint as Exhibit 6 and incorporated into this complaint by reference.

81. The Notice of Default contains a true and accurate accounting of the amounts then due and owing under the Lease and L.OI.

82. The Notice of Default gave HBL notice that by reason of HBL's defaults under the Lease, WPH Properties had exercised its right under Section 16.1 of the Lease to terminate the Lease, effective January 13, 2020.

83. The Notice of Default further gave HBL notice that pursuant to Section 16.1 of the Lease all Rent for the balance of the Term was accelerated and HBL became obligated to pay WPH Properties the present value of the accelerated rent, discounted at a rate of 6% per annum.

84. HBL continued, and still continues, to occupy the Premises, despite WPH Properties' termination of the Lease.

85. Because HBL has held over after its default resulted in termination of the Lease, HBL is a tenant month-to-month at a rent equal to 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

86. HBL has failed to perform its obligations as a tenant month-to-month by failing to pay rent in the amount of 300% of the most recent Rent payable by HBL under the Lease, remitting only the base rent which had been payable before WPH Properties terminated the Lease.

87. HBL is in default with respect to its obligations under the Lease and its obligations as a month-to-month tenant following termination of the Lease effective January 13, 2020.

**AMOUNTS DUE**

88. As a result of HBL's defaults, HBL is obligated to pay to WPH Properties, as of

August 25, 2020, the sum of \$113,832,987.54 (the "Amounts Due"), as follows: (i) holdover rent and rent, \$7,096,182.79; (ii) municipal and utility deposits, \$26,725.35; (iii) security and working capital deposits, \$9,800,000.00; (iv) late fees, default fees, costs and professional fees, \$1,948,753.00; and (v) accelerated rent, \$94,961,326.40.

89. HBL is obligated to pay to WPH Properties the Amounts Due in full, plus any amounts that have accrued since August 25, 2020.

90. HBL has failed or refused to pay the Amounts Due.

91. WPH Properties has fully performed all obligations required to be performed on its part with respect to the Lease, the LOI, HBL's month-to-month tenancy after the termination of the Lease, the Jozefovic Guaranty, the Neuman Guaranty, the HBL Security Agreement, the Jozefovic HBL Security Agreement and the Neuman HBL Security Agreement.

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

92. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "91" with the same force and effect as if fully set forth here.

93. By reason of HBL's material default and breach of its obligations pursuant to the Lease and its obligations as a month-to-month tenant after termination of the lease, WPH Properties is entitled to judgment against HBL for the Amounts Due, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law.

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

94. WPH Properties repeats and re-alleges each and every allegation set forth in

paragraphs "1" through "93" with the same force and effect as if fully set forth here.

95. By reason of HBL's material default and breach of its obligations pursuant to the LOI, WPH Properties is entitled to judgment against HBL in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

96. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "95" with the same force and effect as if fully set forth here.

97. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic for the Amounts Due pursuant to the terms of the Jozefovic Guaranty.

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

98. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "97" with the same force and effect as if fully set forth here.

99. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Neuman for the Amounts Due pursuant to the terms of the Neuman Guaranty.

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

100. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "99" with the same force and effect as if fully set forth here.

101. By reason of Jozefovic's default in the performance of his obligations under the Jozefovic Security Agreement and HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic in the amount of \$3,000,000.00.

WHEREFORE, WPH Properties demands judgment as follows:

1. On its First cause of action, against HBL, in the amount of \$113,832,987.54, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

2. On its Second Cause of Action, against HBL, in an amount to be determined at trial; and

3. On its Third Cause of Action, against Jozefovic in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

4. On its Fourth Cause of Action, against Neuman in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

5. On its Fifth Cause of Action, against Jozefovic in the amount of \$3,000,000.00; and

6. On all causes of action, awarding costs, disbursements and attorneys' fees against HBL, pursuant to the provisions of the Lease and against Jozefovic and Neuman pursuant to the provisions of the Jozefovic Guaranty and the Neuman Guaranty; and

7. Awarding such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
November 19, 2020

DILBERTO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

By:  .....  
Alfred E. Donnellan, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

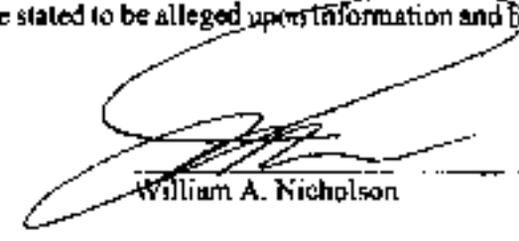
ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO,  
FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
Robert A. Spolizino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the annexed Amended Verified Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

  
William A. Nicholson

Sworn to before me this  
20th day of November 2020

  
Notary Public



# Exhibit 2



**ALEX BARNETT-HOWELL**  
abarnett-howell@mrlip.com

**New York Office**  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
P 212.730.7700 F 212.730.7725 www.mrlip.com

December 2, 2020

**Via Electronic Mail**

Mr. Alfred E. Donnellan  
Managing Partner  
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, NY 10601  
Email: [AED@ddw-law.com](mailto:AED@ddw-law.com)

**Re: *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.*  
*Index No. 60278/2020***

Dear Mr. Donnellan:

We are in receipt of the amended complaint filed on November 30, 2020 on behalf of your client in *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.*, (No. 60278/2020).

Pursuant to CPLR 3025(a), a party may amend as of right only “within twenty days after service of a pleading responding to it.” We filed the Answer with Counterclaims to the Complaint on November 5, 2020. Therefore, the time within which to amend the Complaint as of right expired on November 25, 2020. The filing on the Amended Complaint without leave of Court renders the pleading a nullity and we request that you withdraw it in order to avoid a motion to dismiss on these grounds.

Furthermore, the Amended Complaint contains allegations regarding the Collateral Assignment and Pledge of Membership Interest dated August 11, 2017. That agreement and the allegations related to it are the subject matter of claims in the prior filed action and currently pending matter of *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, (No. 655549/2020). Therefore, it is inappropriate to assert the same claims in a separate subsequent action.

We request that you voluntarily resolve these issues without requiring us to resort to further unnecessary motion practice. Please confirm your agreement to withdraw amended complaint by close of business Thursday, December 3<sup>rd</sup>.

Thank you for your courtesy in this matter.

Very truly yours,  
**MICHELMAN & ROBINSON, LLP**

Alex Barnett-Howell

ABH:ec

# Exhibit 3

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
  
– against –  
  
HBL SNF, LLC, LIZER JOZEOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants.

Index No. \_\_\_\_\_  
60278/2020

**VERIFIED** **AMENDED**  
**VERIFIED** **COMPLAINT**

Plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”), by its attorneys, DelBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, for its amended verified complaint against defendants, HBL SNF, LLC (“HBL”), Lizer Jozefovic a/k/a Lizer Jozofovic (“Jozefovic”) and Mark Neuman (“Neuman”), alleges:

**NATURE OF THE CASE**

1. This action concerns HBL’s material default of its obligations under an amended and restated operating lease dated as of November 19, 2015 (the “Lease”), by which WPH Properties leased to HBL a brand new, state-of-the-art, 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York.

2. WPH Properties had constructed the nursing facility and entered into the Lease with HBL dated November 19, 2015. The Lease was amended and restated in 2017. It provided that HBL would operate the facility for 30 years, commencing. The Lease commenced on September 30, 2019. HBL took possession of the facility on September 30, 2019. By the end of October 2019,

HBL had defaulted.

3. On January 7, 2020, WPH Properties served notice of default and elected to terminate the Lease and accelerate all rents due. This action seeks to recover from HBL the Rent it owes and the other damages its defaults have caused and to enforce the unconditional guaranties of HBL's performance under the Lease given by Neuman and Jozefovic.

**PARTIES AND VENUE**

4. WPH Properties is a limited liability company duly organized and existing under the laws of the State of Massachusetts, with its principal place of business at 2 Bourbon Street, Suite 200, Peabody, Massachusetts. WPH Properties is duly authorized to do business in the State of New York.

5. HBL was and is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 537 Route 22, Purdys, New York.

6. Jozefovic is an individual residing at 53 Mariner Way, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

7. Neuman is an individual residing at 22 Lyncrest Drive, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

8. Pursuant to CPLR § 503(a), venue is properly designated in Westchester County based on the residences of WPH Properties and HBL, because a substantial part of the events giving rise to the claim occurred in Westchester County and because HBL and WPH Properties agreed in the Lease that any action or proceeding arising out of the Lease be brought in Westchester County. Lease § 20.1(b).

**FACTS**

9. WPH Properties is and was at all relevant times the owner of the real property known as 116-120 Church Street, White Plains, New York (the “Real Property”).

10. WPH Properties constructed a brand new, state-of-the-art, 160-bed skilled nursing facility on the Real Property.

**THE LEASE**

11. In 2017, WPH Properties, as landlord, and HBL, as tenant, entered into the amended and restated Lease, dated as of November 19, 2015, under which WPH Properties leased to HBL the Real Property and the improvements to be constructed on the Real Property, together with other assets, all as defined in Section 2.1 of the Lease (the “Facility”). A true and accurate copy of the Lease is annexed to this complaint as **Exhibit 1** and is incorporated into this complaint by reference.

12. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019.

13. HBL entered into possession of the Facility on September 30, 2019.

14. The ~~lease~~Lease provided for a term of 30 years, with three 10--year options to the tenant, unless sooner terminated. Exhibit 1, Lease, § 3.1.

15. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 (the “Fixed Rent”). Exhibit 1, Lease, § 3.2.

16. The Lease also obligated HBL to pay WPH Properties other amounts which are defined as “Additional Rent.” Fixed Rent and Additional Rent are referred to collectively as “Rent.”

17. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Premises during the Term. Exhibit 1, Lease, § 4.1.

18. The Lease obligated HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit 1, Lease, § 4.2.

19. The Lease obligated HBL to keep the Premises in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses relating to the Premises. Exhibit 1, Lease, § 5.2.

20. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit 1, Lease, § 7.1.

21. A true and accurate copy of the Jozefovic Guaranty is annexed to this complaint as **Exhibit 2.**

22. A true and accurate copy of the Neuman Guaranty is annexed to this complaint as **Exhibit 3.**

23. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

24. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Jozefovic without the necessity of any notice of

nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Jozefovic expressly waived.

25. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

26. The Neuman Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

27. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an agreement by Capital Funding Group by which Capital Funding Group agreed to allow HBL to draw down on its credit line each month so as to enable Capital Funding Group to pay the Fixed Rent each month directly to WPH Properties on the commencement date and for the following 11 months. Exhibit 1, Lease, § 7.1.

28. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease. Exhibit 1, Lease, § 7.1.

29. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, \$1,600,000 as an additional security deposit. Exhibit 1, Lease, § 7.1.

30. The Lease obligated HBL to provide WPH Properties all reports, statements and

inspections as defined in the Lease, including all Medicare, Medicaid and other provider agreements and reimbursement rates for the Facility, updated reimbursement rates, financial reporting and written reports providing an operational overview of significant events and circumstances on a monthly basis. Exhibit 1, Lease, § 7.4.

31. The Lease obligated HBL to maintain working capital accounts in specified amounts. Exhibit 1, Lease, § 7.7.

32. The Lease provides that HBL will be in default of the Lease if, among other things, (i) HBL fails to pay any installment of Rent within five days of the date when Rent was due; (ii) HBL defaults in the prompt and full performance of any other of its obligations and fails to correct that failure within 30 days of receipt of written notice from WPH Properties of the default; (iii) HBL fails to give WPH Properties timely notice or timely deliver copies of documents as required by ~~section~~Section 7.4 of the Lease; (iv) HBL defaults or breaches the provisions of ~~section~~Section 7.4(b); (v) a Guarantor defaults beyond expiration of any applicable cure period; or (vi) any governmental authority assesses a fine or penalty against HBL in an amount in excess of \$75,000. Exhibit 1, Lease, § 16.1.

33. WPH Properties performed all of the conditions on its part required by the Lease.

34. The Lease provides in ~~section~~Section 16.1 that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent.

35. Section 16.1 of the Lease also provides that upon the occurrence of a default, and in addition to all of the other remedies provided for in the Lease, WPH Properties is immediately

entitled to retain the security deposit required by ~~section~~Section 7.1 of the Lease and HBL has no further claim, right, title or interest therein to the extent of WPH Properties' claims.

36. Section 16.1 of the Lease also provides that upon the occurrence of a default and the commencement of an action for Rent or for any other amount due under the Lease, HBL must pay to WPH Properties all of the expenses, including reasonable attorneys' fees, incurred by WPH Properties to enforce the Lease.

37. In addition, under the terms of the Lease, HBL's continuation in occupancy after termination does not constitute a renewal of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 201.13.

**THE JOZEFOVIC SECURITY AGREEMENT**

38. On August 11, 2017 Jozefovic executed a Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Jozefovic Security Agreement"), assigning to WPH Properties' nominee a first and superior security interest in Jozefovic's interest in Waterview Acquisition I, LLC (the "Jozefovic Waterview Collateral") in order to secure the obligations under the Jozefovic Security Agreement and under the Lease. A true and accurate copy of the Jozefovic Security Agreement is annexed to this complaint as Exhibit 4.

39. The Jozefovic Security Agreement provides that Jozefovic has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of the Jozefovic Waterview Collateral. Exhibit 4, Jozefovic Security Agreement § 3

40. The Jozefovic Security Agreement further provides that Jozefovic agrees not to subsequently further amend or voluntarily permit the amendment of the Waterview Acquisition I,

LLC Operating Agreement that would in any manner materially adversely affect the Jozefovic Security Agreement and/or the rights of WPH Properties. Exhibit 4, Jozefovic Security Agreement § 4

41. On September 15, 2020 WPH Properties duly perfected its security interest with respect to the Jozefovic Waterview Collateral by filing a UCC financing statement.

42. Upon information and belief, in or around December 2019, Jozefovic assigned the Jozefovic Waterview Collateral to Metropolitan Commercial Bank (“MCB”) to secure Jozefovic’s obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

43. Upon information and belief, to effectuate Jozefovic’s assignment of the Jozefovic Waterview Collateral to MCB, Jozefovic agreed to and voluntarily permitted the amendment of the Waterview Acquisition I, LLC Operating Agreement.

44. Jozefovic breached his obligations under the Jozefovic Security Agreement by agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and assigning the Jozefovic Waterview Collateral to MCB.

45. Jozefovic further breached the Jozefovic Security Agreement by failing to take all of the necessary steps to add Howard Fensterman, a principal of WPH Properties, as a co-signatory to the JP Morgan Chase accounts identified therein as required by the Jozefovic Security Agreement.

46. Jozefovic and HBL breached their obligation to post the \$1,600,000 additional security deposit required by the Jozefovic Security Agreement and the Lease.

47. Jozefovic’s moving of funds into a separate account that he controls does not satisfy the obligation to post the \$1.6 million additional security deposit as required by the Jozefovic

Security Agreement and the Lease.

48. Jozefovic's and HBL's failure to satisfy the obligation to post the \$1.6 million additional security deposit constitutes a breach of the Jozefovic Security Agreement and a breach of the Lease.

49. The Jozefovic Security Agreement provides that Jozefovic pledges, assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member of Waterview Acquisition I, LLC to WPH Properties in order to secure the obligations under the Jozefovic Security Agreement and under the Lease.

50. Pursuant to the remedies granted to WPH Properties under the UCC and the Jozefovic Security Agreement, in the event of a default, WPH Properties is entitled, among other remedies, to dispose of the Jozefovic Waterview Collateral at a public sale.

51. Jozefovic breached the Jozefovic Security Agreement and materially and adversely affected the Jozefovic Waterview Collateral and the rights of WPH Properties by (i) agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and (ii) assigning the Jozefovic Waterview Collateral to MCB to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

52. As a result of Jozefovic breaching the Jozefovic Security Agreement by amending the operating agreement and assigning the Jozefovic Waterview Collateral to MCB, any purchaser of the Jozefovic Waterview Collateral at public sale by WPH Properties will purchase the Jozefovic Waterview Collateral subject to MCB's senior security interest in the collateral.

53. Jozefovic's breach of the Jozefovic Security Agreement therefore has caused WPH Properties damages in the amount of \$3,000,000, the amount of Jozefovic's obligation to MCB

secured by Jozefovic's illicit assignment of the same collateral to MCB.

**HBL BREACHED ITS OBLIGATIONS UNDER THE LEASE**

38.54. HBL failed to perform its obligations, materially defaulting under the Lease, almost immediately after taking possession of the Premises.

39.55. HBL failed to pay Rent as required by the Lease.

40.56. HBL failed to pay real estate taxes as required by the Lease.

41.57. HBL failed to pay utility deposits as required by the Lease.

42.58. HBL failed to pay municipal maintenance escrows as required by the Lease.

43.59. HBL failed to pay utility charges as required by the Lease.

44.60. HBL failed or refused to deliver certificates of insurance as required by the Lease.

45.61. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility, as required by the Lease.

46.62. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider updated rate sheets, as required by the Lease.

47.63. HBL failed to deliver to WPH Properties the required financial reporting, as required by the Lease.

48.64. HBL failed to deliver to WPH Properties the required written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease, as required by the Lease.

49.65. HBL failed or refused to deliver to WPH Properties the security deposits, as required by the Lease.

50.66. HBL failed to deliver and maintain the required credit line in an amount equal to

12 ~~months~~months' rent, as required by the Lease.

~~51.67.~~ HBL failed to have and maintain the working capital account required by the Lease.

~~52.68.~~ HBL failed to pay late fees and costs, as required by the Lease.

#### THE LETTER OF INTENT

~~53.69.~~ After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease, despite HBL's default.

~~54.70.~~ On November 20, 2019, WPH Properties and HBL entered into a Letter of Intent (the "LOI") in which WPH Properties and HBL agreed that WPH Properties would sell the Facility for \$73,000,000 to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties or its designees would have a 22.5 percent interest.

~~55.71.~~ A true and accurate copy of the LOI is annexed to this complaint as ~~exhibit~~ 4Exhibit 5.

~~56.72.~~ The LOI provides for the Lease to be amended to require that HBL pay the November 2019 rent by November 18, 2019, the December rent by December 5, 2019 and all real estate taxes and utility payments by December 1, 2019, that by December 5, 2019 HBL reimburse WPH Properties for \$65,856 in municipal and utility deposits, that HBL enter into a Deposit Account Control Agreement with MNB requiring MNB to draw on the account first to pay the rent.

~~57.73.~~ The LOI further provides for the Lease to be amended so that the \$3,700,000 security deposit required by ~~section~~Section 7.1(a)(ii) is reduced to \$2,000,000, \$1,000,000 of which was required to be paid by HBL on or before December 1, 2019 or the date on which WPH Properties obtained a permanent certificate of occupancy for the Facility, ~~(which was granted on~~

November 14, 2019), whichever was later, and the balance of which was required to be paid ~~upon~~  
~~the closing of title on on~~ April 1, 2020, which was the Closing date required by the LOI.

~~58.74.~~ In addition, the LOI provides for the Lease to be amended so that in lieu of providing the additional \$1,600,000 in security required by ~~section~~Section 7.1(a)(iii) of the Lease, HBL would be required to enter into an agreement with JP Morgan Chase Bank prohibiting liquidation of that account until the second \$1,000,000 in security required by the LOI had been paid.

~~59.75.~~ The LOI also provides for the Lease to be amended to require HBL to obtain a single working capital line of credit in the amount of \$8,000,000 by December 1, 2019.

~~60.76.~~ HBL defaulted and breached its obligations under the LOI by failing to pay rent, failing to pay the municipal and utility payments to WPH Properties, failing to pay the real estate taxes and utility payments, failing to enter into the Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank, by failing to pay the first \$1,000,000 security deposit as required by the LOI and by failing to obtain the \$8,000,000 working capital credit line, and by failing to meet the required Closing date of April 1, 2020.

~~61.77.~~ WPH Properties performed all conditions on its part required by the LOI.

~~62.78.~~ Solely as a result of HBL’s breach of the LOI, WPH Properties did not sell the property to the Delaware Statutory Trust, causing damage to WPH Properties, and WPH Properties incurred interest and late charges on its loans, all of which are the direct result of HBL’s breach of the LOI.

**NOTICE OF DEFAULT, TERMINATION OF THE LEASE AND ACCELERATION OF RENT**

~~63.79.~~ On January 7, 2020, while the LOI was in effect, WPH Properties served a “Notice

of Default And Landlord’s Election To Terminate Lease And Accelerate All Rents Due For The Balance of the Lease Term” upon HBL (the “Notice of Default”).

64.80. A true and accurate copy of the Notice of Default is annexed to this complaint as **Exhibit 56** and incorporated into this complaint by reference.

65.81. The Notice of Default contains a true and accurate accounting of the amounts then due and owing under the Lease and LOI.

66.82. The Notice of Default gave HBL notice that by reason of HBL’s defaults under the Lease, WPH Properties had exercised its right under ~~section~~Section 16.1 of the Lease to terminate the Lease, effective January 13, 2020.

67.83. The Notice of Default further gave HBL notice that pursuant to ~~section~~Section 16.1 of the Lease all Rent for the balance of the Term was accelerated and HBL became obligated to pay WPH Properties the present value of the accelerated rent, discounted at a rate of 6% per annum.

68.84. HBL continued, and still continues, to occupy the Premises, despite WPH Properties’ termination of the Lease.

69.85. Because HBL has held over after its default resulted in termination of the Lease, HBL is a tenant month-to-month at a rent equal to 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

70.86. HBL has failed to perform its obligations as a tenant month-to-month by failing to pay rent in the amount of 300% of the most recent Rent payable by HBL under the Lease, remitting only the base rent which had been payable before WPH Properties terminated the Lease.

71.87. HBL is in default with respect to its obligations under the Lease and its obligations as a month-to-month tenant following termination of the Lease effective January 13, 2020.

**AMOUNTS DUE**

72.88. As a result of HBL's defaults, HBL is obligated to pay to WPH Properties, as of August 25, 2020, the sum of \$113,832,987.54 (the "Amounts Due"), as follows: (i) holdover rent and rent, \$7,096,182.79; (ii) municipal and utility deposits, \$26,725.35; (iii) security and working capital deposits, \$9,800,000.00; (iv) late fees, default fees, costs and professional fees, \$1,948,753.00; and (v) accelerated rent, \$94,961,326.40.

73.89. HBL is obligated to pay to WPH Properties the Amounts Due in full, plus any amounts that have accrued since August 25, 2020.

74.90. HBL has failed or refused to pay the Amounts Due.

75.91. WPH Properties has fully performed all obligations required to be performed on its part with respect to the Lease, the LOI, HBL's month-to-month tenancy after the termination of the Lease, the Jozefovic Guaranty, the Neuman Guaranty, the HBL Security Agreement, the Jozefovic HBL Security Agreement and the Neuman HBL Security Agreement.

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

76.92. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "75.91" with the same force and effect as if fully set forth here.

77.93. By reason of HBL's material default and breach of its obligations pursuant to the Lease and its obligations as a month-to-month tenant after termination of the lease, WPH Properties is entitled to judgment against HBL for the Amounts Due, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law.

**SECOND CAUSE OF ACTION AGAINST HBL**

**(BREACH OF CONTRACT)**

78.94. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs “1” through “~~7793~~” with the same force and effect as if fully set forth here.

79.95. By reason of HBL’s material default and breach of its obligations pursuant to the LOI, WPH Properties is entitled to judgment against HBL in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

80.96. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs “1” through “~~7995~~” with the same force and effect as if fully set forth here.

81.97. By reason of HBL’s default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic for the Amounts Due pursuant to the terms of the Jozefovic Guaranty.

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

82.98. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs “1” through “~~8197~~” with the same force and effect as if fully set forth here.

83.99. By reason of HBL’s default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Neuman for the Amounts Due pursuant to the terms of the Neuman Guaranty.

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

100. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs “1” through “99” with the same force and effect as if fully set forth here.

101. By reason of Jozefovic’s default in the performance of his obligations under the

Jozefovic Security Agreement and HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic in the amount of \$3,000,000.00.

WHEREFORE, WPH Properties demands judgment as follows:

1. On its ~~first~~First cause of action, against HBL in the amount of \$113,832,987.54, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

2. On its Second Cause of Action, against HBL, in an amount to be determined at trial; and

3. On its Third Cause of Action, against Jozefovic in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

4. On its Fourth Cause of Action, against Neuman in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

5. On its Fifth Cause of Action, against Jozefovic in the amount of \$3,000,000.00; and

~~5.6.~~ On all causes of action, awarding costs, disbursements and attorneys' fees against HBL pursuant to the provisions of the Lease and against Jozefovic and Neuman pursuant to the provisions of the Jozefovic Guaranty and the Neuman Guaranty; and

6.7. Awarding such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
~~September 16~~ November 19, 2020

DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

By: \_\_\_\_\_  
Alfred E. Donnellan, Esq.  
~~Peter S. Dawson, Esq.~~  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO,  
FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

VERIFICATION

STATECOMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the annexed Amended Verified Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

William A. Nicholson

Sworn to before me this  
16th\_\_th day of SeptemberNovember 2020

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

Index No. 60278/2020

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

– against –

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN and WILLIAM  
NICHOLSON,

Third-Party Defendants,

**VERIFIED ANSWER TO  
THIRD-PARTY  
COMPLAINT**

Third-Party Defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (the “Third-Party Defendants”), by their attorneys DelBello, Donnellan Weingarten Wise & Wiederkehr, LLP, as and for its Answer of the Third-Party Complaint of Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic a/k/a Lizer Jozofovic and Mark Neuman, respectfully state and allege as follows:

1. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1 of the Third-Party Complaint.
2. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 2 of the Third-Party Complaint.

3. Third-Party Defendants deny the allegations set forth in paragraph 3 of the Third-Party Complaint.

4. Third-Party Defendants admit the allegations set forth in paragraph 4 of the Third-Party Complaint.

5. Third-Party Defendants deny the allegations set forth in paragraph 5 of the Third-Party Complaint.

6. Third-Party Defendants admit the allegations set forth in paragraph 6 of the Third-Party Complaint.

7. Third-Party Defendants admit the allegations set forth in paragraph 7 of the Third-Party Complaint.

8. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 8 of the Third-Party Complaint.

9. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 9 of the Third-Party Complaint.

10. Third-Party Defendants deny the allegations set forth in paragraph 10 of the Third-Party Complaint.

11. Third-Party Defendants admit the allegations set forth in paragraph 11 of the Third-Party Complaint.

12. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 12 of the Third-Party Complaint.

13. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 13 of the Third-Party Complaint.

14. Third-Party Defendants deny the allegations set forth in paragraph 14 of the Third-Party Complaint except to admit that WHP Properties acted as developer for the new Facility.

15. Third-Party Defendants deny the allegations set forth in paragraph 15 of the Third-Party Complaint and refer to the terms of the Development Agreement.

16. Third-Party Defendants deny the allegations set forth in paragraph 16 of the Third-Party Complaint.

17. Third-Party Defendants deny the allegations set forth in paragraph 17 of the Third-Party Complaint except Third-Party Defendants admit that, at one point in time, non-final projected costs were estimated to be \$56,631,759.

18. Third-Party Defendants deny the allegations set forth in paragraph 18 of the Third-Party Complaint except Third-Party Defendants admit that, at one point in time, non-final projected costs were estimated to be those listed in the allegations set forth in paragraph 18 of the Third-Party Complaint.

19. Third-Party Defendants deny the allegations set forth in paragraph 19 of the Third-Party Complaint.

20. Third-Party Defendants deny the allegations set forth in paragraph 20 of the Third-Party Complaint.

21. Third-Party Defendants deny the allegations set forth in paragraph 21 of the Third-Party Complaint.

22. Third-Party Defendants admit the allegations set forth in paragraph 22 of the Third-Party Complaint.

23. Third-Party Defendants deny the allegations set forth in paragraph 23 of the Third-Party Complaint except Third-Party Defendants admit that CCC Equities, LLC provided \$9,863,246.

24. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 24 of the Third-Party Complaint.

25. Third-Party Defendants deny the allegations set forth in paragraph 25 of the Third-Party Complaint except Third-Party Defendants admit that the Jozefovic Team entered into a lease agreement with WHP Properties, and an amended and restated lease thereto, to occupy and operate the Facility.

26. Third-Party Defendants deny the allegations set forth in paragraph 26 of the Third-Party Complaint except that Third-Party Defendants admits that WHP Properties executed a lease, and an amended and restated lease thereto, as landlord.

27. Third-Party Defendants deny the allegations set forth in paragraph 27 of the Third-Party Complaint except that Third-Party Defendants state that the Lease referenced in paragraph 27 speaks for itself.

28. Third-Party Defendants deny the allegations set forth in paragraph 28 of the Third-Party Complaint.

29. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 28 of the Third-Party Complaint.

30. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 30 of the Third-Party Complaint.

31. Third-Party Defendants deny the allegations set forth in paragraph 31 of the Third-Party Complaint.

32. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 32 of the Third-Party Complaint.

33. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 33 of the Third-Party Complaint.

34. Third-Party Defendants deny the allegations set forth in paragraph 34 of the Third-Party Complaint.

35. Third-Party Defendants deny the allegations set forth in paragraph 35 of the Third-Party Complaint.

36. Third-Party Defendants deny the allegations set forth in paragraph 34 of the Third-Party Complaint except that Third-Party Defendants admit that HBL SNF LLC and Third-Party Defendants entered into the Development Agreement.

37. Third-Party Defendants deny the allegations set forth in paragraph 34 of the Third-Party Complaint except that Third-Party Defendants admit that HBL SNF LLC and Third-Party Defendants entered into a lease and an amended and restated lease thereto.

38. No response is required as to paragraph 38 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 38 of the Third-Party Complaint and the term Lease as defined in the Third-Party Complaint.

39. Third-Party Defendants deny the allegations set forth in paragraph 39 of the Third-Party Complaint and Third-Party Defendants state that the Development Agreement speaks for itself.

40. Third-Party Defendants deny the allegations set forth in paragraph 40 of the Third-Party Complaint.

41. Third-Party Defendants admit the allegations set forth in paragraph 41 of the Third-Party Complaint.

42. Third-Party Defendants deny the allegations set forth in paragraph 42 of the Third-Party Complaint.

43. Third-Party Defendants deny the allegations set forth in paragraph 43 of the Third-Party Complaint.

44. Third-Party Defendants deny the allegations set forth in paragraph 44 of the Third-Party Complaint.

45. Third-Party Defendants deny the allegations set forth in paragraph 45 of the Third-Party Complaint.

46. Third-Party Defendants deny the allegations set forth in paragraph 46 of the Third-Party Complaint.

47. Third-Party Defendants deny the allegations set forth in paragraph 47 of the Third-Party Complaint.

48. Third-Party Defendants deny the allegations set forth in paragraph 48 of the Third-Party Complaint.

49. Third-Party Defendants deny the allegations set forth in paragraph 49 of the Third-Party Complaint.

50. Third-Party Defendants deny the allegations set forth in paragraph 50 of the Third-Party Complaint.

51. Third-Party Defendants deny the allegations set forth in paragraph 51 of the Third-Party Complaint.

52. Third-Party Defendants deny the allegations set forth in paragraph 52 of the Third-Party Complaint.

53. Third-Party Defendants deny the allegations set forth in paragraph 53 of the Third-Party Complaint.

54. Third-Party Defendants deny the allegations set forth in paragraph 54 of the Third-Party Complaint.

55. Third-Party Defendants deny the allegations set forth in paragraph 55 of the Third-Party Complaint.

56. Third-Party Defendants deny the allegations set forth in paragraph 56 of the Third-Party Complaint.

57. Third-Party Defendants deny the allegations set forth in paragraph 57 of the Third-Party Complaint except that Third-Party Defendants state that the Development Agreement speaks for itself.

58. Third-Party Defendants deny the allegations set forth in paragraph 58 of the Third-Party Complaint.

59. Third-Party Defendants deny the allegations set forth in paragraph 59 of the Third-Party Complaint.

60. Third-Party Defendants deny the allegations set forth in paragraph 60 of the Third-Party Complaint.

61. Third-Party Defendants deny the allegations set forth in paragraph 61 of the Third-Party Complaint.

62. Third-Party Defendants deny the allegations set forth in paragraph 62 of the Third-Party Complaint.

63. Third-Party Defendants deny the allegations set forth in paragraph 63 of the Third-Party Complaint.

64. Third-Party Defendants deny the allegations set forth in paragraph 64 of the Third-Party Complaint.

65. Third-Party Defendants deny the allegations set forth in paragraph 65 of the Third-Party Complaint.

66. Third-Party Defendants deny the allegations set forth in paragraph 66 of the Third-Party Complaint.

67. Third-Party Defendants deny the allegations set forth in paragraph 67 of the Third-Party Complaint.

68. Third-Party Defendants deny the allegations set forth in paragraph 68 of the Third-Party Complaint.

69. Third-Party Defendants deny the allegations set forth in paragraph 69 of the Third-Party Complaint.

70. Third-Party Defendants deny the allegations set forth in paragraph 70 of the Third-Party Complaint.

71. No response is required as to paragraph 71 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 71 of the Third-Party Complaint.

72. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 72 of the Third-Party Complaint.

73. Third-Party Defendants deny the allegations set forth in paragraph 73 of the Third-Party Complaint.

74. Third-Party Defendants deny the allegations set forth in paragraph 74 of the Third-Party Complaint.

75. Third-Party Defendants deny the allegations set forth in paragraph 75 of the Third-Party Complaint.

76. Third-Party Defendants deny the allegations set forth in paragraph 76 of the Third-Party Complaint.

77. Third-Party Defendants deny the allegations set forth in paragraph 77 of the Third-Party Complaint.

78. Third-Party Defendants deny the allegations set forth in paragraph 78 of the Third-Party Complaint except Third-Party Defendants admit that CCCE procured financial contributions from third parties.

79. Third-Party Defendants deny the allegations set forth in paragraph 79 of the Third-Party Complaint.

80. Third-Party Defendants deny the allegations set forth in paragraph 80 of the Third-Party Complaint.

81. Third-Party Defendants deny the allegations set forth in paragraph 81 of the Third-Party Complaint.

82. Third-Party Defendants deny the allegations set forth in paragraph 82 of the Third-Party Complaint.

83. Third-Party Defendants deny the allegations set forth in paragraph 83 of the Third-Party Complaint.

84. Third-Party Defendants deny the allegations set forth in paragraph 84 of the Third-Party Complaint.

85. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 85 of the Third-Party Complaint.

86. Third-Party Defendants deny the allegations set forth in paragraph 86 of the Third-Party Complaint.

87. Third-Party Defendants deny the allegations set forth in paragraph 87 of the Third-Party Complaint.

**AS TO THE FIRST COUNTERCLAIM**

88. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth at length.

89. No response is required as to paragraph 89 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 89 of the Third-Party Complaint.

90. No response is required as to paragraph 90 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 90 of the Third-Party Complaint.

91. No response is required as to paragraph 91 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 91 of the Third-Party Complaint.

**AS TO THE SECOND COUNTERCLAIM**

92. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth length.

93. No response is required as to paragraph 93 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 93 of the Third-Party Complaint.

**AS TO THE THIRD COUNTERCLAIM**

94. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth.

95. No response is required as to paragraph 95 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 95 of the Third-Party Complaint.

96. No response is required as to paragraph 96 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 96 of the Third-Party Complaint.

97. No response is required as to paragraph 97 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 97 of the Third-Party Complaint.

**AS TO THE FOURTH COUNTERCLAIM**

98. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth.

99. No response is required as to paragraph 99 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 99 of the Third-Party Complaint.

100. No response is required as to paragraph 100 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 100 of the Third-Party Complaint.

101. No response is required as to paragraph 101 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 101 of the Third-Party Complaint.

102. No response is required as to paragraph 102 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 102 of the Third-Party Complaint.

103. No response is required as to paragraph 103 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 103 of the Third-Party Complaint.

104. Third-Party Defendants deny the allegations set forth in paragraph 87 of the Third-Party Complaint.

105. No response is required as to paragraph 105 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 105 of the Third-Party Complaint.

106. No response is required as to paragraph 106 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 106 of the Third-Party Complaint.

**AS TO THE FIFTH COUNTERCLAIM**

107. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth.

108. No response is required as to paragraph 108 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 108 of the Third-Party Complaint.

109. No response is required as to paragraph 109 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 109 of the Third-Party Complaint.

**AS TO THE SIXTH COUNTERCLAIM**

110. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth.

111. No response is required as to paragraph 111 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 111 of the Third-Party Complaint.

112. Third-Party Defendants deny the allegations set forth in paragraph 112 of the Third-Party Complaint.

113. Third-Party Defendants deny the allegations set forth in paragraph 113 of the Third-Party Complaint.

114. No response is required as to paragraph 114 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 114 of the Third-Party Complaint.

**AS AND FOR A FIRST AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

115. The Third-Party Plaintiffs do not have personal jurisdiction over the Third-Party Defendants.

**AS AND FOR A SECOND AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

116. The Third-Party Complaint is barred, in whole or in part, by the doctrine of laches.

**AS AND FOR A THIRD AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

117. The Third-Party Complaint is barred, in whole or in part, by the doctrine of equitable estoppel.

**AS AND FOR A FOURTH AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

118. The Third-Party Complaint is barred, in whole or in part, by Third-Party Plaintiffs' failure to satisfy the conditions precedent and to perform its own obligations under the parties' Agreements.

**AS AND FOR A FIFTH AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

119. The Third-Party Complaint is barred, in whole or in part, by the doctrine of unclean hands and bad faith.

**AS AND FOR A SIXTH AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

120. The Third-Party Complaint is barred, in whole or in part, because of Third-Party Plaintiffs' failure to mitigate its purported damages.

**AS AND FOR A SEVENTH AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

121. Any damages purportedly incurred by Third-Party Plaintiffs, as alleged in the Third-Party Complaint, are the result of Third-Party Plaintiffs' own acts and/or omissions, or that

of its principals, directors, officers, employees or agents, and not as the result of Third-Party Defendants' conduct.

**AS AND FOR AN EIGHTH AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

122. The Third-Party Complaint fails to state any cause of action

**AS AND FOR A NINTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

123. The Third-Party Complaint is barred, in whole or in part, because of Third-Party Plaintiffs' release of the Third-Party Defendants' obligations in the agreements at issue in the litigation.

**WHEREFORE**, Third-Party Defendants demand Judgment against Third-Party Plaintiffs: (1) dismissing the Third-Party Complaint; and (2) such other, further and different relief as to the Court may seem just, proper and equitable.

Dated: White Plains, New York  
December 11, 2020

DELBELLO DONNELLAN WEINGARTEN WISE &  
WIEDERKEHR, LLP  
*Lead Counsel for Third-Party Defendants*

By: /s/ Alfred E. Donnellan  
Alfred E. Donnellan, Esq.  
Nelida Lara, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, FORMATO, FERRARA, WOLF &  
CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare  
Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601

(914) 607-7010

TO:

John Giardino, Esq.  
Alex Barnett-Howell, Esq.  
Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10022  
Phone: (212) 730-7700  
*Attorneys for Defendants HBL SNF, LLC,  
Lizer Jozefovic and Mark Neuman*

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS }  
COUNTY OF ESSEX } ss:

William A. Nicholson, being duly sworn, deposes and says:

I am a named Third-Party Defendant. I have read the annexed Verified Answer to Third-Party Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

*[Handwritten Signature]*  
William A. Nicholson

Sworn to before me this  
4<sup>th</sup> day of December 2020

*[Handwritten Signature]*  
Notary Public



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

Index No. 60278/2020

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

– against –

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN and WILLIAM  
NICHOLSON,

Third-Party Defendants,

**VERIFIED REPLY TO  
COUNTERCLAIMS**

Plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”), by its attorneys DelBello, Donnellan Weingarten Wise & Wiederkehr, LLP, as and for its Reply to the Counterclaims of the Defendants HBL SNF, LLC, Lizer Jozefovic a/k/a Lizer Jozofovic and Mark Neuman, respectfully states and alleges as follows:

1. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1 of the Counterclaims.
2. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 2 of the Counterclaims.
3. WPH Properties denies the allegations set forth in paragraph 3 of the Counterclaims.

4. WPH Properties admits the allegations set forth in paragraph 4 of the Counterclaims.

5. WPH Properties denies the allegations set forth in paragraph 5 of the Counterclaims.

6. WPH Properties admits the allegations set forth in paragraph 6 of the Counterclaims.

7. WPH Properties admits the allegations set forth in paragraph 7 of the Counterclaims.

8. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 8 of the Counterclaims.

9. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 9 of the Counterclaims.

10. WPH Properties denies the allegations set forth in paragraph 10 of the Counterclaims.

11. WPH Properties admits the allegations set forth in paragraph 11 of the Counterclaims.

12. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 12 of the Counterclaims.

13. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 13 of the Counterclaims.

14. WPH Properties denies the allegations set forth in paragraph 14 of the Counterclaims except to admit that WHP Properties acted as developer for the new Facility.

15. WPH Properties denies the allegations set forth in paragraph 15 of the Counterclaims and refers to the terms of the Development Agreement.

16. WPH Properties denies the allegations set forth in paragraph 16 of the Counterclaims.

17. WPH Properties denies the allegations set forth in paragraph 17 of the Counterclaims except WPH Properties admits that, at one point in time, non-final projected costs were estimated to be \$56,631,759.

18. WPH Properties denies the allegations set forth in paragraph 18 of the Counterclaims except WPH Properties admits that, at one point in time, non-final projected costs were estimated to be those listed in the allegations set forth in paragraph 18 of the Counterclaims.

19. WPH Properties denies the allegations set forth in paragraph 19 of the Counterclaims.

20. WPH Properties denies the allegations set forth in paragraph 20 of the Counterclaims.

21. WPH Properties denies the allegations set forth in paragraph 21 of the Counterclaims.

22. WPH Properties admits the allegations set forth in paragraph 22 of the Counterclaims.

23. WPH Properties denies the allegations set forth in paragraph 23 of the Counterclaims except WPH Properties admits that CCC Equities, LLC provided \$9,863,246.

24. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 24 of the Counterclaims.

25. WPH Properties denies the allegations set forth in paragraph 25 of the Counterclaims except WPH Properties admits that the Jozefovic Team entered into a lease agreement, and an amended and restated lease thereto, to occupy and operate the Facility.

26. WPH Properties denies the allegations set forth in paragraph 26 of the Counterclaims except that WPH Properties admits that it executed a lease, and an amended and restated lease thereto, as landlord.

27. WPH Properties denies the allegations set forth in paragraph 27 of the Counterclaims except that WPH Properties states that the Lease referenced in paragraph 27 speaks for itself.

28. WPH Properties denies the allegations set forth in paragraph 28 of the Counterclaims.

29. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 28 of the Counterclaims.

30. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 30 of the Counterclaims.

31. WPH Properties denies the allegations set forth in paragraph 31 of the Counterclaims.

32. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 32 of the Counterclaims.

33. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 33 of the Counterclaims.

34. WPH Properties denies the allegations set forth in paragraph 34 of the Counterclaims.

35. WPH Properties denies the allegations set forth in paragraph 35 of the Counterclaims.

36. WPH Properties denies the allegations set forth in paragraph 34 of the Counterclaims except that WPH Properties admits that HBL SNF LLC and WPH Properties entered into the Development Agreement.

37. WPH Properties denies the allegations set forth in paragraph 34 of the Counterclaims except that WPH Properties admits that HBL SNF LLC and WPH Properties entered into a lease and an amended and restated lease thereto.

38. No response is required as to paragraph 38 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 38 of the Counterclaims and the term Lease as defined in the Counterclaims.

39. WPH Properties denies the allegations set forth in paragraph 39 of the Counterclaims and WPH Properties states that the Development Agreement speaks for itself.

40. WPH Properties denies the allegations set forth in paragraph 40 of the Counterclaims.

41. WPH Properties admits the allegations set forth in paragraph 41 of the Counterclaims.

42. WPH Properties denies the allegations set forth in paragraph 42 of the Counterclaims.

43. WPH Properties denies the allegations set forth in paragraph 43 of the Counterclaims.

44. WPH Properties denies the allegations set forth in paragraph 44 of the Counterclaims.

45. WPH Properties denies the allegations set forth in paragraph 45 of the Counterclaims.

46. WPH Properties denies the allegations set forth in paragraph 46 of the Counterclaims.

47. WPH Properties denies the allegations set forth in paragraph 47 of the Counterclaims.

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49. WPH Properties denies the allegations set forth in paragraph 49 of the Counterclaims.

50. WPH Properties denies the allegations set forth in paragraph 50 of the Counterclaims.

51. WPH Properties denies the allegations set forth in paragraph 51 of the Counterclaims.

52. WPH Properties denies the allegations set forth in paragraph 52 of the Counterclaims.

53. WPH Properties denies the allegations set forth in paragraph 53 of the Counterclaims.

54. WPH Properties denies the allegations set forth in paragraph 54 of the Counterclaims.

55. WPH Properties denies the allegations set forth in paragraph 55 of the Counterclaims.

56. WPH Properties denies the allegations set forth in paragraph 56 of the Counterclaims.

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58. WPH Properties denies the allegations set forth in paragraph 58 of the Counterclaims.

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60. WPH Properties denies the allegations set forth in paragraph 60 of the Counterclaims.

61. WPH Properties denies the allegations set forth in paragraph 61 of the Counterclaims.

62. WPH Properties denies the allegations set forth in paragraph 62 of the Counterclaims.

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64. WPH Properties denies the allegations set forth in paragraph 64 of the Counterclaims.

65. WPH Properties denies the allegations set forth in paragraph 65 of the Counterclaims.

66. WPH Properties denies the allegations set forth in paragraph 66 of the Counterclaims.

67. WPH Properties denies the allegations set forth in paragraph 67 of the Counterclaims.

68. WPH Properties denies the allegations set forth in paragraph 68 of the Counterclaims.

69. WPH Properties denies the allegations set forth in paragraph 69 of the Counterclaims.

70. WPH Properties denies the allegations set forth in paragraph 70 of the Counterclaims.

71. No response is required as to paragraph 71 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 71 of the Counterclaims.

72. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 72 of the Counterclaims.

73. WPH Properties denies the allegations set forth in paragraph 73 of the Counterclaims.

74. WPH Properties denies the allegations set forth in paragraph 74 of the Counterclaims.

75. WPH Properties denies the allegations set forth in paragraph 75 of the Counterclaims.

76. WPH Properties denies the allegations set forth in paragraph 76 of the Counterclaims.

77. WPH Properties denies the allegations set forth in paragraph 77 of the Counterclaims.

78. WPH Properties denies the allegations set forth in paragraph 78 of the Counterclaims except WPH Properties admits that CCCE procured financial contributions from third parties.

79. WPH Properties denies the allegations set forth in paragraph 79 of the Counterclaims.

80. WPH Properties denies the allegations set forth in paragraph 80 of the Counterclaims.

81. WPH Properties denies the allegations set forth in paragraph 81 of the Counterclaims.

82. WPH Properties denies the allegations set forth in paragraph 82 of the Counterclaims.

83. WPH Properties denies the allegations set forth in paragraph 83 of the Counterclaims.

84. WPH Properties denies the allegations set forth in paragraph 84 of the Counterclaims.

85. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 85 of the Counterclaims.

86. WPH Properties denies the allegations set forth in paragraph 86 of the Counterclaims.

87. WPH Properties denies the allegations set forth in paragraph 87 of the Counterclaims.

**AS TO THE FIRST COUNTERCLAIM**

88. WPH Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth at length.

89. No response is required as to paragraph 89 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 89 of the Counterclaims.

90. No response is required as to paragraph 90 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 90 of the Counterclaims.

91. No response is required as to paragraph 91 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 91 of the Counterclaims.

**AS TO THE SECOND COUNTERCLAIM**

92. WPH Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth length.

93. No response is required as to paragraph 93 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 93 of the Counterclaims.

**AS TO THE THIRD COUNTERCLAIM**

94. WPH Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth.

95. No response is required as to paragraph 95 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 95 of the Counterclaims.

96. No response is required as to paragraph 96 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 96 of the Counterclaims.

97. No response is required as to paragraph 97 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 97 of the Counterclaims.

**AS TO THE FOURTH COUNTERCLAIM**

98. WHP Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth.

99. No response is required as to paragraph 99 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 99 of the Counterclaims.

100. No response is required as to paragraph 100 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 100 of the Counterclaims.

101. No response is required as to paragraph 101 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 101 of the Counterclaims.

102. No response is required as to paragraph 102 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 102 of the Counterclaims.

103. No response is required as to paragraph 103 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 103 of the Counterclaims.

104. WPH Properties denies the allegations set forth in paragraph 87 of the Counterclaims.

105. No response is required as to paragraph 105 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 105 of the Counterclaims.

106. No response is required as to paragraph 106 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 106 of the Counterclaims.

**AS TO THE FIFTH COUNTERCLAIM**

107. WHP Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth.

108. No response is required as to paragraph 108 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 108 of the Counterclaims.

109. No response is required as to paragraph 109 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 109 of the Counterclaims.

**AS TO THE SIXTH COUNTERCLAIM**

110. WHP Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth.

111. No response is required as to paragraph 111 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 111 of the Counterclaims.

112. WPH Properties denies the allegations set forth in paragraph 112 of the Counterclaims.

113. WPH Properties denies the allegations set forth in paragraph 113 of the Counterclaims.

114. No response is required as to paragraph 114 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 114 of the Counterclaims.

**AS AND FOR A FIRST AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

115. The Counterclaims fail to state any cause of action.

**AS AND FOR A SECOND AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

116. The Counterclaims are barred, in whole or in part, by the doctrine of laches.

**AS AND FOR A THIRD AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

117. The Counterclaims are barred, in whole or in part, by the doctrine of equitable estoppel.

**AS AND FOR A FOURTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

118. The Counterclaims are barred, in whole or in part, by Defendants' failure to satisfy the conditions precedent and to perform its own obligations under the parties' Agreements.

**AS AND FOR A FIFTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

119. The Counterclaims are barred, in whole or in part, by the doctrine of unclean hands and bad faith.

**AS AND FOR A SIXTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

120. The Counterclaims are barred, in whole or in part, because of Defendants' failure to mitigate its purported damages.

**AS AND FOR A SEVENTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

121. Any damages purportedly incurred by Defendants, as alleged in the Counterclaims, are the result of Defendants' own acts and/or omissions, or that of its principals, directors, officers, employees or agents, and not as the result of WHP Properties' conduct.

**AS AND FOR AN EIGHTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

122. The Counterclaims are barred, in whole or in part, because of Defendants' release of Plaintiff's obligations in the agreements at issue in the litigation.

**WHEREFORE**, WHP Properties demands Judgment as prayed for in the Complaint, and Judgment against Defendants: (1) dismissing the Counterclaims contained in Defendants Verified Answer; and (2) such other, further and different relief as to the Court may seem just, proper and equitable.

Dated: White Plains, New York  
December 11, 2020

DELBELLO DONNELLAN WEINGARTEN WISE &  
WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare  
Properties I, LLC*

By: /s/ Alfred E. Donnellan  
Alfred E. Donnellan, Esq.  
Nelida Lara, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, FORMATO, FERRARA, WOLF &  
CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare  
Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

TO:

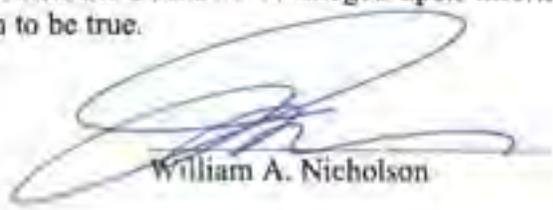
John Giardino, Esq.  
Alex Barnett-Howell, Esq.  
Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10022  
Phone: (212) 730-7700  
*Attorneys for Defendants HBL SNF, LLC,  
Lizer Jozefovic and Mark Neuman*

VERIFICATION

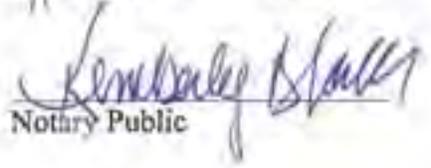
COMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the annexed Verified Reply to Counterclaims, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

  
William A. Nicholson

Sworn to before me this  
11<sup>th</sup> day of December 2020

  
Notary Public



**Alfred E. Donnellan**  
**Partner**  
aed@ddw-law.com

## **WISE & WIEDERKEHR, LLP**

COUNSELLORS AT LAW

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January 11, 2021

**VIA ECF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King Blvd.  
White Plains, New York 10601

***Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al***  
***Index No. 60278/2020***

Dear Justice Walsh:

This firm represents plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”) and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, “third-party defendants”) in the above action. We are writing in anticipation of tomorrow’s virtual conference to advise the Court that we wish to raise with the Court two motions that we wish to make.

First, as the Court may recall, the subject of our conference two weeks ago was our motion for leave to amend. At the defendants’ request, the conference was adjourned for two weeks in anticipation of a determination by the Supreme Court, New York County, with respect to the motion to consolidate that case with this one. There has been no decision. We, therefore, renew our request that the Court set a briefing schedule with respect to our motion for leave to amend.

Second, we will request that the Court set a briefing schedule for our motion to dismiss the counterclaims and third-party claims asserted by defendants/third-party plaintiffs, HBL SNF, Inc. (“HBL”), Lizer Jozefovic a/k/a Lizer Jozofovic (“Jozefovic”) and Mark Neuman (“Neuman”) (collectively, “defendants”), as well as a stay of discovery relating to the counterclaims and third-party claims pending the Court’s decision on the motion.

This is an action for breach of a lease for a brand new, state-of-the-art, 160-bed skilled nursing facility. The defendants have raised affirmative defenses, counterclaims and third-party claims alleging that WPH Properties breached the development agreement for the facility. Article III § I of the Development Agreement, however, releases those claims upon the defendants’ occupancy of the building. It provides that:

HONORABLE GRETCHEN WALSH  
JANUARY 11, 2021  
PAGE TWO

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“Except as provided in the Lease, on the Substantial Completion Date the Tenant/Operator shall (i) be deemed to have taken occupancy and accepted possession of the Project, (ii) have agreed that the Project has been completed in accordance with the Plans and Specifications, and (iii) ***have agreed that the Developer has fulfilled all of its responsibilities hereunder to the satisfaction of Tenant/Operator.***”

Development Agreement, Article III § I (emphasis added).

WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019 and HBL entered into possession of the Facility on September 30, 2019. Accordingly, the claims asserted by the defendants (the “Claims”) have been discharged and released under the express terms of the Development Agreement.

The need to move to dismiss on that basis now arises from the defendants’ document requests, which contain nine interrogatories and at least 80 of the document requests with respect to those claims and the alleged obligations under the Development Agreement, which, again, are barred pursuant to the release and agreement that all responsibilities under the Development Agreement have been fulfilled.

WPH Properties and third-party defendants should not be required to engage in the time consuming and expensive process of responding to interrogatories and over eighty separate document requests relating to Claims that have been discharged and released. WPH Properties and third-party defendants therefore request that the Court stay discovery relating to the Claims pending resolution of the Motion for partial summary judgment seeking dismissal of the Claims. To be clear, WPH Properties and third-party defendants do not seek to stay all discovery in this case. They seek only a limited stay of any discovery relating to the defendants’ counterclaims and third-party claims.

On January 7, 2021, in a good faith effort to resolve these issues without requesting the Court’s intervention, we sent a letter to John Giordano Esq., the attorney representing defendants, advising him that the Claims have been discharged and released pursuant to the Development Agreement. We requested that the defendants immediately withdraw all discovery demands relating to the Claims and discontinue the Claims with prejudice. A copy of the January 7, 2021 letter is annexed as Exhibit 1. The defendants have not agreed to do so. The letter from their counsel is attached as Exhibit 2.

Thank you for your consideration of this request.

Respectfully,

/s/ Alfred E. Donnellan

Alfred E. Donnellan

cc: John Giardino, Esq.  
(via ECF)

EXHIBIT 1

Alfred E. Donnellan  
Partner  
aed@ddw-law.com

## WISE & WIEDERKEHR, LLP

COUNSELLORS AT LAW

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(203) 298-0000

January 7, 2021

### VIA ECF

John Giardino, Esq.  
Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> floor  
New York, New York 10022

**Re: *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al***  
***Index No. 60278/2020***

Dear Mr. Giardino:

As you know, this firm represents plaintiff White Plains Healthcare Properties I, LLC (“WPH Properties”) and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, “third-party defendants”) in the above action.

I write to alert you to the fact that defendants’ counterclaims and third-party claims based upon alleged breach of obligations under the Development Agreement and alleged misrepresentations concerning project financing, construction and completion of the project are barred by Article III § I of the Development Agreement, which provides as follows:

Except as provided in the Lease, on the Substantial Completion Date the Tenant/Operator shall (i) be deemed to have taken occupancy and accepted possession of the Project, (ii) have agreed that the Project has been completed in accordance with the Plans and Specifications, and (iii) ***have agreed that the Developer has fulfilled all of its responsibilities hereunder to the satisfaction of Tenant/Operator.***

Development Agreement Article III § I (emphasis added).

The Substantial Completion Date has occurred. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019 and HBL entered into possession of the Facility on September 30, 2019. Since defendant agreed in the Development Agreement that the project

JANUARY 7, 2021  
PAGE TWO

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has been completed and that WPH Properties fulfilled all of its responsibilities to the satisfaction of HBL, there is no good faith basis for the counterclaims and third-party claims.

In addition, the Letter of Intent between the parties dated November 20, 2019 expressly waives any claims by the Tenant against the Landlord relating to 1) any obligation to deliver a mortgage of any particular amount, 2) any claims for uncompleted work except for a remaining punchlist and 3) any claims related to the Cost Certification except Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon receipt of all rent being paid and remaining current and all obligations of the Tenant are paid.

The urgency of this situation arises from the fact that many of defendants' document demands and interrogatories seek discovery relating to the counterclaims and third-party claims, which, again, have been discharged and released pursuant to the Development Agreement. They therefore seek discovery that is completely irrelevant to the issues in this case and not reasonably calculated to lead to the discovery of admissible evidence. In particular, defendants' First Request for the Production of Documents and Things dated December 18, 2020 contains at least 80 requests (specifically, request numbers 4 through 79 and 239 through 246) concerning those claims. Interrogatories number 1-7, 12 and 13 similarly seek information concerning those claims. All of these requests therefore fall outside the scope of permissible discovery.

Accordingly, I am writing in advance of next week's conference with the Court to request that the defendants withdraw their counterclaims and third-party claims, as well as the defendants' interrogatories and document requests relating to those claims because the release makes those claims frivolous as defined by 22 NYCRR 130-1.1.

This letter is a good faith effort to resolve these issues without Court intervention. If defendants do not immediately agree to discontinue the claims with prejudice and withdraw the related interrogatories and document requests, WPH Properties and third-party defendants will seek appropriate relief from the Court, including sanctions.

Please let me know no later than 5 p.m. on January 8, 2021 whether the defendants will discontinue the claims with prejudice and withdraw the related interrogatories and document requests.

Very truly yours,

/s/ Alfred E. Donnellan  
Alfred E. Donnellan

EXHIBIT 2



**JOHN GIARDINO**  
jgiardino@mrlp.com

**New York Office**  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
P 212.730.7700 F 212.730.7725 www.mrlp.com

January 8, 2021

**VIA EMAIL**

Alfred E. Donnellan, Esq.  
Delbello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Ave.  
White Plains, New York 10601  
aed@ddw-law.com

**Re: *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al***  
***Index No. 60278/2020***

Dear Mr. Donnellan:

I write in response to your letter dated January 7, 2021.

On December 18, 2020, Defendants served White Plains Healthcare Properties I, LLC, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson (collectively referred to as "Plaintiffs") with their First Set of Interrogatories and First Request for the Production of Documents and Things (collectively, the "Discovery Requests")

Our Discovery Requests were provided in accordance with Judge Walsh's Preliminary Conference Order, filed November 13, 2020 (the "PCO"), which required written discovery demands to be served on or before December 18, 2020.

For the reasons stated herein, Defendants will not discontinue their claims or withdraw the Discovery Requests. We expect Plaintiffs to provide responses and answers to the Discovery Requests by February 26, 2021, as set forth in the PCO.

Your letter asserts that Defendants' "counterclaims and third-party claims based upon alleged breach of obligations under the Development Agreement and alleged misrepresentations concerning project financing, construction and completion of the project are barred by Article III § I of the Development Agreement." You also contend that the Letter of Intent waived "any claims by the Tenant against the Landlord" regarding the (1) "obligation to deliver a mortgage of any particular amount, 2) any claims for uncompleted work except for a remaining punchlist and 3) any claims related to the Cost Certification."

January 8, 2021  
Page 2

We disagree. The Development Agreement was entered into between the parties on November 19, 2015, with the express requirement that Plaintiffs would deliver a completed, state-of-the-art 160-bed skilled nursing facility on Church Street in White Plains, New York (the "Project"). The Development Agreement imposed substantial obligations on Plaintiffs, including, but not limited to, the requirements that (1) the Project would be "substantially completed and ready for occupancy within 22 months;" (2) Plaintiffs would be "responsible for all for all development costs;" and (3) the Project would be "a 'turnkey job.'" Development Agreement, Article III §§ D-E, H. Plaintiffs also represented that the Project could be completed for an estimated cost of \$56.6 million, with Plaintiffs responsible for securing the financing and mortgage.

It is sufficient to state that Plaintiffs breached these obligations, forcing Defendants to expend substantial resources and further delaying completion of the Project until December 2019. While Defendants chose to begin operations to mitigate damages, Defendants have never agreed to waive the claims or damages which resulted from Plaintiffs' breaches.

Moreover, the Development Agreement does not contain a waiver of claims or damages. Waiver of claims or damages requires specific language and intent. *City of New York v State*, 40 NY2d 659, 669 [1976] ("A waiver is the intentional relinquishment of a known right with both knowledge of its existence and an intention to relinquish it") (citations omitted). Absent clear language and consideration, Plaintiffs cannot claim that the Development Agreement constitutes a waiver of all claims and damages related to the Project. *Braddock v Braddock*, 60 AD3d 84, 92 [1st Dept 2009] ("Proof of a waiver, of course, requires establishing an intentional relinquishment of a known right and should not be lightly presumed.") (citations omitted).

Likewise, the Letter of Intent, entered into on November 20, 2019, placed substantial obligations on Plaintiffs, including, but not limited, to the requirement that the Project would be contributed "to a newly formed Delaware Statutory Trust," which Defendants would acquire. Again, it is indisputable that Plaintiffs breached their obligations under the Letter of Intent. Due to these and other factors, Plaintiffs cannot rely upon alleged waivers in the Development Agreement or the Letter of Intent, particularly in the presence of Defendants' repeated and clear objections to the non-performance and other malfeasance of the Plaintiffs.

Finally, Defendants have full right to demand discovery into these issues regardless of whether Plaintiffs dispute the validity of Defendants' claims. As you well know, the scope of discovery is extremely broad:

There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof. We have emphasized that the words, 'material and necessary', are . . . to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason . . . The statute embodies the policy determination that liberal discovery encourages fair and effective resolution of disputes on the merits.

*Forman v Henkin*, 30 NY3d 656, 661 [2018]. Therefore, CPLR 3101(a) permits Defendants to engage in legitimate discovery regarding Plaintiffs' failures and breaches regarding the construction and financing of the Project, as these matters are both material and necessary to Plaintiffs' claims.

January 8, 2021  
Page 3

While we fully intend to work with you and your clients to efficiently conduct discovery, Defendants will not waive valid claims or their discovery requests related to those claims. We are available to discuss the manner in which the documents we have sought can be produced.

Very truly yours,

**MICHELMAN & ROBINSON, LLP**



John Giardino

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiffs,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Index No. 60278/2020

**AFFIRMATION OF  
ALFRED E. DONNELLAN**

Alfred E. Donnellan, an attorney duly admitted to practice in the courts of the State of New York, affirms the following to be true under the penalty of perjury:

1. I am a member of the law firm of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, the attorneys, along with Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, for plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”), and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, “third-party defendants”). I submit this affirmation in support of the motion of WPH Properties, pursuant to CPLR § 3025(b), for leave to file an amended complaint.

2. WPH Properties is the owner of a brand new, state-of-the-art, 160-bed skilled nursing home located at 116-120 Church Street, White Plains, New York. Defendant HBL SNF,

LLC is the tenant and operator of the Facility under a lease, dated as of November 19, 2015, as amended July 12, 2017. Defendants Lizer Jozefovic and Mark Neuman are the principals of HBL and the guarantors of HBL's obligations under the lease. The guaranty was the subject of a security agreement, pursuant to which Jozefovic pledged his controlling, 71% membership interest in Waterview Acquisition I, LLC, which owns a 130-bed skilled nursing facility known as Waterview Hills Rehabilitation and Nursing Center located at 537 Route 22, Purdys, New York 10578 as security for HBL's obligations.

3. WPH Properties commenced this action on September 18, 2020 by filing a summons and complaint seeking to recover the amounts due as a result of HBL's default under the lease, a subsequent letter of intent and as a hold-over tenant after WPH Properties terminated the lease, as well as the guaranties by Jozefovic and Neuman. A copy of the summons and complaint is attached as **Exhibit A**. The defendants answered on November 5, 2020. A copy of their answer is attached as **Exhibit B**.

4. On November 30, 2020, WPH Properties served filed an amended complaint that added a fifth cause of action alleging that Jozefovic had breached his obligations under the security agreement by agreeing to and voluntarily permitting the amendment of the operating agreement of Waterview Acquisition I, LLC, by assigning the Waterview Membership interest that had been pledged as security for the lease to Metropolitan Commercial Bank ("MCB") as security for another obligations, by failing to add defendant Howard Fensterman as a co-signatory to certain accounts held by JP Morgan Chase, as required by the security agreement, and by failing to post an additional security deposit required by the lease. A copy of the amended complaint is attached

as **Exhibit C**. A redline version of the amended complaint, showing the changes from the original complaint, is annexed as **Exhibit D**.

5. By letter dated December 2, 2020, the defendants' counsel rejected the service of the amended complaint on the grounds that it was not served within 20 days of the service of the answer and that he had instituted the New York County action seeking declaratory relief regarding WHP Properties' rights to enforce the security agreement. A copy of the letter from the defendants' counsel is attached as **Exhibit E**. Due to a clerical error, the amended complaint was served shortly after Thanksgiving Day weekend, 25 days after defendants served their answer on November 5, 2020.

6. The defendants' reasons for rejecting the amended complaint are not a basis for denying this motion. To begin with, WHP Properties already moved to change venue and consolidate the action entitled *Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, (Supreme Court, New York County, Index No. 655549/2020) (the "New York County Action") with this action because the New York County Action was filed after this action was commenced in Westchester and the venue for the New York County Action is improper because the only connection this dispute has to New York County is the place of business of MCB, a nominal party. The motion to change venue and consolidate has been fully briefed and submitted before Hon. Nancy Bannon, J.S.C. and the parties are awaiting the Court's decision on the motion. More important, WPH Properties is already suing HBL and Jozefovic here for breaching the lease and the security agreement. WPH Properties' additional claims, based also on the lease and the security agreement, belong here, as well, not in the libel action Jozefovic commenced in New York County.

7. Pursuant to the Commercial Division rules, on December 4, 2020, WPH Properties requested a pre-motion conference with respect to a motion for leave to amend. The issue was discussed at several conferences, most recently on January 22, 2021. The defendants will not consent to the service and filing of the amended complaint. WPH Properties therefore moves for leave to amend.

8. For the reasons set forth in the accompanying memorandum of law, WPH Properties respectfully submits that leave to amend is appropriate and should be granted. Granting leave to amend the complaint would result in no prejudice or surprise whatever to the defendants. Discovery in this case has only just commenced and no depositions have been scheduled taken. The additional cause of action contained in the amended complaint – the fifth cause of action – arises out of the same lease and involves the obligations as are at issue in the original complaint therefore there is no prejudice or surprise to the defendants. And the defendants have no plausible argument that the fifth cause of action “is palpably insufficient or patently devoid of merit.”

9. The fifth cause of action added to the amended complaint is based on the clear and unambiguous provisions of the security agreement and the lease, copies of which are attached as **Exhibit F and Exhibit G**, respectively. Many of the allegations in the proposed fifth cause of action are either indisputable or are established by the answer Metropolitan Commercial Bank (“MCB”) has submitted in the New York County Action, the related action pending before Hon. Nancy Bannon, J.S.C in the Supreme Court, New York County. A copy of MCB’s answer is attached as **Exhibit H**.

10. MCB’s answer confirms that after pledging the Waterview Collateral to WPH

Properties, Jozefovic pledged it again MCB to secure his loan obligation to MCB. The MCB answer also establishes that the Waterview operating agreement was amended to permit that pledge. Jozefovic has also admitted in an affirmation he submitted to the court in the New York County Action that, after pledging the Waterview Collateral to WPH Properties, he subsequently “assigned the [Waterview] Membership Interest to Defendant Metropolitan Commercial Bank (“MCB”) as part of a financing arrangement. Affirmation of Lizer Jozefovic dated October 21, 2020, ¶23. As alleged in the amended complaint’s fifth cause of action, Jozefovic breached the security agreement by pledging his Waterview interest to MCB and by amending the Waterview operating agreement to facilitate that pledge.

11. As set forth in the accompanying memorandum of law, “leave to amend a pleading should be granted where the amendment is neither palpably insufficient nor patently devoid of merit, and the delay in seeking amendment does not prejudice or surprise the opposing party.” That is precisely the situation here.

WHEREFORE, I respectfully request that this Court grant the motion of WPH Properties for leave to amend in all respects.

Dated: White Plains, New York  
January 26, 2021

/s/ Alfred E. Donnellan  
Alfred E. Donnellan

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiffs,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Index No. 60278/2020

**AFFIRMATION OF  
ALFRED E. DONNELLAN**

Alfred E. Donnellan, an attorney duly admitted to practice in the courts of the State of New York, affirms the following to be true under the penalty of perjury:

1. I am a member of the law firm of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, the attorneys, along with Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, for plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”), and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, “third-party defendants”). I submit this affirmation in support of the motion of WPH Properties, pursuant to CPLR § 3025(b), for leave to file an amended complaint.

2. WPH Properties is the owner of a brand new, state-of-the-art, 160-bed skilled nursing home located at 116-120 Church Street, White Plains, New York. Defendant HBL SNF,

LLC is the tenant and operator of the Facility under a lease, dated as of November 19, 2015, as amended July 12, 2017. Defendants Lizer Jozefovic and Mark Neuman are the principals of HBL and the guarantors of HBL's obligations under the lease. The guaranty was the subject of a security agreement, pursuant to which Jozefovic pledged his controlling, 71% membership interest in Waterview Acquisition I, LLC, which owns a 130-bed skilled nursing facility known as Waterview Hills Rehabilitation and Nursing Center located at 537 Route 22, Purdys, New York 10578 as security for HBL's obligations.

3. WPH Properties commenced this action on September 18, 2020 by filing a summons and complaint seeking to recover the amounts due as a result of HBL's default under the lease, a subsequent letter of intent and as a hold-over tenant after WPH Properties terminated the lease, as well as the guaranties by Jozefovic and Neuman. A copy of the summons and complaint is attached as **Exhibit A**. The defendants answered on November 5, 2020. A copy of their answer is attached as **Exhibit B**.

4. On November 30, 2020, WPH Properties served filed an amended complaint that added a fifth cause of action alleging that Jozefovic had breached his obligations under the security agreement by agreeing to and voluntarily permitting the amendment of the operating agreement of Waterview Acquisition I, LLC, by assigning the Waterview Membership interest that had been pledged as security for the lease to Metropolitan Commercial Bank ("MCB") as security for another obligations, by failing to add defendant Howard Fensterman as a co-signatory to certain accounts held by JP Morgan Chase, as required by the security agreement, and by failing to post an additional security deposit required by the lease. A copy of the amended complaint is attached

as **Exhibit C**. A redline version of the amended complaint, showing the changes from the original complaint, is annexed as **Exhibit D**.

5. By letter dated December 2, 2020, the defendants' counsel rejected the service of the amended complaint on the grounds that it was not served within 20 days of the service of the answer and that he had instituted the New York County action seeking declaratory relief regarding WHP Properties' rights to enforce the security agreement. A copy of the letter from the defendants' counsel is attached as **Exhibit E**. Due to a clerical error, the amended complaint was served shortly after Thanksgiving Day weekend, 25 days after defendants served their answer on November 5, 2020.

6. The defendants' reasons for rejecting the amended complaint are not a basis for denying this motion. To begin with, WHP Properties already moved to change venue and consolidate the action entitled *Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, (Supreme Court, New York County, Index No. 655549/2020) (the "New York County Action") with this action because the New York County Action was filed after this action was commenced in Westchester and the venue for the New York County Action is improper because the only connection this dispute has to New York County is the place of business of MCB, a nominal party. The motion to change venue and consolidate has been fully briefed and submitted before Hon. Nancy Bannon, J.S.C. and the parties are awaiting the Court's decision on the motion. More important, WPH Properties is already suing HBL and Jozefovic here for breaching the lease and the security agreement. WPH Properties' additional claims, based also on the lease and the security agreement, belong here, as well, not in the libel action Jozefovic commenced in New York County.

7. Pursuant to the Commercial Division rules, on December 4, 2020, WPH Properties requested a pre-motion conference with respect to a motion for leave to amend. The issue was discussed at several conferences, most recently on January 22, 2021. The defendants will not consent to the service and filing of the amended complaint. WPH Properties therefore moves for leave to amend.

8. For the reasons set forth in the accompanying memorandum of law, WPH Properties respectfully submits that leave to amend is appropriate and should be granted. Granting leave to amend the complaint would result in no prejudice or surprise whatever to the defendants. Discovery in this case has only just commenced and no depositions have been scheduled taken. The additional cause of action contained in the amended complaint – the fifth cause of action – arises out of the same lease and involves the obligations as are at issue in the original complaint therefore there is no prejudice or surprise to the defendants. And the defendants have no plausible argument that the fifth cause of action “is palpably insufficient or patently devoid of merit.”

9. The fifth cause of action added to the amended complaint is based on the clear and unambiguous provisions of the security agreement and the lease, copies of which are attached as **Exhibit F and Exhibit G**, respectively. Many of the allegations in the proposed fifth cause of action are either indisputable or are established by the answer Metropolitan Commercial Bank (“MCB”) has submitted in the New York County Action, the related action pending before Hon. Nancy Bannon, J.S.C in the Supreme Court, New York County. A copy of MCB’s answer is attached as **Exhibit H**.

10. MCB’s answer confirms that after pledging the Waterview Collateral to WPH

Properties, Jozefovic pledged it again MCB to secure his loan obligation to MCB. The MCB answer also establishes that the Waterview operating agreement was amended to permit that pledge. Jozefovic has also admitted in an affirmation he submitted to the court in the New York County Action that, after pledging the Waterview Collateral to WPH Properties, he subsequently “assigned the [Waterview] Membership Interest to Defendant Metropolitan Commercial Bank (“MCB”) as part of a financing arrangement. Affirmation of Lizer Jozefovic dated October 21, 2020, ¶23. As alleged in the amended complaint’s fifth cause of action, Jozefovic breached the security agreement by pledging his Waterview interest to MCB and by amending the Waterview operating agreement to facilitate that pledge.

11. As set forth in the accompanying memorandum of law, “leave to amend a pleading should be granted where the amendment is neither palpably insufficient nor patently devoid of merit, and the delay in seeking amendment does not prejudice or surprise the opposing party.” That is precisely the situation here.

WHEREFORE, I respectfully request that this Court grant the motion of WPH Properties for leave to amend in all respects.

Dated: White Plains, New York  
January 26, 2021

/s/ Alfred E. Donnellan  
Alfred E. Donnellan

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

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Document Number:

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1	<a href="#">SUMMONS + COMPLAINT</a>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
2	<a href="#">EXHIBIT(S)</a> - 1 <i>Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
3	<a href="#">EXHIBIT(S)</a> - 2 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
4	<a href="#">EXHIBIT(S)</a> - 3 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
5	<a href="#">EXHIBIT(S)</a> - 4 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
6	<a href="#">EXHIBIT(S)</a> - 5 <i>Notice of Default</i>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
7	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> <i>Affidavit of service upon defendant HBL SNF Inc</i>	<a href="#">Coleman, W.</a> Filed: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>

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8	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> affidavits of service of summons and complaint - all defendants	<a href="#">Coleman, W.</a> Filed: 10/07/2020 Received: 10/07/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
9	<a href="#">NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
10	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #1) Affirmation of Default of Alfred E. Donnellan	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
11	<a href="#">EXHIBIT(S)</a> - 1 (Motion #1) Complaint <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
12	<a href="#">EXHIBIT(S)</a> - 2 (Motion #1) Affidavit of Service	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
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18	<a href="#">RJI -RE: NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
19	<a href="#">ADDENDUM - COMMERCIAL DIVISION (840C)</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
20	<a href="#">COURT NOTICE</a>	Court User Filed: 10/29/2020 Received: 10/29/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
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22	<a href="#">NOTICE OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020	<b>Processed</b>

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23 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
24 <a href="#">EXHIBIT(S)</a> - A (Motion #2) <i>Email Correspondence</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
25 <a href="#">EXHIBIT(S)</a> - B (Motion #2) <i>Proof of November Rent Payment</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
26 <a href="#">EXHIBIT(S)</a> - C (Motion #2) <i>Filed Answer</i>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
27 <a href="#">MEMORANDUM IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
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29 <a href="#">STIPULATION - WITHDRAWING MOTION/ORDER TO SHOW CAUSE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 11/09/2020 Received: 11/09/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
30 <a href="#">DECISION + ORDER ON MOTION</a> (Motion #1) <i>Motion withdrawn</i>	Court User Filed: 11/13/2020 Received: 11/10/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
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32 <a href="#">JOINT ONE PAGE STATEMENT OF FACTS &amp; PARTIES CONTENTIONS</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
33 <a href="#">EXHIBIT(S)</a> - 1 <i>Copy of Pleadings</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
34 <a href="#">PRELIMINARY CONFERENCE ORDER (PROPOSED)</a>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	*** Pending *** <a href="#">Confirmation Notice</a>
35 <a href="#">EXHIBIT(S)</a> - 1 <i>ADR Attorney Certification for Alfred Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 11/12/2020 Received: 11/12/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
36 <a href="#">ORDER - PRELIMINARY CONFERENCE</a>	Court User Filed: 11/13/2020 Received: 11/13/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
37 <a href="#">COMPLAINT (AMENDED)</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

		Filed: 11/30/2020	<a href="#">Confirmation Notice</a>
	<i>Amended Verified Complaint</i>	Received: 11/30/2020	
38	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended and Restated Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
39	<a href="#">EXHIBIT(S)</a> - 2 <i>Jozefovic Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
40	<a href="#">EXHIBIT(S)</a> - 3 <i>Neuman Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
41	<a href="#">EXHIBIT(S)</a> - 4 <i>Jozefovic Security Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
42	<a href="#">EXHIBIT(S)</a> - 5 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
43	<a href="#">EXHIBIT(S)</a> - 6 <i>Notice of Default</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
44	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> <i>Letter to Judge Walsh requesting pre motion conference</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
45	<a href="#">EXHIBIT(S)</a> - 1 <i>Amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
46	<a href="#">EXHIBIT(S)</a> - 2 <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
47	<a href="#">EXHIBIT(S)</a> - 3 <i>Compared version of amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
48	<a href="#">ANSWER TO THIRD PARTY COMPLAINT</a> <i>Verified Answer to Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
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50	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 01/11/2021 Received: 01/11/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
51	<a href="#">NOTICE OF MOTION</a> (Motion #3) <i>to file Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
52	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF</a>	<a href="#">Donnellan, A.</a>	<b>Processed</b>

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	<a href="#">MOTION</a> (Motion #3) <i>Affirmation of Alfred E. Donnellan in Support of Motion to file Amended Complaint</i>	Filed: 01/26/2021 Received: 01/26/2021	<a href="#">Confirmation Notice</a>
53	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>Complaint with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
54	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
55	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Amended Compliant with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
56	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Redline version of Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
57	<a href="#">EXHIBIT(S)</a> - E (Motion #3) <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
58	<a href="#">EXHIBIT(S)</a> - F (Motion #3) <i>Security Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
59	<a href="#">EXHIBIT(S)</a> - G (Motion #3) <i>Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
60	<a href="#">EXHIBIT(S)</a> - H (Motion #3) <i>NY County Action Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
61	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
62	<a href="#">NOTICE OF MOTION</a> (Motion #4) *Corrected*	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
63	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #4) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
64	<a href="#">EXHIBIT(S)</a> - A (Motion #4) <i>Complaint</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
65	<a href="#">EXHIBIT(S)</a> - B (Motion #4) <i>Answer</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
66	<a href="#">EXHIBIT(S)</a> - C (Motion #4) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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Lease  
**Redacted** per 22 NYCRR §202.5(e)  
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Filed: 02/03/2021 [Confirmation Notice](#)  
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- 68 [EXHIBIT\(S\)](#) - E (Motion #4)  
Temporary Certificate of Occupancy  
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- 69 [EXHIBIT\(S\)](#) - F (Motion #4)  
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- 70 [EXHIBIT\(S\)](#) - G (Motion #4)  
NYSDOH Communication  
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- 75 [EXHIBIT\(S\)](#) - A (Motion #3)  
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[Giardino, J.](#) **Processed**  
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# Exhibit B

## to Donnellan Aff.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278 2020

-against-

HBL SNE, LLC, LIZER JOZEFOVIC AKA LIZER  
JOZOVIC and MARK NEUMAN,

VERIFIED ANSWER  
WITH AFFIRMATIVE  
DEFENSES, COUNTER-  
CLAIMS AND THIRD-  
PARTY COMPLAINT

Defendants and  
Third-Party Plaintiff.

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

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Defendants, HBL SNE, LLC, LIZER JOZEFOVIC AKA LIZER JOZOVIC and  
MARK NEUMAN (collectively, "Defendants"), by and through their counsel Michelman &  
Robinson, LLP, hereby assert the following verified answer with affirmative defenses,  
counterclaims, and third-party complaint and allege upon information and belief as follows:

**ANSWER TO COMPLAINT**

1. Defendants deny the allegations in paragraphs "1," "2," and "3."
2. Defendants admit the allegations in paragraphs "4" through "11."
3. Defendants deny the allegations in paragraphs "12" and "13."
4. In response to the allegations in paragraphs "14" through "20," Defendants assert  
that the document speaks for itself.

5. Defendants admit the allegations in paragraphs “21” and “22.”

6. In response to the allegations in paragraph “23,” Defendants assert that the document speaks for itself.

7. Defendants deny the allegations in paragraphs “24,” “25,” and “26.”

8. In response to the allegations in paragraphs “27” through “32,” Defendants assert that the document speaks for itself.

9. Defendants deny the allegations in paragraph “33.”

10. In response to the allegations in paragraphs “34” through “37,” Defendants assert that the document speaks for itself.

11. Defendants deny the allegations in paragraphs “38” through “53.”

12. In response to the allegations in paragraph “54,” Defendants assert that the document speaks for itself.

13. Defendants admit the allegations in paragraph “55.”

14. In response to the allegations in paragraphs “56” through “59,” Defendants assert that the document speaks for itself.

15. Defendants deny the allegations in paragraphs “60,” “61,” and “62.”

16. Defendants lack sufficient information to form a belief regarding the allegations and, on that basis, deny the allegations in paragraphs “63” and “64.”

17. Defendants deny the allegations in paragraph “65.”

18. In response to the allegations in paragraphs “66” and “67,” Defendants assert that the document speaks for itself.

19. Defendants deny the allegations in paragraphs “68” through “75.”

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

20. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “75” as if fully set forth herein.

21. Defendants deny the allegations in paragraphs “76” and “77.”

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

22. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “77” as if fully set forth herein.

23. Defendants deny the allegations in paragraphs “78” and “79.”

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

24. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “79” as if fully set forth herein.

25. Defendants deny the allegations in paragraphs “80” and “81.”

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

26. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “81” as if fully set forth herein.

27. Defendants deny the allegations in paragraphs “82” and “83.”

**AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses, without admitting that Defendants would bear the burden of proof on any of these or any other affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE  
(Plaintiff's Breach)**

1. Plaintiff's claims for relief are barred, in whole or in part, because plaintiff is in breach of its obligations under the Lease and the integrated development agreements.

**SECOND AFFIRMATIVE DEFENSE  
(Failure to Perform)**

2. Plaintiff failed to perform its obligations under the Lease and integrated Project documents and is not entitled to performance by the Defendants.

**THIRD AFFIRMATIVE DEFENSE  
(Terms Too Indefinite To Enforce)**

3. Certain terms within the Lease which plaintiff seeks to enforce are not clear and not definite and are therefore unenforceable.

**FOURTH AFFIRMATIVE DEFENSE  
(Payment)**

4. Defendants have made various substantial pre-payments of rent which have not been credited to their account.

**FIFTH AFFIRMATIVE DEFENSE  
(Not Entitled to Enforcement)**

5. Plaintiff's failure to deliver the Project in compliance with NYSDOH approvals renders the Lease unenforceable.

**SIXTH AFFIRMATIVE DEFENSE  
(Offsets)**

6. Defendants are entitled to substantial offsets against the rents due under the Lease.

**SEVENTH AFFIRMATIVE DEFENSE  
(Fraud In The Inducement)**

7. Plaintiff induced the Defendants to enter into the Lease and guarantee agreements by making fraudulent representations and failing to disclose material facts.

**EIGHTH AFFIRMATIVE DEFENSE  
(Waiver)**

8. Plaintiff has accepted performance by Defendants and waives any and all right to sue for breach of contract.

**NINTH AFFIRMATIVE DEFENSE  
(Bad Faith/Unclean Hands)**

9. The plaintiff is not entitled to the relief it seeks as it has acted in bad faith and with unclean hands.

**TENTH AFFIRMATIVE DEFENSE  
(Other Affirmative Defenses)**

10. Defendants reserve the right to supplement or amend this Verified Answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this litigation.

**COUNTERCLAIMS AGAINST WHITE PLAINS  
HEALTHCARE PROPERTIES I, LLC  
AND  
THIRD-PARTY CLAIMS AGAINST CCC EQUITIES, LLC,  
PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, AND WILLIAM NICHOLSON**

Now and for their counterclaims against plaintiff and third-party complaint against third-party defendants, Defendants, upon information and belief, allege the following:

1. CCC Equities, LLC is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

2. Project Equity Consulting is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

3. The Congress Companies is a corporation duly organized and existing under the laws of the State of Massachusetts with an address and place of business at 2 Bourbon Street, West Peabody Executive Center, Peabody, Massachusetts 01960 and regularly conducts business within the State of New York.

4. Howard Fensterman is an individual residing at 4 Pond Lane, Sands Point, New York 11050 with a business address and place of business at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

5. Through the period complained of herein, Fensterman acted as both a principal in the transaction and legal counsel to certain parties including the defendant Lizer Jozefovic.

6. William Nicholson is an individual residing at 12 Long Meadow Drive, Ipswich, Massachusetts 01938 with a business address and place of business at 2 Bourbon Street, West Peabody Executive Center, Suite 200, Peabody, Massachusetts 01960.

7. This case involves the development of a new state-of-the-art 160-bed skilled nursing facility on Church Street in White Plains, New York (the "Facility.")

8. The Facility was proposed by the defendant, HBL SNF, LLC, and its principals Lizer Jozefovic and Mark Newman (the “Jozefovic Team”) to the New York State Department of Health (“NYSDOH”) in August 2009.

9. The Facility is dedicated to providing specialized services to “difficult to place patients,” including but not limited to, patients who exhibit psychiatric behaviors, patients who are undocumented, patients with developmental and physical disabilities, and patients who have no means of financial support and require charity care.

10. The Facility was intentionally located in White Plains to service high-density minority and high-density poverty populations as compared to surrounding regions.

11. In order to obtain a Certificate of Need from NYSDOH, the Jozefovic Team acquired skilled nursing bed licenses from other area nursing facilities including Hebrew Hospital Home of Westchester, Bethel Nursing Home, and Taylor Care Center.

12. After full review of the Jozefovic Team’s application, NYSDOH determined that the Jozefovic Team was a successful operator of nursing facilities that are authorized to care for the elderly and individuals with long-term physical care needs and has an established history of achieving high occupancy at the facilities it operated.

13. NYSDOH further determined that the Facility was unique and necessary as it provided care to patients not accepted by other facilities because of their special needs.

14. At the time the Jozefovic Team proposed the Facility, the Plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and the third-party defendants Howard Fensterman (“Fensterman”), William Nicholson (“Nicholson”), and their companies CCC Equities LLC (“CCCE”), Project Equity Construction (“PEC”), and The Congress Companies (“Congress”), approached the Jozefovic Team and proposed that they act as developers for the new Facility.

15. Led by third-party defendant Fensterman, these parties represented that they were capable of performing all aspects of development of the Facility including construction and financing (hereafter “the Project.”)

16. In fact, the Project costs for the Facility presented to NYSDOH by the Jozefovic Team were costs calculated and submitted by Fensterman and Nicholson.

17. Importantly, these costs established a total Project cost of \$56, 631,759.

18. The Project costs for the Facility were itemized by Fensterman and Nicholson as follows:

Land acquisition	\$ 4,528,333
New construction	\$37,282,722
Design Contingency	\$ 1,864,136
Construction Contingency	\$ 1,864,136
Architect/Engineering Fees	\$ 2,982,618
Construction Manager Fees	\$ 745,654
Other Fees (Consultant)	\$ 750,000
Movable Equipment	\$ 1,480,000
Financing Costs	\$ 2,112,000
Interim Interest Expense	\$ 2,710,400
CON Application Fee	\$ 2,000
CON Processing Fee	\$ 309,760
Total Project Cost	\$56,631,759

19. Many of these costs were to be paid to Fensterman and Nicholson directly, as well as Fensterman’s law firm, and other costs to their entities as fees, interest costs, and other Project expenses.

20. In addition, Fensterman and Nicholson represented that they could arrange for 100% of the Project financing.

21. More specifically, Fensterman and Nicholson specifically represented and agreed in writing that they could secure a HUD insured mortgage in the amount of \$42,240,000 with an interest rate of 5.5% and a term of thirty (30) years.

22. A description of this mortgage was included in the projected Medicaid Reimbursement submitted to NYSDOH as part of the Project feasibility forecast.

23. Furthermore, Fensterman represented that he could provide the necessary project equity in the amount of \$9,863,246 through his company CCC Equities, LLC.

24. The Jozefovic Team presented this financing arrangement to NYSDOH in support of its request for approval of the Facility and these costs became part of NYSDOH's Project approval.

25. Given that Fensterman and Nicholson agreed to develop, finance, and own the Project, the Jozefovic Team agreed to enter into a Lease Agreement to occupy and operate the Facility.

26. To accomplish this, Fensterman and Nicholson proposed that their company White Plains Healthcare Properties I, LLC become the landlord for the operating company owned by the Jozefovic Team known as HBL SNF, LLC.

27. The Lease was to be for a twenty (20) year term.

28. The rent was to be calculated as an amount equal to the debt service of the HUD insured mortgage to be obtained by Fensterman and Nicholson plus a return of cash equity to WPHP on the account of the equity contributions through CCCE.

29. The annual rent proposed by Fensterman and Nicholson and presented to NYSDOH equaled \$4,318,000 annually or \$360,000 per month.

30. The amount of annual rent as calculated above was eligible for reimbursement to HBL SNF, LLC through the NYSDOH.

31. The Project as proposed to the NYSDOH was to be completed in approximately twenty (20) months.

32. The NYSDOH gave approval for the Project on the terms described above in October 2012.

33. Throughout the NYSDOH application process, the Jozefovic Team relied upon representations made by Fensterman and Nicholson.

34. However, shortly after receiving approval from NYSDOH, the Jozefovic Team learned that Fensterman and Nicholson did not have the capital necessary to commence or complete the Project as presented.

35. As a result of this lack of capital the Project was delayed for years.

36. In an attempt to overcome this lack of capital, on November 15, 2015, HBL SNF, LLC entered into a Development Agreement with White Plains Healthcare Properties I, LLC (the “Development Agreement.”)

37. On the same date, HBL SNF, LLC entered into a Lease with White Plains Healthcare Properties I, LLC (the “Lease”) for the Facility in order to enable WPHP to obtain its Project financing.

38. The Development Agreement and Lease are essential parts of the same transaction and are constitute integrated agreements.

39. Pursuant to the Development Agreement, the Project was to be “turn-key” meaning that the plaintiff and third-party defendants would deliver a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place in accordance with the approval granted by NYSDOH.

40. However, because Fensterman and Nicholson lacked sufficient capital to complete the Project on a turn-key basis, they induced the Jozefovic Team to withdraw its equity from

another nursing facility which it owned and operated known as Waterview Nursing Home and to contribute that equity to the Project so that the Project could move forward in 2016.

41. In particular, the Jozefovic Team made the following capital contributions to the Project as memorialized in a Term Sheet dated November 20, 2015:

- a) \$2,200,000 paid to WPHP to be used by Congress for pre-development costs;
- b) \$197,072 to CCC Equities, LLC to be used in the discretion of Fensterman;
- c) \$1,595,368.32 into a control account in the name of HBL SNF.

42. Despite repeated requests since 2015, Fensterman, Nicholson, Congress, and CCCE have failed or refused to provide an accounting of the use of the predevelopment and discretionary funds paid to them.

43. In consideration for the \$2,200,000 contribution to WPHP, WPHP agreed that these funds constituted a loan to WPHP to be repaid to HBL SNF, LLC.

44. No provision was made for the payment of interest on the loan notwithstanding that WPHP had the use of such funds since 2015.

45. WPHP agreed to repay the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") in the amount of \$1,500,000 for the Project and by giving HBL SNF, LLC a future credit against Lease payments.

46. When advancing these funds to Fensterman, Nicholson, CCC Equities and Congress, the Jozefovic Team anticipated that the Facility would be delivered in September 2017.

47. The Facility was not delivered until December 2019.

48. Despite repeated requests, WPHP has never provided an accounting for purchases of the required FF&E or any documentation evidencing repayment of \$1,500,000 of the loan amount to HBL SNF, LLC.

49. In the absence of such an accounting, HBL SNF, LLC cannot determine how much of its loan amount, if any, has been repaid and how much of the remaining loan balance should be credited to current Lease payments.

50. In addition, accrued interest on the \$2,200,000 loan must be calculated from November 2015 and either paid to HBL SNF, LLC or credited to payments due under the Lease.

51. The Development Agreement required that the Project be substantially completed within twenty-two (22) months or before September 2017.

52. The plaintiff breached its obligations to HBL SNF, LLC by failing to complete the Project until December 2019.

53. The delay in completing the Project caused HBL SNF, LLC to lose substantial revenue.

54. In addition, by delivering the Project in December 2019, HBL SNF, LLC encountered market conditions during its start-up phase in 2020 caused by the COVID-19 pandemic which adversely affected HBL SNF LLC's operations as it has nursing homes throughout the region.

55. HBL SNF, LLC would not have encountered these adverse financial conditions but not for the delay caused by plaintiff and third-party defendants.

56. In addition to the Project being completed more than two (2) years late, plaintiff and third-party defendants delivered the Project well over budget.

57. The Development Agreement required the plaintiff to enter into a construction contract with Congress and to secure a 100% performance bond to guarantee the performance of the construction contract.

58. However, unbeknownst to HBL SNF, LLC, Congress could not secure a performance bond.

59. Fensterman and Nicholson never disclosed to HBL SNF, LLC or any of its principals that Congress could not obtain a bond.

60. As a result, WPHP entered into a contract without approval or consent from HBL SNF, LLC for a creation of a joint venture agreement with a third-party contractor.

61. The joint venture, among other reasons, added substantial costs to the Project.

62. These substantial additional costs exceeded the capital expenditures approved by NYSDOH and are not reimbursable through NYSDOH.

63. Upon information and belief, Congress's inability to secure the performance bond is related to certain judgments taken against its principal Nicholson arising from claims for diversion of project funds in a skilled nursing project located in Milwaukee, Wisconsin dating back to 2015, the time when the Jozefovic Team advanced monies to Nicholson and Congress.

64. Neither Fensterman nor Nicholson disclosed these adverse proceedings to the Jozefovic Team.

65. In fact, Nicholson was adjudged to have committed conversion and civil theft in the amount of \$1,903,452, and that judgement was affirmed on appeal to the Seventh Circuit Court of Appeals.

66. The Development Agreement required that plaintiff and third-party defendants deliver the Project at the costs approved by NYSDOH.

67. Only in the event of a change order, authorized by HBL SNF, LLC, would HBL SNF, LLC have responsibility for any cost higher than the cost approved by the NYSDOH.

68. There were no approved change orders.

- 69. The approved Project cost is \$57,000,000.
- 70. The plaintiff and third-party defendants caused the Project to exceed the approved costs by more than \$5,000,000.
- 71. The plaintiff and third-party defendants breached their obligations to HBL SNF, LLC under the Development Agreement by causing the Project to be over budget.
- 72. As a result, HBL SNF, LLC is not eligible for reimbursement of its rent payments as originally intended - a loss of eligibility that will cause substantial harm to HBL SNF, LLC.
- 73. Given these costs overruns and the loss of eligibility for reimbursement, the Lease is unenforceable.
- 74. As part of the “turn-key” delivery of the Project, plaintiff was obligated to provide permanent financing for the Project on the terms of the HUD insured loan submitted by plaintiff as part of the Project approved by NYSDOH.
- 75. The plaintiff and third-party defendants have failed to provide such permanent financing and are in breach of the Development Agreement and the Lease.
- 76. In connection with the permanent financing, the plaintiff and third-party defendants were required to demonstrate sufficient equity invested in the Project for HUD or any other lender of permanent financing to grant a thirty (30) year loan to the Project.
- 77. Plaintiff and third-party defendants have failed to demonstrate sufficient equity in the Project.
- 78. Upon information and belief, Fensterman procured financial contributions from individual third parties who contributed capital to CCCE to meet the equity requirement.
- 79. Although this capital is required to be and has, in fact, been represented by Fensterman to be in the nature of equity, upon information and belief, these contributions from

individual third-parties are loans at high rates of interest which are overdue as a result of the Project delays.

80. Fensterman, CCCE, and plaintiff have caused additional financial burden to the Project and have attempted to pass along to HBL SNF, LLC and the Jozefovic Team these higher interest costs.

81. The Project cost overruns and the higher finance costs due to the delay in delivering the Project, together with the lack of sufficient equity, have prevented the Project from securing permanent financing.

82. The plaintiff and third-party defendants have advised HBL SNF, LLC that they have initiated this lawsuit because they are in default of their current loan agreements.

83. As of this date, plaintiff and third-party defendants have been unable to provide to the Jozefovic Team an accurate Project accounting of Project expenditures and have refused to provide information concerning the Project financing.

84. As of this date, plaintiff and third-party defendants have been unable to procure the HUD insured financing which they represented they could secure and is required by NYSDOH Project approval.

85. As of this date, the Project does not comply with the approval issued by the NYSDOH.

86. As a result of the failure to deliver the Project on the terms approved by NYSDOH, HBL SNF, LLC cannot be reimbursed for the cost of the Facility as intended by the Development Agreement and the Lease and HBL SNF, LLC and its principals have suffered financial harm as a result.

87. Throughout the development process, WPHP, Fensterman, Nicholson and Congress have made false representations to the Jozefovic Team and have taken adverse actions which have adversely affected the business of HBL SNF, LLC.

**AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST WPHP,  
CCCE, CONGRESS, AND FENSTERMAN  
(DEMAND FOR ACCOUNTING)**

88. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “87” with the same force and effect as if fully set forth herein.

89. HBL SNF, LLC, Lizer Jozefovic and Mark Neuman had a trust-based relationship with Fensterman, Nicholson, and WPHP.

90. Given that relationship, HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman advanced monies to WPHP and Fensterman prior to commencement of the Project in order to allow the Project to proceed.

91. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman are entitled to an accounting of the use of the funds advanced for the Project.

**AS AND FOR A SECOND CAUSE OF ACTION AS AGAINST WPHP  
(PAYMENT OF INTEREST)**

92. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “91” with the same force and effect as if fully set forth herein.

93. HBL SNF, LLC is entitled to imputed interest on the \$2,200,000 made to WPHP loan from November 2015 to present.

**AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST WPHP  
(BREACH OF CONTRACT)**

94. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “93” with the same force and effect as if fully set forth herein.

95. WPHP breached the Development Agreement and the Lease.

96. As a result of such breach, HBL SNF, LLC has been damaged by the loss of reimbursable capital expenditures and has incurred other costs due to the nonperformance of WPHP.

97. In addition, HBL SNF, LLC has lost funds and continues to lose revenues as a result of Project delays.

**AS AND FOR A FOURTH CAUSE OF ACTION  
AS AGAINST FENSTERMAN AND NICHOLSON  
(FRAUD IN THE INDUCEMENT)**

98. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “97” with the same force and effect as if fully set forth herein.

99. Third-party defendants Fensterman and Nicholson fraudulently induced HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman to enter into the Development Agreement, the Lease, and the Guaranty.

100. Fensterman and Nicholson misrepresented the Project costs.

101. Fensterman and Nicholson misrepresented their ability to secure permanent HUD financing.

102. Fensterman and Nicholson misrepresented their ability to complete the Project.

103. Fensterman misrepresented the capital contributions made to CCCE to satisfy the equity requirement for the Project.

104. Fensterman and Nicholson failed to disclose the claimant civil proceeding against Nicholson for civil theft.

105. By reason of such fraud in the inducement, Defendants Lizer Jozefovic and Mark Neuman have no obligations under the guarantees.

106. By reason of such fraud in the inducement, HBL SNF, LLC has suffered financial damages.

**AS AND FOR A FIFTH CAUSE OF ACTION  
AS AGAINST ALL THIRD-PARTY DEFENDANTS  
(BAD FAITH)**

107. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “106” with the same force and effect as if fully set forth herein.

108. As alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.

109. As a result of such bad faith dealings, HBL SNF, LLC has suffered damages in an amount not less than \$15,000,000.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(FRAUD)**

110. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “109” with the same force and effect as if fully set forth herein.

111. The misrepresentations and non-disclosures by Fensterman and Nicholson and third-party defendants constitute fraud.

112. WPHP, Fensterman and Nicholson new such statements were false.

113. WPHP, Fensterman and Nicholson made such statements to deceive HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman.

114. HBL SNF, LLC has been damaged by such fraudulent conduct.

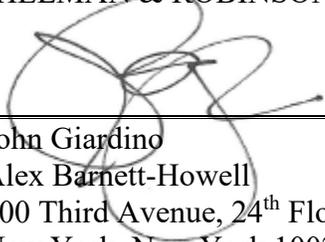
**WHEREFORE**, Defendants and Third-Party Plaintiffs deny generally and specifically that it committed any wrongdoing and demand:

- 1) A determination that the amount of rent payable under the Lease be modified by any sums not reimbursable by the NYSDOH and offset by prior payments and accrued interest;
- 2) The Guaranty Agreements be nullified;
- 3) Monetary damages in an amount to be determined;
- 4) Attorneys' fees, and
- 5) Such other relief as the Court deems appropriate.

Dated: New York, New York

November 5, 2020

MICHELMAN & ROBINSON, LLP

By:   
 \_\_\_\_\_  
 John Giardino  
 Alex Barnett-Howell  
 800 Third Avenue, 24<sup>th</sup> Floor  
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 Attorneys for Defendants

**VERIFICATION BY ATTORNEY**

JOHN GIARDINO, being an attorney duly admitted to practice in the courts of New York, affirms the following under penalties of perjury:

I am an attorney for Defendants HBL-SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARK NEUMAN, in the above entitled action and have read the foregoing Verified Answer and know the contents thereof; that the same is true upon information and belief, and that as to those matters I believe them to be true.

I further state that the grounds of my belief as to all matters in the Verified Answer are based upon the file maintained by my office and conference and telephone conferences with Defendants. This verification is made pursuant to the provisions of RPAPL 741 because Defendants was not available to sign the same at the time the Verified Answer was prepared.

Dated: New York, New York

November 5, 2020

  
\_\_\_\_\_  
JOHN GIARDINO, ESQ.

# Exhibit D

## to Donnellan Aff.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants.

Index No. \_\_\_\_\_  
60278/2020

**VERIFIED AMENDED**  
**VERIFIED COMPLAINT**

Plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”), by its attorneys, DelBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, for its amended verified complaint against defendants, HBL SNF, LLC (“HBL”), Lizer Jozefovic a/k/a Lizer Jozofovic (“Jozefovic”) and Mark Neuman (“Neuman”), alleges:

**NATURE OF THE CASE**

1. This action concerns HBL’s material default of its obligations under an amended and restated operating lease dated as of November 19, 2015 (the “Lease”), by which WPH Properties leased to HBL a brand new, state-of-the-art, 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York.

2. WPH Properties had constructed the nursing facility and entered into the Lease with HBL dated November 19, 2015. The Lease was amended and restated in 2017. It provided that HBL would operate the facility for 30 years, commencing. The Lease commenced on September 30, 2019. HBL took possession of the facility on September 30, 2019. By the end of October 2019,

HBL had defaulted.

3. On January 7, 2020, WPH Properties served notice of default and elected to terminate the Lease and accelerate all rents due. This action seeks to recover from HBL the Rent it owes and the other damages its defaults have caused and to enforce the unconditional guaranties of HBL's performance under the Lease given by Neuman and Jozefovic.

**PARTIES AND VENUE**

4. WPH Properties is a limited liability company duly organized and existing under the laws of the State of Massachusetts, with its principal place of business at 2 Bourbon Street, Suite 200, Peabody, Massachusetts. WPH Properties is duly authorized to do business in the State of New York.

5. HBL was and is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 537 Route 22, Purdys, New York.

6. Jozefovic is an individual residing at 53 Mariner Way, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

7. Neuman is an individual residing at 22 Lyncrest Drive, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

8. Pursuant to CPLR § 503(a), venue is properly designated in Westchester County based on the residences of WPH Properties and HBL, because a substantial part of the events giving rise to the claim occurred in Westchester County and because HBL and WPH Properties agreed in the Lease that any action or proceeding arising out of the Lease be brought in Westchester County. Lease § 20.1(b).

**FACTS**

9. WPH Properties is and was at all relevant times the owner of the real property known as 116-120 Church Street, White Plains, New York (the “Real Property”).

10. WPH Properties constructed a brand new, state-of-the-art, 160-bed skilled nursing facility on the Real Property.

**THE LEASE**

11. In 2017, WPH Properties, as landlord, and HBL, as tenant, entered into the amended and restated Lease, dated as of November 19, 2015, under which WPH Properties leased to HBL the Real Property and the improvements to be constructed on the Real Property, together with other assets, all as defined in Section 2.1 of the Lease (the “Facility”). A true and accurate copy of the Lease is annexed to this complaint as **Exhibit 1** and is incorporated into this complaint by reference.

12. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019.

13. HBL entered into possession of the Facility on September 30, 2019.

14. The ~~lease~~Lease provided for a term of 30 years, with three 10--year options to the tenant, unless sooner terminated. Exhibit 1, Lease, § 3.1.

15. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 (the “Fixed Rent”). Exhibit 1, Lease, § 3.2.

16. The Lease also obligated HBL to pay WPH Properties other amounts which are defined as “Additional Rent.” Fixed Rent and Additional Rent are referred to collectively as “Rent.”

17. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Premises during the Term. Exhibit 1, Lease, § 4.1.

18. The Lease obligated HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit 1, Lease, § 4.2.

19. The Lease obligated HBL to keep the Premises in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses relating to the Premises. Exhibit 1, Lease, § 5.2.

20. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit 1, Lease, § 7.1.

21. A true and accurate copy of the Jozefovic Guaranty is annexed to this complaint as **Exhibit 2.**

22. A true and accurate copy of the Neuman Guaranty is annexed to this complaint as **Exhibit 3.**

23. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

24. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Jozefovic without the necessity of any notice of

nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Jozefovic expressly waived.

25. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

26. The Neuman Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

27. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an agreement by Capital Funding Group by which Capital Funding Group agreed to allow HBL to draw down on its credit line each month so as to enable Capital Funding Group to pay the Fixed Rent each month directly to WPH Properties on the commencement date and for the following 11 months. Exhibit 1, Lease, § 7.1.

28. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease. Exhibit 1, Lease, § 7.1.

29. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, \$1,600,000 as an additional security deposit. Exhibit 1, Lease, § 7.1.

30. The Lease obligated HBL to provide WPH Properties all reports, statements and

inspections as defined in the Lease, including all Medicare, Medicaid and other provider agreements and reimbursement rates for the Facility, updated reimbursement rates, financial reporting and written reports providing an operational overview of significant events and circumstances on a monthly basis. Exhibit 1, Lease, § 7.4.

31. The Lease obligated HBL to maintain working capital accounts in specified amounts. Exhibit 1, Lease, § 7.7.

32. The Lease provides that HBL will be in default of the Lease if, among other things, (i) HBL fails to pay any installment of Rent within five days of the date when Rent was due; (ii) HBL defaults in the prompt and full performance of any other of its obligations and fails to correct that failure within 30 days of receipt of written notice from WPH Properties of the default; (iii) HBL fails to give WPH Properties timely notice or timely deliver copies of documents as required by ~~section~~Section 7.4 of the Lease; (iv) HBL defaults or breaches the provisions of ~~section~~Section 7.4(b); (v) a Guarantor defaults beyond expiration of any applicable cure period; or (vi) any governmental authority assesses a fine or penalty against HBL in an amount in excess of \$75,000. Exhibit 1, Lease, § 16.1.

33. WPH Properties performed all of the conditions on its part required by the Lease.

34. The Lease provides in ~~section~~Section 16.1 that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent.

35. Section 16.1 of the Lease also provides that upon the occurrence of a default, and in addition to all of the other remedies provided for in the Lease, WPH Properties is immediately

entitled to retain the security deposit required by ~~section~~Section 7.1 of the Lease and HBL has no further claim, right, title or interest therein to the extent of WPH Properties' claims.

36. Section 16.1 of the Lease also provides that upon the occurrence of a default and the commencement of an action for Rent or for any other amount due under the Lease, HBL must pay to WPH Properties all of the expenses, including reasonable attorneys' fees, incurred by WPH Properties to enforce the Lease.

37. In addition, under the terms of the Lease, HBL's continuation in occupancy after termination does not constitute a renewal of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 201.13.

**THE JOZEFOVIC SECURITY AGREEMENT**

38. On August 11, 2017 Jozefovic executed a Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Jozefovic Security Agreement"), assigning to WPH Properties' nominee a first and superior security interest in Jozefovic's interest in Waterview Acquisition I, LLC (the "Jozefovic Waterview Collateral") in order to secure the obligations under the Jozefovic Security Agreement and under the Lease. A true and accurate copy of the Jozefovic Security Agreement is annexed to this complaint as Exhibit 4.

39. The Jozefovic Security Agreement provides that Jozefovic has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of the Jozefovic Waterview Collateral. Exhibit 4, Jozefovic Security Agreement § 3

40. The Jozefovic Security Agreement further provides that Jozefovic agrees not to subsequently further amend or voluntarily permit the amendment of the Waterview Acquisition I,

LLC Operating Agreement that would in any manner materially adversely affect the Jozefovic Security Agreement and/or the rights of WPH Properties. Exhibit 4, Jozefovic Security Agreement § 4

41. On September 15, 2020 WPH Properties duly perfected its security interest with respect to the Jozefovic Waterview Collateral by filing a UCC financing statement.

42. Upon information and belief, in or around December 2019, Jozefovic assigned the Jozefovic Waterview Collateral to Metropolitan Commercial Bank (“MCB”) to secure Jozefovic’s obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

43. Upon information and belief, to effectuate Jozefovic’s assignment of the Jozefovic Waterview Collateral to MCB, Jozefovic agreed to and voluntarily permitted the amendment of the Waterview Acquisition I, LLC Operating Agreement.

44. Jozefovic breached his obligations under the Jozefovic Security Agreement by agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and assigning the Jozefovic Waterview Collateral to MCB.

45. Jozefovic further breached the Jozefovic Security Agreement by failing to take all of the necessary steps to add Howard Fensterman, a principal of WPH Properties, as a co-signatory to the JP Morgan Chase accounts identified therein as required by the Jozefovic Security Agreement.

46. Jozefovic and HBL breached their obligation to post the \$1,600,000 additional security deposit required by the Jozefovic Security Agreement and the Lease.

47. Jozefovic’s moving of funds into a separate account that he controls does not satisfy the obligation to post the \$1.6 million additional security deposit as required by the Jozefovic

Security Agreement and the Lease.

48. Jozefovic's and HBL's failure to satisfy the obligation to post the \$1.6 million additional security deposit constitutes a breach of the Jozefovic Security Agreement and a breach of the Lease.

49. The Jozefovic Security Agreement provides that Jozefovic pledges, assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member of Waterview Acquisition I, LLC to WPH Properties in order to secure the obligations under the Jozefovic Security Agreement and under the Lease.

50. Pursuant to the remedies granted to WPH Properties under the UCC and the Jozefovic Security Agreement, in the event of a default, WPH Properties is entitled, among other remedies, to dispose of the Jozefovic Waterview Collateral at a public sale.

51. Jozefovic breached the Jozefovic Security Agreement and materially and adversely affected the Jozefovic Waterview Collateral and the rights of WPH Properties by (i) agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and (ii) assigning the Jozefovic Waterview Collateral to MCB to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

52. As a result of Jozefovic breaching the Jozefovic Security Agreement by amending the operating agreement and assigning the Jozefovic Waterview Collateral to MCB, any purchaser of the Jozefovic Waterview Collateral at public sale by WPH Properties will purchase the Jozefovic Waterview Collateral subject to MCB's senior security interest in the collateral.

53. Jozefovic's breach of the Jozefovic Security Agreement therefore has caused WPH Properties damages in the amount of \$3,000,000, the amount of Jozefovic's obligation to MCB

secured by Jozefovic's illicit assignment of the same collateral to MCB.

**HBL BREACHED ITS OBLIGATIONS UNDER THE LEASE**

38.54. HBL failed to perform its obligations, materially defaulting under the Lease, almost immediately after taking possession of the Premises.

39.55. HBL failed to pay Rent as required by the Lease.

40.56. HBL failed to pay real estate taxes as required by the Lease.

41.57. HBL failed to pay utility deposits as required by the Lease.

42.58. HBL failed to pay municipal maintenance escrows as required by the Lease.

43.59. HBL failed to pay utility charges as required by the Lease.

44.60. HBL failed or refused to deliver certificates of insurance as required by the Lease.

45.61. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility, as required by the Lease.

46.62. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider updated rate sheets, as required by the Lease.

47.63. HBL failed to deliver to WPH Properties the required financial reporting, as required by the Lease.

48.64. HBL failed to deliver to WPH Properties the required written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease, as required by the Lease.

49.65. HBL failed or refused to deliver to WPH Properties the security deposits, as required by the Lease.

50.66. HBL failed to deliver and maintain the required credit line in an amount equal to

12 ~~months~~months' rent, as required by the Lease.

~~51.67.~~ HBL failed to have and maintain the working capital account required by the Lease.

~~52.68.~~ HBL failed to pay late fees and costs, as required by the Lease.

#### THE LETTER OF INTENT

~~53.69.~~ After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease, despite HBL's default.

~~54.70.~~ On November 20, 2019, WPH Properties and HBL entered into a Letter of Intent (the "LOI") in which WPH Properties and HBL agreed that WPH Properties would sell the Facility for \$73,000,000 to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties or its designees would have a 22.5 percent interest.

~~55.71.~~ A true and accurate copy of the LOI is annexed to this complaint as ~~exhibit~~  
~~4~~Exhibit 5.

~~56.72.~~ The LOI provides for the Lease to be amended to require that HBL pay the November 2019 rent by November 18, 2019, the December rent by December 5, 2019 and all real estate taxes and utility payments by December 1, 2019, that by December 5, 2019 HBL reimburse WPH Properties for \$65,856 in municipal and utility deposits, that HBL enter into a Deposit Account Control Agreement with MNB requiring MNB to draw on the account first to pay the rent.

~~57.73.~~ The LOI further provides for the Lease to be amended so that the \$3,700,000 security deposit required by ~~section~~Section 7.1(a)(ii) is reduced to \$2,000,000, \$1,000,000 of which was required to be paid by HBL on or before December 1, 2019 or the date on which WPH Properties obtained a permanent certificate of occupancy for the Facility, ~~(which was granted on~~

November 14, 2019), whichever was later, and the balance of which was required to be paid ~~upon~~  
~~the closing of title on on~~ April 1, 2020, which was the Closing date required by the LOI.

~~58.74.~~ In addition, the LOI provides for the Lease to be amended so that in lieu of providing the additional \$1,600,000 in security required by ~~section~~Section 7.1(a)(iii) of the Lease, HBL would be required to enter into an agreement with JP Morgan Chase Bank prohibiting liquidation of that account until the second \$1,000,000 in security required by the LOI had been paid.

~~59.75.~~ The LOI also provides for the Lease to be amended to require HBL to obtain a single working capital line of credit in the amount of \$8,000,000 by December 1, 2019.

~~60.76.~~ HBL defaulted and breached its obligations under the LOI by failing to pay rent, failing to pay the municipal and utility payments to WPH Properties, failing to pay the real estate taxes and utility payments, failing to enter into the Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank, by failing to pay the first \$1,000,000 security deposit as required by the LOI and by failing to obtain the \$8,000,000 working capital credit line, and by failing to meet the required Closing date of April 1, 2020.

~~61.77.~~ WPH Properties performed all conditions on its part required by the LOI.

~~62.78.~~ Solely as a result of HBL's breach of the LOI, WPH Properties did not sell the property to the Delaware Statutory Trust, causing damage to WPH Properties, and WPH Properties incurred interest and late charges on its loans, all of which are the direct result of HBL's breach of the LOI.

**NOTICE OF DEFAULT, TERMINATION OF THE LEASE AND ACCELERATION OF RENT**

~~63.79.~~ On January 7, 2020, while the LOI was in effect, WPH Properties served a "Notice

of Default And Landlord’s Election To Terminate Lease And Accelerate All Rents Due For The Balance of the Lease Term” upon HBL (the “Notice of Default”).

64.80. A true and accurate copy of the Notice of Default is annexed to this complaint as **Exhibit 56** and incorporated into this complaint by reference.

65.81. The Notice of Default contains a true and accurate accounting of the amounts then due and owing under the Lease and LOI.

66.82. The Notice of Default gave HBL notice that by reason of HBL’s defaults under the Lease, WPH Properties had exercised its right under ~~section~~Section 16.1 of the Lease to terminate the Lease, effective January 13, 2020.

67.83. The Notice of Default further gave HBL notice that pursuant to ~~section~~Section 16.1 of the Lease all Rent for the balance of the Term was accelerated and HBL became obligated to pay WPH Properties the present value of the accelerated rent, discounted at a rate of 6% per annum.

68.84. HBL continued, and still continues, to occupy the Premises, despite WPH Properties’ termination of the Lease.

69.85. Because HBL has held over after its default resulted in termination of the Lease, HBL is a tenant month-to-month at a rent equal to 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

70.86. HBL has failed to perform its obligations as a tenant month-to-month by failing to pay rent in the amount of 300% of the most recent Rent payable by HBL under the Lease, remitting only the base rent which had been payable before WPH Properties terminated the Lease.

71.87. HBL is in default with respect to its obligations under the Lease and its obligations as a month-to-month tenant following termination of the Lease effective January 13, 2020.

**AMOUNTS DUE**

72.88. As a result of HBL’s defaults, HBL is obligated to pay to WPH Properties, as of August 25, 2020, the sum of \$113,832,987.54 (the “Amounts Due”), as follows: (i) holdover rent and rent, \$7,096,182.79; (ii) municipal and utility deposits, \$26,725.35; (iii) security and working capital deposits, \$9,800,000.00; (iv) late fees, default fees, costs and professional fees, \$1,948,753.00; and (v) accelerated rent, \$94,961,326.40.

73.89. HBL is obligated to pay to WPH Properties the Amounts Due in full, plus any amounts that have accrued since August 25, 2020.

74.90. HBL has failed or refused to pay the Amounts Due.

75.91. WPH Properties has fully performed all obligations required to be performed on its part with respect to the Lease, the LOI, HBL’s month-to-month tenancy after the termination of the Lease, the Jozefovic Guaranty, the Neuman Guaranty, the HBL Security Agreement, the Jozefovic HBL Security Agreement and the Neuman HBL Security Agreement.

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

76.92. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs “1” through “75.91” with the same force and effect as if fully set forth here.

77.93. By reason of HBL’s material default and breach of its obligations pursuant to the Lease and its obligations as a month-to month tenant after termination of the lease, WPH Properties is entitled to judgment against HBL for the Amounts Due, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law.

**SECOND CAUSE OF ACTION AGAINST HBL**

**(BREACH OF CONTRACT)**

78.94. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs “1” through “~~77~~93” with the same force and effect as if fully set forth here.

79.95. By reason of HBL’s material default and breach of its obligations pursuant to the LOI, WPH Properties is entitled to judgment against HBL in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

80.96. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs “1” through “~~79~~95” with the same force and effect as if fully set forth here.

81.97. By reason of HBL’s default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic for the Amounts Due pursuant to the terms of the Jozefovic Guaranty.

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

82.98. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs “1” through “~~81~~97” with the same force and effect as if fully set forth here.

83.99. By reason of HBL’s default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Neuman for the Amounts Due pursuant to the terms of the Neuman Guaranty.

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

100. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs “1” through “99” with the same force and effect as if fully set forth here.

101. By reason of Jozefovic’s default in the performance of his obligations under the

Jozefovic Security Agreement and HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic in the amount of \$3,000,000.00.

WHEREFORE, WPH Properties demands judgment as follows:

1. On its ~~first~~First cause of action, against HBL in the amount of \$113,832,987.54, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

2. On its Second Cause of Action, against HBL, in an amount to be determined at trial; and

3. On its Third Cause of Action, against Jozefovic in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

4. On its Fourth Cause of Action, against Neuman in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

5. On its Fifth Cause of Action, against Jozefovic in the amount of \$3,000,000.00; and

~~5.6.~~ On all causes of action, awarding costs, disbursements and attorneys' fees against HBL pursuant to the provisions of the Lease and against Jozefovic and Neuman pursuant to the provisions of the Jozefovic Guaranty and the Neuman Guaranty; and

6.7. Awarding such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
~~September 16~~ November 19, 2020

DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

By: \_\_\_\_\_  
Alfred E. Donnellan, Esq.  
~~Peter S. Dawson, Esq.~~  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO,  
FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

VERIFICATION

STATECOMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the annexed Amended Verified Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

\_\_\_\_\_  
William A. Nicholson

Sworn to before me this  
16th th day of ~~September~~November 2020

\_\_\_\_\_  
Notary Public

# Exhibit E

## to Donnellan Aff.

**M R** MICHELMAN & ROBINSON, LLP  
ATTORNEYS AT LAW

ALEX BARNETT-HOWELL  
abarnett-howell@mrlp.com

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December 2, 2020

**Via Electronic Mail**

Mr. Alfred E. Donnellan  
Managing Partner  
DeiBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, NY 10601  
Email: [AED@ddw-law.com](mailto:AED@ddw-law.com)

**Re: *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.*  
Index No. 60278/2020**

Dear Mr. Donnellan:

We are in receipt of the amended complaint filed on November 30, 2020 on behalf of your client in *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.*, (No. 60278/2020).

Pursuant to CPLR 3025(a), a party may amend as of right only "within twenty days after service of a pleading responding to it." We filed the Answer with Counterclaims to the Complaint on November 5, 2020. Therefore, the time within which to amend the Complaint as of right expired on November 25, 2020. The filing on the Amended Complaint without leave of Court renders the pleading a nullity and we request that you withdraw it in order to avoid a motion to dismiss on these grounds.

Furthermore, the Amended Complaint contains allegations regarding the Collateral Assignment and Pledge of Membership Interest dated August 11, 2017. That agreement and the allegations related to it are the subject matter of claims in the prior filed action and currently pending matter of *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, (No. 655549/2020). Therefore, it is inappropriate to assert the same claims in a separate subsequent action.

We request that you voluntarily resolve these issues without requiring us to resort to further unnecessary motion practice. Please confirm your agreement to withdraw amended complaint by close of business Thursday, December 3<sup>rd</sup>.

Thank you for your courtesy in this matter.

Very truly yours,

**MICHELMAN & ROBINSON, LLP**



Alex Barnett-Howell

ABH:ec

# Exhibit F

## to Donnellan Aff.

**COLLATERAL ASSIGNMENT AND PLEDGE  
OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT**

**THIS ASSIGNMENT** made as of August 11, 2017, by Lizer Jozelovic, an individual having an address at 53 Mariner Way, Monsey New York 10952 (the "Assignor") to Howard Fensterman as nominee for White Plains Health Care Properties LLC, a Massachusetts Limited Liability Company (the "Assignee") with reference to the following facts.

**WHEREAS**, HBL-SNF a New York Limited Liability Company ("Operator/Tenant) an entity controlled by Assignor had entered into a development agreement with WHITE PLAINS HEALTHCARE PROPERTIES I, LLC (the "Developer") dated November 19, 2015 (the "Agreement") which was amended by and between the Parties by that certain first Amendment to the Development Agreement (the "Amendment") dated as of July 12, 2017.

**WHEREAS**, the Development Agreement among other things obligated the Tenant to enter into a Lease with Developer in return for the Developer, developing, designing, financing and Building a 160 Bed Skilled Nursing Home for Tenant in White Plains New York; and

**WHEREAS** the Development Agreement obligated the Tenant to obtain CON approval to build such 160 Bed Skilled Nursing Home for Tenant in White Plains New York and to deliver to Developer such documents as are reasonably requested by Developers lenders; and

**WHEREAS**, the Tenant has obtained all CON approvals necessary to construct the Skilled Nursing Home and the Developer has obtained all zoning and building department of approvals and a Construction Loan; and

**WHEREAS**, in or about November 2015 in consideration of Howard Fensterman and/or CCC Equities assigning all mortgages held by them on property owned by Waterview Acquisition I, LLC agreed that he would pre-pay Two Million Two Hundred Thousand Dollars to White Plains Healthcare Properties and would additionally establish a joint signature account in JP Morgan Bank into which the sum of One Million Six Hundred Thousand Dollars was deposited; and

**WHEREAS**, The Lease requires the sum of 1.6 Million Dollars to be delivered to Landlord at least 60 days prior to the Commencement date of the Lease as additional security for the Tenants faithful performance of the terms and conditions of the Lease; and

**WHEREAS**, Section 10.2 of the Loan Agreement by and between Developer and its Construction lender restates the language of the Lease and Developer has undertaken to ensure that the 1.6 Million Dollars on deposit with JP Morgan shall be delivered according to the terms and provisions of the Lease; and

**WHEREAS**, the Sums in the JP Morgan Account entitled HBL, SNF, LLC, Account Number [REDACTED] have been transferred to two JP Morgan Accounts entitled Waterview Acquisition I, LLC Account Number [REDACTED] and Account Number [REDACTED] in which Howard Fensterman is not a signatory and the parties want to enter into this agreement by which Howard Fensterman will be added as a signatory to such account under terms and conditions set forth below; and

WHEREAS, Tenant and Assignor have promised to add Howard Fensterman as a signatory to such account so as to ensure that no withdrawals may be made so as to reduce the amount of the account below 1.6 Million and so as to ensure that when required 60 days prior to the commencement date the money in the account or equivalent shall be delivered as additional cash security for the lease; and;

WHEREAS in order to secure the promises made by Assignor concerning such account Assignor has agreed to deliver to Assignee this Assignment; and the Assignor desires to pledge to Assignee all of his membership interest in Waterview Acquisition I, LLC (the "Company"), in order to secure the promises made herein and in the Lease and Security Agreement delivered to the Construction Lender;

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignee and the Assignor hereby agree as follows:

1. As collateral security for the Borrowers' obligations under the Lease, the Security Agreement, the Loan, and the Development Agreement the Assignor hereby pledges and assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member in the Company (the "Collateral").

2. Upon the effectuation of Section 7.1(a)(iii) of the Lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the interest in the Company assigned to the Assignee pursuant to Paragraph 1 hereof shall be automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect. Notwithstanding the foregoing, the Assignee hereby agrees to execute any document reasonably required for the purpose of evidencing the reassignment of such interest and the termination of this Assignment.

3. The Assignor represents, covenants and warrants that he is the legal and beneficial owner of the Collateral and has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in the Company and that there are no current liens or encumbrances that exist as of the day of the execution of this assignment.

4. The Assignor agrees not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

5. The Assignor covenants and agrees not to voluntarily withdraw as the managing member of the Company without the prior written consent of Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

6. The covenants provided for in this Assignment shall be binding upon the

successors and assignees of the parties hereto.

7. This Assignment shall be governed by the laws of the State of New York.

8. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument in writing duly signed by or on behalf of the Assignor or Assignee.

9. Assignor represents and warrants that he has a 71 % membership interest in the Company and that he is manager thereof.

10. In accordance with the laws of the State of New York and as part of the consideration for the making of the Loan, Assignor consents to the jurisdiction of any local, state or federal court located within New York and further consents that all service of process may be made by registered mail to his address set forth below and service so made shall be deemed completed five (5) days after the same shall have been mailed.

11. Assignor covenants and agrees to execute such additional documents and to take such further actions as may be reasonably required to carry out the provisions and intent of this Assignment including, without limitation, executing a financing statement or statements and continuations thereof. In addition, Assignor grants to Assignee a power of attorney coupled with an interest to effectuate the terms of the foregoing sentence and to file all continuations, renewals or amended financing statements without the signature of Assignor.

13. Should Assignor violate the terms and provisions concerning the maintenance of the account as set forth in the resolution of Waterview Acquisition I, LLC annexed hereto as Exhibit A the Assignee shall have:

(a) The right to sell the Collateral in the State of New York at one or more public or private sales at such price and on such terms as Assignee in its discretion accepts, for cash, upon or for future delivery. Upon any such sale, the Assignee shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral. Such purchaser at any such sale shall hold the Collateral sold absolutely free from any claim or right on the part of the Assignor, and the Assignor hereby waives (to the extent permitted by law) all rights of redemption, stay or appraisal which he has or may have under any rule of law or statute now existing or hereafter adopted. The Assignee shall give the Assignor twenty-one (21) days' written notice by registered or certified mail, postage prepaid, return receipt requested (which Assignor acknowledges is reasonable and sufficient), of the Assignee's intention to make any such public or private sale. Such notice, in the case of public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places in the State of New York as the Assignee may fix in the

notice of such sale. The Assignee shall not be obligated to make any sale of the Collateral if it shall determine not to do so, regardless of the fact that notice of such sale of the Collateral may have been given. The Assignee may, upon one day's written notice, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place within in the State of New York to which the same was so adjourned. In case sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Assignee until the sale price is paid by the purchaser or purchasers thereof, but the Assignee shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold, and, in case of any such failure, such Collateral may be sold again upon like notice. As an alternative to exercising the power of sale herein conferred upon it, the Assignee may proceed by a suit or suits at law or in equity to foreclose this Assignment and to sell the Collateral, or any portion thereof, pursuant to a judgment or decree of a court of competent jurisdiction;

(b) such other rights with respect to the Collateral as shall be afforded to secured parties by the Uniform Commercial Code of the State of New York including, but not limited to, the right to setoff; and/or

(c) to apply any proceeds of any disposition of the Collateral to the payment of the cash security required under the terms and provisions of the lease and reasonable expenses of the Assignee in connection with the exercise of its rights or remedies, including reasonable fees and expense of attorneys, and any balance shall be paid to such party as shall be entitled thereto pursuant to law.

13. The Assignor hereby waives any right to require that the Assignee proceed against any real or personal property or any guaranty given as security for the Note, whether or not existing or hereafter given, before exercising its rights and remedies with respect to the Collateral.

14. This Agreement may be executed in counterparts, each of which, when taken together, shall be construed as one and the same instrument.

15. All notices, demands and other communications provided for herein shall be deemed received upon personal delivery or delivery by national overnight delivery service, or three (3) business days following deposit in the U.S. mail, postage prepaid, first class registered or certified,

to Assignor or assignee at the following addresses:

If to Assignor:  
Liner Jozefovic  
53 Mariner Way  
Monsey, New York

With a copy to:  
Michelman & Robinson, LLP  
800 Third Avenue  
New York, New York  
Attention: Mark H. Zafrin, Esq.

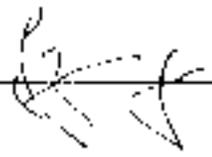
If to Assignee:  
Howard Fensterman  
C/o Abrams, Fensterman et al  
3 Dakota Drive  
Suite 300  
Lake Success, New York 11042

IN WITNESS WHEREOF, Assignor has duly executed this Assignment, as of the day and year first written above.

  
Lizer Jozefovic

The Company hereby acknowledges receipt of this Assignment by Assignor.

WATERVIEW ACQUISITION I, LLC

By: 

# Exhibit G

## to Donnellan Aff.

**AMENDED AND RESTATED OPERATING LEASE**

**By and Between**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,**  
a Massachusetts limited liability company  
("Landlord")

**and**

**HPI, SM<sup>2</sup>, LLC,**  
a New York limited liability company ("Tenant")

**Dated as of November 19, 2015**



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**EXHIBIT "A"**

**Legal Description**

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of White Plains, County of Westchester and State of New York. Said parcel being more particularly described as follows:

**BEGINNING** at a point in the easterly line of Church Street where the same is intersected by the southerly line of Barker Avenue;

**THENCE** from said point North 70 degrees 40 minutes 10 seconds East a distance of 173.57 feet along the southerly line of Barker Avenue to a point where the same is intersected by the division line herein described parcel on the West and lands now or formerly of Koepfel & Mohr Equities on the East;

**THENCE** from said point and along said division line South 17 degrees 59 minutes 50 seconds East a distance of 200.51 feet to a point in the division line between the herein described parcel on the north and lands now or formerly of Hamilton Plaza Company, Inc. on the south;

**THENCE** from said point and along said line South 71 degrees 01 minutes 50 seconds West a distance of 173.24 feet to the easterly line of Church Street; and

**THENCE** from said point and along said line North 18 degrees 05 minutes 04 seconds West a distance of 199.41 feet to the point and place of BEGINNING.

EXHIBIT A

1303449-517057-5

**EXHIBIT 'B'**

**GUARANTY**

See Attached



**SCHEDULE 3.1**

**Definition of Material Default**

Material Default shall mean the occurrence of any of the following:

(a) Any Lease Default except 16.1 (a) (xv) and (xxx), provided that the following Lease Defaults shall not be deemed a Material Default unless they occur two or more times within such period: 16.1 (a) (ix), (xvi), (xxx), (xxxI), and the following Lease Defaults shall not be deemed a Material Default unless they occur three or more times within such period: 16.1 (a) (i), (ii), (xvii).

(b) Any Lease Default during such period constitutes an "Event of Default" by Lendlord under any Loan Document between Lendlord and its Mortgagee(s) evidencing or documenting a loan secured by the Facility;

**EXHIBIT 7.1(a)**  
See Attached

**EXHIBIT 7.1(b)**  
See Attached

**EXHIBIT 7.1(c)**  
See Attached

SCHEDULE 7.4

<u>PERIOD</u>	<u>EBITDAR TARGET</u>
Quarter 1 (____, 201__ through ____ 201__)	\$ _____
Quarter 2	\$ _____
Quarter 3	\$ _____
Quarter 4	\$ _____
Quarter 5	\$ _____
Quarter 6 and thereafter	\$ _____

"EBITDAR" means with respect to any quarterly period for the Facility an amount determined on a consolidated basis equal to the sum of the following amounts for the Facility for a trailing twelve month period: (a) earnings/(net income or net loss) (including, as an expense an actual or theoretical management expense of five percent (5%) of gross receipts) from operations before (b) interest expense, (c) income tax expense, (d) depreciation expense, (e) amortization expense, and (f) Fixed Rent, defined in accordance with GAAP for such quarterly period. EBITDAR is not considered a measure of financial performance under GAAP. In calculating earnings for the trailing twelve months that encompasses any month prior to the Commencement Date, for the months prior to the Commencement Date, revenue shall be calculated using current rates of reimbursement, meaning reimbursement rates in effect as of the start of the applicable quarterly period.

## OPERATING LEASE

THIS AMENDED AND RESTATED OPERATING LEASE ("Lease") is entered into as of November 19, 2015 (the "Effective Date"), by and between WHITE PLAINS HEALTHCARE PROPERTIES I, LLC a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 203, Peabody, MA 01960 ("WHPCP") or (the "Landlord") and HBL SNP, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (the "Tenant"), and amends and restates in its entirety the lease between the Parties dated as of November 19, 2015.

### RECITALS

A. WHEREAS, Landlord is the owner of the real property, improvements, and personal property constituting the long-term care facility commonly known as 116-120 Church Street, White Plains, New York and more particularly described on Exhibit A, attached herein and made a part hereof, (the "Real Property"), and following execution of this Lease, upon which certain buildings and improvements shall be erected (the "Facility"); and

B. WHEREAS, Landlord desires to lease the entire Leased Premises (defined herein) to Tenant and Tenant desires to lease the Leased Premises from Landlord pursuant to the terms, conditions and covenants set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, promises, representations and warranties set forth herein and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

### ARTICLE I

#### INCORPORATION OF RECITALS; PRINCIPLES OF CONSTRUCTION, DEFINITIONS

Section 1.1 Incorporation of Recitals. The aforesaid Recitals A through B are hereby incorporated into this Lease as if fully set forth herein. Landlord and Tenant are hereinafter sometimes individually referred to as a "Party" and collectively referred to as "Parties".

Section 1.2 Principles of Construction. All references to articles, sections, schedules and exhibits are to articles, sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Landlord" shall mean

"Landlord and its successors and assigns"; the words "Leased Premises" shall include any portion of the Leased Premises and any interest therein, and the phrases "attorney's fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal, legal assistant and law clerk fees and disbursements, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise, and, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Landlord in protesting its interest in the Leased Premises and its rights hereunder. Wherever pursuant to this Lease it is provided that Landlord shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees as defined above. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The words "includes", "including" and similar terms shall be construed as if followed by the words "without limitation". Whenever in this Lease any consent, approval, determination or decision of Landlord is to be made by Landlord, or any matter is to be satisfactory to Landlord, then unless expressly provided to the contrary, such provision shall be deemed to mean that such consent, approval, determination or decision of Landlord or determination whether a matter is satisfactory shall be made by Landlord in its sole and absolute discretion for any or no reason and shall be final and conclusive. Any reference in this Lease shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease shall be deemed to be a reference to this Lease (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease or in the Guaranty shall be deemed to be a reference to the Guaranty (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time.

Section 1.3 Definitions.

- "Additional Rent" as defined in Section 3.2
- "Affiliate" as defined in Section 20.31.
- "Change of Ownership" means
- "Commencement Date" as defined in Section 3.1.
- "Commissioner" means the Federal Housing Commissioner also called the Assistant Secretary for Housing in the United States Department of Housing and Urban Development.
- "DOH" means New York State Department of Health.
- "Effective Date" as defined in introductory paragraph.
- "Eligible Institution" as defined in Section 4.3.
- "Extension Term" as defined in Section 3.1(i).



"Facility" as defined in Recital A.

"First Refinance" means the replacement or refinance of the Original Mortgage and/or original Junior Debt, in whole or part, in an amount not less than \$42,200,000.

"First Refinance Date" means the date of the First Refinance.

"Fixed Rent" as defined in Section 3.2.

"Governmental Authority" as defined in Section 5.2.

"Guarantors" mean Lizer Josefovic and Mark Neuman.

"Hazardous Materials" as defined in Section 10.3

"Hazardous Waste" as defined in Section 10.3.

"Health Care Authority or Authorities" means any Governmental Authority (including HUD) having responsibility for the approval, licensing, certification, payment, issuance of guarantees and insurance for, and/or otherwise setting standards for the operation and occupancy of skilled nursing facilities

"Health Care Licenses" means all Medicare and Medicaid certifications and provider agreements, all public third party payor certifications and provider agreements, and all certifications, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses and certificates of need required by Health Care Authorities for the legal use, occupancy and operation of the Facility.

"HUD" means the United States Department of Housing and Urban Development.

"Junior Debt" means a mortgage on the Premises junior to the first Mortgage, and/or debt relating to the development and construction of the Premises.

"Landlord" as defined in Introductory paragraph, and Section 1.2.

"Landlord's Indemnitees" as defined in Section 9.1.

"Landlord's Work" as defined in Section 5.1.

"Laws" as defined in Section 5.1.

"Lease Default" as defined in Section 16.1.

"Leased Premises" as defined in Section 2.1.

"Lease Year" as defined in Section 3.1.

"Letter of Credit" as defined in Section 7.1.

"Material Default" as defined in Schedule 3.1.

"Mortgages" shall refer to the first and second priority mortgages secured by fee simple interest in the Real Property as amended, restated, extended or replaced from time to time in Landlord's discretion.

"Original Mortgage" means the original Mortgage placed on the Premises by Landlord.

"Overdue Rate" as defined in Section 9.1(h).

"Primary Market of the Facility" means a fifteen mile radius of the Leased Premises.

"Prime Rate" as defined in Section 9.1.

"Prospective Mortgagor" means any Person chosen by Landlord as a Mortgage prior to a closing of a Mortgage to be held by such Person.

"Real Property" as defined in Recital A.

"Refinance" means the replacement or refinancing of the Mortgage, or Junior Debt, or any debt in replacement thereof, in whole or part, including the First Refinance.

"Refinance Date" means the date of any Refinance including the First Refinance.

"Rent" as defined in Section 3.2.

"Security Deposit" as defined in Section 7.1.

"Special Purpose Entity" as defined in Schedule 19.2.

"Substantial Completion Date" means the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Landlord's architect, that the Facility was substantially completed and in substantial compliance with the plans and specifications for the Facility, and (ii) the date Landlord delivers a Temporary Certificate of Occupancy (the "TCO") for the Facility, provided, however, if the Landlord is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (ii).

"Tenant's Lease Coverage Ratio" means EBITDAR divided by Fixed Rent.

"Terms" as defined by Section 3.1 (including all exercised Extension Terms).

"Total Project Cost or "TPC" is the actual cost of purchasing, developing, constructing, and equipping the Facility, including without limitation, the cost of the Real Property and improvements, development costs, financing costs, and the cost of Landlord's Work and all equipment.

"Utilities" as defined in Section 4.1.

ARTICLE II

LEASED PREMISES

Section 2.1 Leased Premises. Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions set forth in this Lease, the following assets:

- (a) all of Landlord's right, title, and interest in and to the Real Property, including, without limitation, all buildings, structures, erections, improvements, appurtenances, easements and fixtures, including fixed machinery and fixed equipment situated thereon or forming a part thereof; and
- (b) all of Landlord's right, title and interest in and to all machinery, trade equipment, trade fixtures, furniture, furnishings, beds, and accessories of all kinds used in connection with the Facility located on the Real Property.

All of the items described in Sections 2.1(a) and 2.1(b) herein are collectively referred to as the "Leased Premises." Landlord and Tenant acknowledge and understand that all of the items which comprise the Leased Premises, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, shall be transferred back to Landlord in accordance with the terms and conditions set forth herein upon the expiration or earlier termination of this Lease.

Section 2.2 In connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein, and each successor in interest, shall have the right to transfer all amounts deposited pursuant to Section 4.3 with respect to the Facility, less any amount used pursuant to Section 4.3, to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, Landlord or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto. If Landlord's interest in the Leased Premises is sold or conveyed as provided above or otherwise or by operation of law: (i) at the new owner's option, Tenant shall affirm to and recognize the new owner as Tenant's Landlord under this Lease and Tenant shall take such actions to confirm the foregoing within ten (10) days after request.

ARTICLE III

TERM AND RENT

Section 3.1 Term of Lease.

(a) The term (the "Term") of this Lease shall be for a period of thirty (30) years commencing on the later to occur of (i) the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility and (ii) the date that New York State Department of Health (hereinafter sometimes, "DOH") determines that the Landlord's Work is sufficiently complete as constructed (but not necessarily the Tenant's operations) to accept patients, provided, however, if the Landlord is unable to obtain a permanent or temporary Certificate of Occupancy because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of a permanent or temporary Certificate of Occupancy shall not be a condition under clause (i) (the "Commencement Date"), and ending at 11:59:59 P.M. on the day preceding the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date (the "Expiration Date"). Under any and all circumstances, Landlord shall not be liable to Tenant, in damages or otherwise, for any delay in delivering the Leased Premises to Tenant and Tenant shall have no right to terminate or rescind this Lease on account thereof. Notwithstanding the Commencement Date, certain of the rights and obligations of the parties shall commence on the Effective Date, but not including Tenant's obligations to pay Fixed Rent and Impositions prior to the Commencement Date, or to maintain the Leased Premises, insure the Leased Premises or restore the Leased Premises after a casualty or condemnation prior to the Commencement Date, or any other rights and obligations, which by their terms are intended to commence as of the Commencement Date, which rights and obligations shall commence on the Commencement Date.

As used herein with respect to the Term and the periods for payment of Rent (unless the context otherwise requires) the term "Lease Year" shall mean a 365 day period (or 366 day period in the case of a leap year), first commencing on the Commencement Date and thereafter on successive anniversaries thereof, and ending on the day prior to the next succeeding anniversary of the Commencement Date.

Landlord and Tenant hereby acknowledge that the Commencement Date is presently indeterminate and shall occur only as hereinabove provided in this Section. Except for the rights of Tenant expressly stated herein, Tenant hereby waives any right to rescind this Lease under the provisions of Section 223-a of the Real Property Law of the State of New York, and agrees that the provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of said Section 223-a. Landlord and Tenant shall execute a memo specifying the Commencement Date immediately following its occurrence.

(b) Provided a Lease Default has not occurred and is then continuing either at the time of the exercise of the options provided below or at the end of the Term or Extension Term, or there has not been any Lease Default listed in Schedule 3.1 attached hereto (a "Material Default"), whether or not cured, within two years of the end of the Term or Extension Term, Tenant shall have the option to extend the Term of this Lease for three (3) additional periods of ten (10) years each (each an "Extension Term"), by giving written notice to Landlord

not less than five forty-five (45) days nor more than seven hundred (700) days prior to the expiration of the Term (or Extension Term as the case may be) of this Lease, TIME BEING OF THE ESSENCE to these time periods. These options may be exercised by Tenant serving written notice upon Landlord stating that Tenant is exercising the option to extend. If Tenant fails to give such notice in writing to Landlord within the time period specified herein, all rights and privileges granted to Tenant to extend this Lease shall lapse and become null and void. No later option may be exercised if Tenant has failed to exercise a prior option. If Tenant has validly exercised its option(s) to extend the Term, references herein to the "Term" shall be deemed to include an Extension Term.

Section 3.2 Rent

(a) Beginning in the first (1st) Lease Year of the Term and for each succeeding Lease Year thereafter, including during any and all Extension Terms, until the First Refinance Date, Tenant shall pay Landlord an annual amount of Six Million Seventy Three Thousand One Hundred Fifty Eight (\$6,073,158) Dollars ("Fixed Rent") in monthly installments of \$506,096.50.

(b) Tenant shall pay the Rent to Landlord during the term without deduction or setoff and without demand.

(c) The terms "Additional Rent" or "additional rent" means all sums, amounts, fees, expenses and costs (including, without limitation, legal fees and disbursements) payable or reimbursable to Landlord under this Lease other than Fixed Rent, and all of same shall be and constitute Additional Rent hereunder. The terms "Fixed Rent" and "Additional Rent" shall be collectively referred to as "Rent." Landlord shall have the same rights and remedies hereunder consequent upon a failure of Tenant to pay any item of Additional Rent as upon a failure of Tenant to pay any item of Fixed Rent.

(d) Rent shall be due and payable in advance in equal monthly installments during each year on the first (1st) day of each calendar month thereof (or in the event the first day of the calendar month is not a business day, on the first business day following the first day of each calendar month) throughout the Term. Rent for any period which is less than a full calendar month or full year, as the case may be, during the Term, shall be prorated on a daily basis. Rent shall not be paid more than one (1) month in advance. Rent shall be paid to Landlord at Landlord's address set forth in Section 12.1 or in such other place as Landlord designates from time to time by written notice to Tenant. Tenant agrees to pay Rent, at Landlord's direction, by electronic transfer or wire, as directed by Mortgage in writing.

(e) TENANT HEREBY ACKNOWLEDGES THAT LATE PAYMENT BY TENANT TO LANDLORD OF RENT WILL CAUSE LANDLORD TO INCUR COSTS NOT CONTEMPLATED HEREUNDER, THE EXACT AMOUNT OF WHICH IS PRESENTLY ANTICIPATED TO BE EXTREMELY DIFFICULT TO ASCERTAIN. SUCH COSTS MAY INCLUDE PROCESSING AND ACCOUNTING CHARGES AND LATE CHARGES WHICH MAY BE IMPOSED ON LANDLORD BY THE TERMS OF ANY LOAN AGREEMENT AND OTHER EXPENSES OF A SIMILAR OR DISSIMILAR NATURE. ACCORDINGLY, IF ANY INSTALLMENT OF RENT THAT IS PAYABLE TO LANDLORD

OR ITS DESIGNEE SHALL NOT BE PAID WITHIN FIVE (5) DAYS OF THE DATE WHEN DUE. TENANT WILL PAY LANDLORD ON DEMAND A LATE CHARGE EQUAL TO FIVE PERCENT (5%) OF THE UNPAID PORTION OF THE AMOUNT OF SUCH INSTALLMENT. THE PARTIES AGREE THAT THIS LATE CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE COSTS THAT LANDLORD WILL INCUR BY REASON OF LATE PAYMENT BY TENANT. THE PARTIES FURTHER AGREE THAT SUCH LATE CHARGE IS RENT AND NOT INTEREST AND SUCH ASSESSMENT DOES NOT CONSTITUTE A LENDER OR BORROWER/CREDITOR RELATIONSHIP BETWEEN LANDLORD AND TENANT. IN ADDITION, THE AMOUNT UNPAID, INCLUDING ANY LATE CHARGES, SHALL BEAR INTEREST AT THE OVERDUE RATE FROM THE DUE DATE OF SUCH INSTALLMENT TO THE DATE OF PAYMENT THEREOF, AND TENANT SHALL PAY SUCH INTEREST TO LANDLORD ON DEMAND. THE PAYMENT OF SUCH LATE CHARGE AND/OR SUCH INTEREST SHALL NOT CONSTITUTE A WAIVER OF, NOR EXCUSE OR CURE, ANY DEFAULT UNDER THIS LEASE, NOR PREVENT LANDLORD FROM EXERCISING ANY OTHER RIGHTS AND/OR REMEDIES AVAILABLE TO LANDLORD.

(f) If a default is declared by the Commissioner under the provisions of the Regulatory Agreement, provided a copy of Notice of Default is given to Tenant, Tenant shall thereafter make all future payments under this Lease to the Commissioner.

**Section 3.3 Net Lease Provisions.** Landlord and Tenant intend that the Rent herein specified shall be net to Landlord in each year during the Term, and that all costs, expenses and obligations of every kind and nature, (known or unknown, general or special, ordinary or extraordinary, foreseen or unforeseen, direct or indirect, contingent or otherwise) relating to the operation, repair and maintenance of the Leased Premises (except Landlord's income taxes) which may arise or become due during the Term shall be timely paid by Tenant; and that Landlord shall be indemnified by Tenant against such costs, expenses and obligations. Tenant's obligation to pay Rent is independent of all, and is in no manner conditioned upon any, other covenants, conditions and obligations of Landlord or Tenant under this Lease. There shall be no abatement of Rent payments for any reason nor shall Tenant be entitled to any offsets or deductions from Rent payments due hereunder.

**Section 3.4 Rent Tax.** If any governmental taxing authority levies, assesses, or imposes any tax, sales or use tax, privilege tax, excise or assessment (other than income or franchise taxes) upon or against the Rent payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise or assessment, or, if Landlord pays same, Tenant shall reimburse Landlord for the amount thereof within ten (10) days after written demand by Landlord.

It is the intent of this **Section 3.4** and all other provisions of this Lease to insure that the Rent (including Additional Rent) paid to Landlord by Tenant will be received by Landlord without diminution by any tax, assessment, charge or levy of any nature whatsoever, except United States, State of New York and local net income taxes, and the terms and conditions of this Lease shall be liberally construed to effect such purpose. Without limiting the generality of the foregoing, if any tax is assessed or based on gross income actually or



constructively received by Landlord pursuant to this Lease, Tenant shall pay such amount which, when added to said gross income, shall yield to Landlord, after deduction of all such tax payable by Landlord with respect thereto, a net amount equal to that which Landlord would have realized therefrom had no such tax been imposed.

**Section 3.5. Assignment of Lease to Mortgagee.** Tenant acknowledges that all of the interest of Landlord in and to this Lease has been or will be assigned to Mortgagee pursuant to the Loan Documents.

Tenant agrees to promptly execute and deliver to Landlord from time to time any and all documents required by a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender, or any successor, commercial, agency or private lender, including, without limitation, a lease addendum, regulatory agreement, subordination agreement, non-disturbance and attornment agreement, and/or escrow certificate, in order to finance or refinance the Facility or otherwise.

Tenant will on request at any time or from time to time by Landlord or any Mortgagee or Prospective Mortgagee subordinate this lease and all of Tenant's rights and estate hereunder to such Person's Mortgage and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, or declare such Mortgage to be prior to this lease and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, and agree with such holder that Tenant will assent thereto in the event of foreclosure. Landlord agrees to use reasonable efforts (except that Landlord shall not be obligated to expend money for any such agreement) to obtain a written agreement from any such holder in the form typically used by such holder which consents to this lease and provides that, notwithstanding such mortgage or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting said Mortgage, Tenant shall not be disturbed in peaceful enjoyment of the Leased Premises or this lease terminated or canceled at any time, except in the event Landlord shall have the right to terminate this lease under the terms and provisions set forth herein.

**Section 3.6 True Lease.** It is the intent of Landlord and Tenant and the parties agree that this Lease is a true lease and that this Lease does not represent a financing agreement. Each party shall reflect the transaction represented hereby in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

**Section 3.7 Right of First Refusal; Buyout.** (a) Landlord shall not sell, transfer or convey the Leased Premises to a third person or entity unless Tenant first is given the opportunity to purchase the Leased Premises pursuant to the terms and conditions set forth in this Section 3.7(a). If at any time during the first eleven years of Term Landlord receives from any third person or entity an Offer (as hereinafter defined) to purchase the Leased Premises which Landlord desires to accept, Landlord shall notify Tenant of such Offer by delivering written notice to Tenant, which notification (the "Offer Notice") shall contain a copy of the written Offer or, at Landlord's election, a written summary of the terms of the Offer. For purposes of this Lease, an "Offer" shall mean any bona fide written instrument or verbal communication setting forth the terms pursuant to which Landlord will convey the Leased Premises. Tenant shall have ten (10) Business Days after receipt of the Offer Notice in which to elect by written



notice delivered to Landlord (the "Acceptance Notice") to enter into a formal agreement on the same terms and conditions as those contained in the Offer ("Tenant's Purchase Right"). Such election shall be effective only if within ten (10) Business Days after delivery of the Acceptance Notice the parties enter into a written purchase agreement on terms reasonably acceptable to Landlord in good faith for the sale of the Leased Premises to Tenant containing all terms of the Offer. If Tenant fails to timely deliver the Acceptance Notice, or if Tenant fails to timely enter into said purchase agreement as provided herein, Landlord shall have the right to accept the Offer or any modification thereof on terms substantially similar as those set forth in the Offer. Tenant's right to purchase the Leased Premises identified in the Offer Notice shall not apply to (i) transfers of less than one hundred percent of the ownership interests in Landlord, (ii) a public offering of ownership interests in Landlord, (iii) a recapitalization transaction of any kind involving Landlord, (iv) condemnation, eminent domain or similar proceedings, or (v), rights exercised by Mortgagees in foreclosure or in lieu thereof pursuant to Mortgagee or other documents executed by Landlord in connection therewith, including the subsequent disposition of the Premises by Mortgagee or its affiliate or designee that acquires the Leased Premises in connection therewith.

(b) Notwithstanding anything to the contrary, if Landlord's Offer Notice states that it is purchasing from Tenant Tenant's Purchase Right, then (i) Tenant shall have no further rights under Section 3.7(a), and Section 3.7(a) shall be null and void without further effect, and (ii) upon the closing of the purchase and sale of the Leased Premises pursuant to the Offer, Landlord shall pay Tenant ten percent (10%) of the excess of the sales price agreed to pursuant to the Offer (less costs and fees, including broker's fees) over the TPC, the "Offer Fee", and (iii) the Rent shall be the greater of the amount as determined by Section 3.2(a) or fair market value, as shall be determined by an independent third party appraiser jointly appointed by Landlord or and Tenant, and absent their agreement appointed by the then chairman or similar officer of the Westchester County Society of Real Estate Appraisers. For purposes of clarification, Tenant shall not be entitled to the receipt of the Offer Fee if Tenant exercises Tenant's Purchase Right as set forth in Section 3.7(a) above.

(c) Upon expiration of the eleventh Lease Year, Tenant's Right of First Refusal as set forth in in Section 3.7(a) shall lapse and become null and void.

Section 3.8. Option to Purchase. Commencing on the latter of (i) the first day after the Commencement Date and (ii) 24 months from the date of the closing of the Original Mortgage, and ending on the last day of the fifteenth Lease Year of the Lease, Tenant shall have the option to purchase the Leased Premises from Landlord for a purchase price of \$65,055,000 by giving written notice of its exercise of the Option to Purchase including a proposed closing date, provided if Tenant does not exercise the Option to Purchase prior to receiving an Offer Notice pursuant to Section 3.7, Tenant's Option to Purchase under this Section 3.8 shall lapse unless and until the conveyance of the Leased Premises contemplated under Section 3.7 does not occur. Upon expiration of the fifteenth Lease Year, Tenant's the right to purchase the Leased Premises from Landlord, all as set forth above, shall lapse, become null and void, and Tenant shall have deemed to waived all such rights hereunder.

ARTICLE IV

UTILITIES AND TAXES

Section 4.1 Utilities. From and after the Commencement Date, Tenant shall pay or cause to be paid all charges next coming due and payable for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Leased Premises (the "Utilities") during the Term. Tenant covenants to place all Utilities in Tenant's name as of the Commencement Date. Adjustment shall be made for Utilities applicable to any period prior to the Commencement Date. In the event Landlord is billed directly by any service provider or utility company for any Utilities or services supplied to Tenant during the Term, Landlord shall send Tenant the bill and Tenant shall promptly pay the same. Landlord shall have no obligation or liability with respect to any interruption or failure in the supply of any such Utilities. If Landlord elects to or shall be required to pay for any Utilities to preserve and/or protect the Leased Premises, Tenant shall reimburse Landlord for the cost and expense thereof plus interest at the Prime Rate.

Section 4.2 Taxes. Tenant shall be solely responsible for the payment, prior to the date when penalties would attach, of all general and special real estate taxes and assessments (together with any excise taxes or such real estate taxes and assessments levied or imposed by any governmental taxing authority), fire district taxes, liens, impositions, including capital stock, franchise, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes; personal property taxes, assessments including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; ground rents; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Premises, and all interest and penalties thereon attributable to any failure in payment by Lessee which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon the Leased Premises (collectively, the "Impositions") that accrue from the Commencement Date through the Term. Adjustment shall be made for Impositions applicable to any period prior to the Commencement Date. Tenant shall pay all of the Impositions directly to the applicable taxing authorities and Tenant shall promptly forward proof of payment to Landlord in such form as shall be reasonably acceptable to Landlord unless Landlord elects to require escrow deposits in accordance with Section 4.3 hereof. Landlord shall promptly forward any tax bills which it may receive to Tenant. Landlord shall only bill Tenant for any of the Impositions if Tenant does not pay any of the Impositions before delinquency and Landlord is obligated or elects (in Landlord's sole and absolute discretion) to pay any of the Impositions directly to remain current with all taxing authorities. Tenant shall pay the full amount of any increases in any of the Impositions resulting from alterations or improvements made by or for the benefit of Tenant. After the expiration or termination of this Lease, Tenant shall pay all bills for any of the Impositions which become due and payable after the expiration or termination of the Lease covering any period through the expiration or earlier termination of the Lease. If any governmental taxing authority acting under any present or future ordinance or regulation, shall levy, assess or impose a tax, excise and/or assessment (other than any net income or franchise tax) upon Landlord or Tenant for rental payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise and/or assessment

or shall reimburse Landlord for the cost and expense thereof, as the case may be. Provided that Tenant shall have deposited a sufficient amount of funds to pay the Impositions pursuant to Section 4.3 and Tenant has done nothing to prevent payment by Landlord or its lender of the Impositions, then Tenant shall not be responsible for any and all late payment fees and/or penalties, including interest, imposed by any applicable taxing authorities with respect to the untimely payment of Impositions.

Section 4.3 Escrow Deposits.

(a) Escrow. At the option of Landlord, which may be exercised at any time by Landlord in its sole and absolute discretion Tenant shall, on the first day of the first calendar month commencing after notice from Landlord, and on the first day of each calendar month thereafter during the Term (each of which dates is referred to as a "Monthly Deposit Date"), pay to and deposit with Landlord a sum equal to one-twelfth (1/12th) of the Impositions to be levied, charged, filed, assessed or imposed upon or against the Leased Premises within one (1) year after said Monthly Deposit Date and a sum equal to one-twelfth (1/12th) of the premiums for the property insurance policies required pursuant to Article VI which are payable within one (1) year after said Monthly Deposit Date. If the amount of the Impositions to be levied, charged, assessed or imposed or insurance premiums to be paid within the ensuing one (1) year period shall not be fixed upon any Monthly Deposit Date, such amount for the purpose of computing the deposit to be made by Tenant hereunder shall be reasonably estimated by Landlord with an appropriate adjustment to be promptly made between Landlord and Tenant as soon as such amount becomes determinable. In addition, Landlord may, at its option, from time to time require that any particular deposit be greater than one-twelfth (1/12th) of the estimated amount payable within one (1) year after said Monthly Deposit Date, if such additional deposit is required in order to provide to Landlord sufficient funds from which to make payment of all Impositions on or before the next due date of any installment thereof, or to make payment of any required insurance premiums not later than the due date thereof. If any Mortgagee or the Commissioner requires Landlord to impound insurance premiums on a periodic basis during the term, Tenant, on notice from Landlord indicating this requirement, shall pay a sum of money towards its liability under this Lease to Landlord on a periodic basis in accordance with Landlord's requirements. Landlord shall impound the premium payments received from Tenant in accordance with the requirements of Mortgagee and shall utilize such funds to timely pay insurance premiums.

(b) Use of Deposits. The sums deposited by Tenant under this Section 4.3 shall be held by Landlord or Mortgagee and shall be applied in payment of the Impositions or insurance premiums, as the case may be, when due. Any such deposits may be commingled with other assets of Landlord or such Mortgagee, and shall be deposited by Landlord or such Mortgagee in an Eligible Institution in such account or accounts as Landlord or the Mortgagee may, from time to time select, and Landlord shall not be liable to Tenant or any other person (i) based on Landlord's or the Mortgagee's (or any bank's) choice of investment vehicles, (ii) for any consequent loss of principal or interest or (iii) for any unavailability of funds based on such choice of investment. Furthermore, subject to the foregoing regarding the use of depositories and accounts, Landlord and its Mortgagee shall bear no responsibility for the financial condition of, nor any act or omission by the depository bank. No income, if any, from such investment or interest on such deposits shall be paid to Tenant. To the extent that Landlord does not have an

invoice or bill specifying the due date for payment, Tenant shall give not less than thirty (30) days prior written notice to Landlord in each instance when an Imposition or insurance premium is due, specifying the Imposition or premium to be paid and the amount thereof, the place of payment, and the last day on which the same may be paid in order to comply with the requirements of this Lease. If Landlord, in violation of its obligations under this Lease, does not pay any Imposition or insurance premium when due, for which a sufficient deposit exists, Tenant shall not be in default hereunder by virtue of the failure to pay such Imposition or such insurance premium and Tenant shall not be liable for any late payment fees and/or penalties, including interest imposed as a result of such failure to pay. The term "Eligible Institution" shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least "A-1+" by S&P, "P-1" by Moody's and "P-1+" by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's).

(c) Deficits. If for any reason any deposit made by Tenant or held by Landlord under this Section 4.3 shall not be sufficient to pay any Imposition or insurance premium within the time specified therefor in this Lease, then, within ten (10) days after demand by Landlord, Tenant shall deposit an additional amount with Landlord, increasing the deposit held by Landlord so that Landlord holds sufficient funds to pay such Imposition or premium in full (or in installments as otherwise provided for herein), together with any penalty or interest thereon. Landlord may change its estimate of any Imposition or insurance premium for any period on the basis of a change in an assessment or tax rate or on the basis of a prior miscalculation or for any other good faith reason; in which event, within ten (10) days after demand by Landlord, Tenant shall deposit with Landlord the amount in excess of the sums previously deposited with Landlord for the applicable period which would theretofore have been payable under the revised estimate.

(d) Transfers. Consistent with Section 2.2, in connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein and each successor in interest shall have the right to transfer all amounts deposited pursuant to the provisions of this Section 4.3 and not used pursuant to this Section 4.3 to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, the original Landlord named herein or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto.

(e) Security. All amounts deposited with Landlord pursuant to the provisions of this Section 4.3 shall be held by Landlord as additional security for the payment and performance of Tenant's obligations under this Lease and, upon the occurrence and during the continuance of any Lease Default, Landlord may, in its sole and absolute discretion, apply such amounts towards payment or performance of such obligations.

(f) Return. Upon the expiration or earlier termination of this Lease, as long as all of the Rent and any and all other obligations due under this Lease have been fully paid and performed, any sums then held by Landlord under this Section 4.3 shall be refunded to Tenant.

and subject to the rights of a Mortgagee, together with all interest, if any, earned thereon and all income, if any, earned therefrom; provided, however, that if a Lease Default has occurred and is continuing, all of such sums may be applied by Landlord towards any amounts owed to Landlord pursuant to this Lease.

(b) Receipts. Tenant shall deliver to Landlord copies of all claims and bills in relation to the Impositions and Insurance premiums promptly upon receipt thereof by Tenant.

This Article and the obligations herein shall survive expiration or earlier termination of this Lease.

## ARTICLE V

### LANDLORD'S WORK, MAINTENANCE AND REPAIR, IMPROVEMENTS

Section 5.1 Landlord's Work. (a) Landlord shall cause the Facility to be constructed ("Landlord's Work").

(b) Landlord will give Tenant thirty (30) days' notice of the date Landlord expects to be the Substantial Completion Date. On or prior to the Substantial Completion Date, Landlord and Tenant shall jointly prepare a list of the items for the Facility that remain to be completed or corrected, set a dollar value for the cost to complete the work, and fix time for their completion or correction (collectively the "Punchlist").

(c) Notwithstanding anything in this lease to the contrary, on and after the Substantial Completion Date Tenant shall be deemed to have agreed Landlord has completed Landlord's Work to Tenant's complete satisfaction, except for (i) the Punchlist, (ii) such items of decoration or mechanical adjustment of which Tenant gives Landlord written notice within thirty (30) days after the Substantial Completion Date (the "Initial Correction Items") or (iii) any defects in the Facility which were not known or reasonably discoverable by Tenant in the time period specified in the immediately prior clause (ii) ("Latent Defects"); provided that, as to Latent Defects, Landlord will have no responsibility or liability therefor, or for the correction thereof, unless (A) Tenant conducts at least one inspection of the Facility with a qualified engineer or other expert, within one year from the Substantial Completion Date, and (B) Tenant gives Landlord notice of such Latent Defects within thirty (30) days after discovery thereof and in any event not later than one year after the Substantial Completion Date, which notice will be accompanied by the certification of such engineer or other experts, specifying, in detail, such Latent Defects in the Facility.

(d) At its sole expense, Landlord shall complete the Punchlist, and remedy the Initial Correction Items, and the Latent Defects provided with respect to Latent Defects that the conditions set out in clause (iii) of section (c) are satisfied.

(e) To the extent assignable at no cost to Landlord, Landlord assigns to Tenant all manufacturer warranties on materials and equipment. Tenant shall have the benefit and right to enforce such warranties at its sole cost and expense.

**Section 5.2 Maintenance and Repair.** Except as provided in Section 5.1, Tenant, at Tenant's sole cost and expense, shall keep the Leased Premises, including all buildings, fixtures, trade equipment, trade fixtures, furniture, beds and other personal property leased to Tenant pursuant to this Lease, including, without limitation, all structural and non-structural components, the roof, foundation, all outer walls, plumbing, sprinklers, electrical, mechanical, heating, ventilation, utility service, air conditioning, vertical transport, telephone, communications, cable, computer, fire-life safety, nursing call, and all other systems of the Leased Premises in good condition and repair and in compliance with all Laws. Landlord shall not be responsible to make any improvements, repairs, maintenance or replacements whether occasioned by the act, omission, active negligence, or passive negligence of Landlord or Tenant and/or its agents, employees, invitees or licensees or otherwise, and Tenant shall pay for all improvements, repairs, replacements, maintenance and expenditures relating to the Leased Premises, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the commencement of the Lease, by Tenant's use or by a change in applicable Laws. The Leased Premises and its appurtenances shall at all times be kept clean, safe and sanitary and in good order, condition, replacement and repair by Tenant, at Tenant's sole cost and expense, except for ordinary wear and tear (provided, however, that, without limiting the generality of this Section 5.2, Tenant shall be obligated to replace any portion of the Leased Premises upon any obsolescence thereof or if proper repair is impractical). Tenant shall provide (if not currently a part of the Leased Premises) and maintain, repair and replace, as necessary, all furniture, fixtures, equipment and/or other personal property required by any Governmental Authority (other than furniture, fixtures, equipment and/or other personal property owned by contractors providing ancillary services at the Facility) necessary for the operation of the Facility and to comply with all Laws. All such property provided by Tenant shall immediately become the property of Landlord and Tenant shall execute such documentation as Landlord may reasonably require vesting title in such property in Landlord. Landlord shall have no liability or obligation with respect to such property or any of Tenant's operations relating thereto. All replacements made by Tenant hereunder shall be made in a good and workmanlike manner in accordance with Laws using the same, similar or better quality of materials as being replaced and shall immediately become the property of Landlord. Tenant acknowledges that title and ownership of all repaired and replaced furniture, fixtures, equipment and/or other personal property made hereunder shall belong to and is for the benefit of Landlord. Tenant shall not enter into any equipment lease or conditional sales contracts for any furniture, fixtures, equipment and/or other personal property relating to the Facility without Landlord's consent which it may grant or withhold in its sole discretion. The term "Laws" means, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Leased Premises or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Tenant, at any time in force affecting the Leased Premises or any part thereof. The term "Governmental Authority" means any court, board, agency, arbitrator, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

**Section 5.3 Improvements, Renovation, Alterations and Additions.** Tenant shall have the right during the Term to make such non-structural interior alterations, changes and improvements to the Leased Premises as may be proper and necessary for the conduct of Tenant's business, to cause the Leased Premises to conform to all Laws, for patient comfort and safety, or for the full beneficial use of the Leased Premises, so long as such improvements do not (i) exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) in any given calendar year, (ii) interfere with any of the purposes for which the Facility was leased or affect the roof or structure, (iii) decrease the value of the Leased Premises, (iv) affect any building system, including, heating, ventilation, air conditioning, mechanical, electrical, plumbing or vertical transport systems, or (v) affect the exterior appearance of the Leased Premises. Tenant shall not make any other alterations, changes, or improvements without the express written approval in each instance by Landlord, which consent shall not be unreasonably withheld; provided, however, that the granting or withholding of consent shall not result in any liability to Landlord. Furthermore, Tenant may make all repairs or replacements required by a Governmental Authority without obtaining Landlord's consent, provided, however, Tenant shall give Landlord no less than ten (10) days prior written notice of such government mandated repairs or replacements prior to making or implementing same, unless emergency factors necessitate the making of such repairs before Tenant can reasonably give notice to Landlord, in which event Tenant shall give notice to Landlord as soon as reasonably possible. Tenant shall pay for all costs, fees and penalties imposed by the applicable state agencies or the Center for Medicare and Medicaid Services ("CMS") or other Governmental Authority in connection with any survey or the Change of Ownership. Tenant shall notify Landlord of any alterations, changes or improvements required and/or permitted by the applicable state agencies or the CMS or other Governmental Authority prior to the commencement thereof. Tenant shall pay all costs and expenses of any required and/or permitted alterations, changes, and improvements, shall make the same in a good and workmanlike manner, and in accordance with all Laws, having obtained all necessary permits and approvals from Governmental Authorities having jurisdiction over the Facility and work performed thereon or therein, and shall assure Landlord, in form reasonably satisfactory to Landlord, all necessary permits and authorizations have been received and that payment for the work and materials will be made by Tenant. Tenant hereby completely and fully indemnifies Landlord against any mechanic's liens or other liens or claims in connection with the making of any alterations, changes, and/or improvements. Any liens arising out of any required and/or permitted alterations, changes, and/or improvements shall be discharged of record by Tenant within the earlier of thirty (30) days after the same have been filed by payment, bonding or otherwise, as permitted by law, or five (5) days after commencement of a foreclosure or enforcement action. Notwithstanding any provision of this Lease to the contrary, Tenant shall not undertake any alterations, renovations, or improvements to the Facility or otherwise commence any project or activity with respect to the Facility, which may result in any bed being taken out of service for more than seven (7) days without Landlord's and/or Mortgagee's prior written consent, which Landlord's consent shall not be unreasonably withheld. Tenant shall give Landlord written notice ten (10) days prior to commencing repair, construction, or alterations whose costs exceed One Hundred Thousand Dollars (\$100,000.00).

**Section 5.4 Signs.** All signs installed by Tenant at the Facility shall comply with all Laws, and all necessary permits or licenses shall be obtained by Tenant. Tenant shall maintain all signs in good condition and repair, and/or replace as may be required by applicable law, at all times at Tenant's sole cost and expense. Upon vacating the Leased

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Premises, Tenant shall remove all signs and supporting material or installations so installed by Tenant, but only if Landlord shall request such removal, and Tenant shall repair all damage caused by such removal. Landlord acknowledges and agrees that neither Landlord nor any subsequent tenant of Landlord shall be authorized to use any company or registered trade name of Tenant or any of Tenant's affiliates or subcontractors.

Section 5.5 Surrender (a) Subject to applicable law and to receipt of any necessary DOH approval, Tenant shall deliver up and surrender to Landlord possession of the Leased Premises and all improvements and replacements thereof, including all of Tenant's alterations, improvements work (and all replacements thereof) and all fixtures permanently attached to the Leased Premises by Tenant during the Term, upon the expiration of this Lease or its termination in any manner whatsoever, in as good condition and repair and in substantially similar form, character and manner as the same shall be on the Commencement Date, reasonable wear and tear excepted (without compensation to Tenant), with permitted changes, improvements and additions made during the Term as authorized herein, subject to no liens, encumbrances, charges, restrictions, conditions, limitations or claims whatsoever to the extent not encumbering the Leased Premises as of the Commencement Date, and deliver the keys and/or operational security cards to the Leased Premises to Landlord or Landlord's designated agent.

(b) Licenses and Transfer of Operations. Upon the expiration of the Term or earlier termination of the Lease, Tenant shall and shall cause its subcontractors to, (i) transfer to Landlord or Landlord's nominee a fully operational, licensed and certified, and staffed facility and shall cooperate with Landlord or Landlord's designee or nominee in connection with the processing by Landlord or Landlord's designee or nominee of any applications for all licenses, operating permits and other governmental authorization, all contracts, including contracts with all Governmental Authorities or quasi governmental entities (provided that except following a Lease Default, the reasonable costs and expenses of the processing of any such application shall be paid by Landlord or Landlord's designee or nominee), (ii) transfer to Landlord or Landlord's nominee all tangible personal property of Tenant, including financial and accounting records, business records, data, employee and/or personnel records, patient and resident records, and all records held in electronic form, (all subject to the Laws requiring confidentiality), all equipment and small ware and all inventory used in connection with the Facility, (iii) transfer to Landlord or Landlord's nominee all intangible property except accounts receivable of Tenant, and (iv) transfer to Landlord or Landlord's nominee all residents in the Facility. With respect to resident funds, Tenant shall transfer to Landlord or its designee, all patient and resident trust accounts, and shall cause its subcontractor to prepare and submit to Landlord or its designee a true, correct, and complete accounting and inventory (properly reconciled) of any patient trust funds and resident property to be transferred to Landlord, or its designee. Tenant shall, and shall cause its subcontractor, not to commit any act or be remiss in the undertaking of any act that would jeopardize the licensure or certification of the Facility, and Tenant shall and shall cause its subcontractor to comply with all requests for an orderly transfer of the same upon the expiration or early termination of the Term, including, but not limited to, upon the request of Landlord or its designee, the transitioning of employees in compliance with applicable laws. Without limiting the generality of the foregoing, if requested by Landlord or a proposed replacement operator for the Facility, Tenant hereby agrees to enter into a reasonable operations transfer agreement with such replacement operator. Tenant shall not unreasonably withhold, condition or delay its

consent to entering into any interim subleases or management agreements as may be necessary to effectuate an early transfer of the operations of the Facility prior to the time that such replacement operator holds all licenses and permits from all applicable Governmental Authorities with jurisdiction necessary to operate the Facility for its intended use. In addition, upon request, Tenant shall and shall cause subtenants, to promptly deliver copies to Landlord or Landlord's designee of all books and records relating to the Leased Premises and operations thereon (including inventories, employee lists and personnel records, and policies and procedures manuals). Tenant shall allow Landlord or a proposed replacement operator for the Facility to utilize Tenant's, subtenants' computer hardware and software for a minimum of ninety (90) days to facilitate the transfer of operations, the collection of accounts receivable, the billing of providers, and the provision of patient care. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any loss, damage, cost or expense incurred by Landlord or Landlord's designee or nominee in connection with the correction of any and all deficiencies of a physical nature identified by any Governmental Authority responsible for licensing the Leased Premises in the course of any change of ownership inspection and audit. Tenant shall be responsible for any alterations or renovations necessitated by, or imposed in connection with, a change of ownership inspection survey for the transfer of operation of the Leased Premises to Landlord or its designee. Tenant shall not commence to wind up and terminate the operations of the Facility or relocate the patients or occupants of the Facility to any other health care facility. In addition, Tenant shall not terminate the employees of the Facility except in connection with and upon the transfer of operations of the Facility to Landlord or its designee.

(c) If Landlord notifies Tenant in writing that it intends to transfer the operations of the Facility to a new operator and desires to have Tenant continue to operate the Facility after the Expiration Date or earlier termination of the Lease, then Tenant shall continue to operate the Facility until the earliest to occur of (i) the date on which such successor operator shall assume operation of the Facility, or (ii) the date that is 180 days after the applicable Expiration Date or termination date (the "Reimbursement Period"). During the Reimbursement Period (x) Landlord shall provide Tenant with an operating budget, (y) Landlord shall include in the aforesaid operating budget, and Tenant shall continue to pay during the Reimbursement Period, all Rent that would have been owing under this Lease as to the Leased Premises if this Lease had not expired or terminated as to, and/or Tenant had not been dispossessed from, such Leased Premises, and (z) provided that this Lease was not terminated with respect to, and Tenant was not dispossessed from, such the Lease Premises due to a Lease Default, Landlord shall reimburse Tenant for any operating deficits with respect to the Facility that Tenant may be required to fund out-of-pocket on account of operating losses and expenses incurred by Tenant by reason of, or arising out of compliance with, such budget with respect to the Reimbursement Period. Any such reimbursement shall be due from Landlord to Tenant within 60 days after request by Tenant, provided that Tenant shall furnish such documentation of any operating deficits, losses and expenses as Landlord may reasonably request. The terms of this Section 5.5(c) shall survive the expiration or earlier termination of this Lease and/or any dispossession of Tenant from the Lease Premises.

(d). Use of Legacy Tradename. Without limitation of the other provisions of (b) Section 5.5 and notwithstanding anything to the contrary contained in this Lease, Tenant agrees to allow Landlord or its designee operator, at its option and at no cost to Landlord or any such designee, to continue to use, in its signage, marketing and advertising materials, operations

and otherwise, any or all name(s) (including tradenames) associated with the operation of the Facility as a going concern for up to 180 days following (i) the expiration or termination of this Lease and (ii) the vacation from, and surrender of, the Leased Premises and Facility by Tenant. At the end of such 180 day period, or upon sooner written notice from Landlord to Tenant, Tenant shall, promptly and at its expense, remove its aforesaid name(s) from all signs on the Facility and repair any damage to such signs caused by such removal. Landlord acknowledges and agrees that Tenant, not Landlord, owns the aforesaid names and that neither Landlord nor any designee of Landlord may use the same except as described in this Section 5.3(d) or as otherwise agreed in writing by Tenant.

(c) Management of Terminated/Dispossessed Premises. Commencing on the applicable Termination/Dispossession Date as to any Terminated/Dispossessed Premises, Landlord or its designee, upon notice to Tenant, may elect to assume the responsibilities and obligations for the management and operation of the Business at such Terminated/Dispossessed Premises, and Tenant agrees to cooperate fully to accomplish the transfer of such management and operation without interrupting the operation of such Business to the extent allowable by Law. Tenant shall permit Landlord or its designee to operate the Facility under Tenant's license, certifications and other authorizations pending the issuance of new licenses, certifications and other authorizations Landlord or its designee. Tenant shall not commit any act or be remiss in the undertaking of any act that would jeopardize any licenses, certifications and other authorizations related to the Facility, and Tenant shall comply with all requests for an orderly transfer of all licenses, certifications and other authorizations related to the Facility and any payor's certifications.

(f) In addition, upon any expiration or termination of this Lease, Tenant covenants and agrees to do such things and to take such action as may, from time to time, be necessary or appropriate to permanently surrender and withdraw from possession and operation (including but not limited to licensure and certification) of the Leased Premises, and shall thereafter be fully and permanently relieved of all powers, duties, responsibilities and obligations that are conferred or imposed upon Tenant under this Lease (except those continuing obligations, including but not limited to the obligation to pay all Rent due and owing under this Lease, and the obligation to pay all amounts owed by Tenant to the Medicare, Medicaid, third party payor programs and residents for the period of the Term, which survive the termination hereof as provided herein) and to restore and place Landlord or its designee in possession and operation of the Leased Premises, or any portion thereof, and Tenant covenants and agrees to execute and deliver to Landlord or Landlord's designee (each subject to the approval of DOH) all assignments, operation transfer agreements, consents, consents to assignments (including Medicare and Medicaid provider agreements, if requested by Landlord) documents and other instruments, to the reasonable satisfaction of Landlord in order to effectuate the provisions hereof.

Section 5.6 Condition of Leased Premises. (a) Subject to Section 5.1, Tenant shall accept and take possession of the Leased Premises in its "AS IS," "WHERE IS" "WITH ALL FAULTS" condition, and acceptance of possession of the Leased Premises on the Commencement Date shall be deemed an acknowledgment by Tenant of Tenant's acceptance of the condition of the Leased Premises. Tenant acknowledges and agrees that Landlord is not making any representation, warranty or covenant whatsoever with respect to the condition of the

Leased Premises, or any portion thereof, or its suitability for any particular purpose, and Tenant shall be relying solely on its inspection of the Leased Premises and due diligence investigations with respect thereto.

(b) LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND FOR COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. EFFECTIVE AS OF THE DATE OF THIS LEASE, TENANT SHALL RELEASE LANDLORD FROM ALL CLAIMS WHICH TENANT OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MANAGER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTING ON TENANT'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH TENANT ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES, INCLUDING THE INFORMATION AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS, AND TENANT SHALL NOT LOOK TO LANDLORD IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION, EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS LEASE; (A) TENANT WILL ACQUIRE THE LEASED PREMISES SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS, AND (B) WITHOUT LIMITING THE FOREGOING, WAIVES ANY RIGHT IT OTHERWISE MAY HAVE AT LAW OR IN EQUITY AGAINST LANDLORD WITH RESPECT TO ANY ASPECT OF LEASED PREMISES.

ARTICLE VI

INSURANCE

Section 6.1 INSURANCE. (A) Tenant shall obtain and maintain, or cause to be maintained, insurance for Tenant and the Facility providing at least the following coverages or as required from time to time by any Mortgagee:

(i) comprehensive "all risk" insurance on the Facility and the Personal Property, including Building Ordinance Coverage from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation (except with respect to the insurance pursuant to clauses (D), (x), (y) and (z) below); (B) containing an agreed amount

endorsement with respect to the Facility and Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Ten Thousand Dollars (\$10,000.00) for all such insurance coverage (except as stated in the penultimate sentence of this subsection); and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if the Facility or the use of the Facility shall at any time constitute legal non-conforming structures or uses and covering the increased cost of reconstruction, demolition cost, value of the undamaged portion of the structure and any increased expenses to rebuild due to the enforcement of building or zoning laws or requirements following a covered loss of the Leased Premises. In addition, Tenant shall obtain: (x) if any portion of any of the Leased Premises is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of any loan encumbering the Leased Premises or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or successor legislation, or such greater amount as Landlord and/or Mortgagee shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in an area with a high degree of seismic activity and (z) coastal windstorm insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in a coastal region; provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive insurance policy required under this Subsection (i); and further provided that the earthquake insurance pursuant to clause (y) may provide for a deductible of up to the greater of One Hundred Thousand Dollars (\$100,000.00) and two percent (2%) of the amount of such coverage, (III) the flood insurance pursuant to clause (x) may provide for a deductible of up to One Hundred Thousand Dollars (\$100,000.00), and (IV) the ordinance and law coverage pursuant to clause (D) may have a sub-limit of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Facility, such insurance (A) with a combined limit of not less than Five Million Dollars (\$5,000,000.00) in the aggregate and Two Million Dollars (\$2,000,000.00) per claim, (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) to continue at not less than the aforesaid limit until required to be changed by Landlord and Mortgagee in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability; and (5) contractual liability covering the indemnities contained in Section 9.1 of the Lease to the extent the same is available;

(iii) business income with extra expense insurance (A) with loss payable to Landlord and Mortgagee; (B) covering all risks required to be covered by the insurance provided for in Subsection (i) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Facility and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Facility is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred

percent (100%) of the projected net profit and extra expense with respect to the Facility for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire at the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Tenant's reasonable estimate of the gross income from the Facility for the succeeding twelve (12) month period. Nothing herein contained shall be deemed to relieve Tenant of its obligations to pay the Rent when due except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Facility, and only if the Facility coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above and (3) with an agreed amount endorsement waiving co-insurance provisions.

(v) worker's compensation insurance with respect to any employees of Tenant, as required by any Governmental Authority, Health Care Authority, Legal Requirement or Health Care Requirement;

(vi) boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Landlord and Mortgagee on terms consistent with the commercial property insurance policy required under Subsection (i) above;

(vii) intentionally omitted;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million Dollars (\$1,000,000.00);

(ix) if the Facility is or becomes a legal "non-conforming" use, ordinance or law coverage and insurance coverage to compensate for the cost of (upon a Casualty) demolition or rebuilding of the undamaged portion of the Facility along with any reduced value and the increased cost of construction in amounts as requested by Landlord and Mortgagee;

(x) the commercial property and business income insurance required under Sections 6.1(a)(i) and (iii) above shall cover perils of terrorism and acts of terrorism and Tenant shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i) and (iii) above at all times during the Term;

(xi) professional liability and malpractice insurance with limits of at least Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate. Tenant shall also require each medical director for the Facility and the associated nurse practitioner at the Facility to carry professional liability and malpractice insurance with

limits of not less than Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate; and

(iii) notwithstanding anything to the contrary in the foregoing, all insurance coverage required by any mortgagee of Landlord shall be met by Tenant, from time to time as necessary;

(xiii) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Landlord and/or Mortgagee from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Facility located in or around the region in which the Facility is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or, in the singular, the "Policy"), and shall be subject to the approval of Landlord and Mortgagee as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State of New York and having a claims paying ability rating of "A" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the companies (one of which shall be S&P if they are rating the securities and one of which will be Moody's if they are rating the companies), or if only one Rating Agency is rating the companies, then only by such Rating Agency and shall specifically name Landlord and Mortgagee as loss payees and additional insureds, as applicable. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Landlord and Mortgagee, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Landlord and Mortgagee of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Tenant to Landlord and Mortgagee.

(c) Any blanket insurance Policy shall specifically allocate to the Facility the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Facility in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Tenant as the insured and Landlord and Mortgagee as the additional insured, as their interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called lender's loss payee endorsement in favor of Mortgagee providing that the loss thereunder shall be payable to Mortgagee.

(e) All Policies provided for in Section 6.1 shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Tenant, or anyone acting for Tenant, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Landlord and Mortgagee are concerned;

(ii) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' written notice to Landlord and Mortgagee and any other party named therein as an additional insured;

(iii) the issuers thereof shall give notice to Landlord and Mortgagee if the Policies have not been renewed fifteen (15) days prior to its expiration; and

(iv) Neither Landlord nor Mortgagee shall be liable for any insurance premiums thereon or subject to any assessments due thereunder.

(f) If at any time Landlord and Mortgagee is not in receipt of written evidence that all Policies are in full force and effect, either shall have the right, without notice to Tenant, to take such action as either deems necessary to protect its interest in the Leased Premises, including, without limitation, the obtaining of such insurance coverage as either in its sole discretion deems appropriate. All premiums incurred by Landlord and/or Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Tenant to Landlord and/or Mortgagee, as the case may be, upon demand and, until paid, shall be secured by the Mortgagee and shall bear interest at the Overdue Rate.

(g) Tail Insurance. If Tenant has claims made insurance coverage of any type, upon expiration or earlier termination of this Lease, Tenant shall purchase so-called "tail" insurance for a period of three years in an amount not less than its existing coverages in order to assure Tenant is covered by insurance after the expiration or earlier termination of this Lease for all claims arising or relating to the period prior to the expiration or earlier termination of this Lease, and Landlord and Mortgagee shall be named as additional insured thereunder.

Section 6.2 Certificates of Insurance. Upon the Commencement Date of this Lease, Tenant shall furnish Landlord, Mortgagee and other third parties which Landlord shall designate with appropriate certificates of insurance on acceptable Accord forms, together with an additional insurance endorsement showing that each type of insurance required under this Article VI is in full force and effect and not cancelable or modifiable without thirty (30) days prior written notice to Landlord, and upon request of Landlord or one or more of such additional insureds, deliver copies of such insurance policies. Tenant will provide Landlord with acceptable certificates of insurance pursuant to this Section 6.2 evidencing the renewal of such Policies ten (10) Business Days prior to the Policies' expiration date. Tenant acknowledges that all such certificates shall name Landlord, its successors and assigns, and Mortgagee, its successors and assigns, as additional insureds on the general liability and umbrella policies and as a loss payee/mortgagee, as their interests may appear, on the property and boiler and machinery policies.

Section 6.3 Waiver of Subrogation. Landlord and Tenant hereby waive all rights of recovery for causes of action which either has or may have or which may arise hereafter against the other for any damage to the Leased Premises or the property or business of either of them or of anyone claiming through either of them, by way of subrogation or otherwise, caused by any of the perils covered by a special form policy of property insurance or contents insurance or by any other insurance for damage to property carried by the party whose property was damaged; provided, however, that the foregoing waiver shall apply only if and to the extent that

a waiver of subrogation for property damage is not prohibited in the State of New York, has been consented to by the applicable insurance carrier, and only to the extent of such insurance coverage.

ARTICLE VII

SECURITY, ACCESS AND REPORTING OBLIGATIONS, WORKING CAPITAL

Section 7.1 Security Deposit/Guaranty.

(a) Contemporaneously with the execution of this Lease, Tenant shall deliver a guarantor of this Lease (the "Guaranty") from Liza Jozefovic and Mark Naumen (collectively, the "Guarantors") in the form of Exhibit "B" attached hereto, or in form and amount as may be otherwise required by the Landlord and Landlord's first and second Mortgages. The Guaranty shall set forth that the Guarantors will be required to cooperate in turning the license over to the Landlord's designee or be personally liable for all costs, expenses and damages or deficiencies. The Guarantors shall ensure that the Tenant shall deliver all of the documents required to transfer the license in escrow to Posternak, Blackstein & Lund, or such other party as Landlord designates. As further security for the Tenant's performance under the Lease, the Tenant hereby agrees as follows:

(i) Tenant agrees that it shall deliver to Landlord 60 days prior to the Commencement Date, an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached hereto as Exhibit 7.1(a) or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months.

(ii) Tenant agrees that it shall deliver 60 days prior to the anticipated Commencement Date either (i) an unconditional Letter of Credit, in accordance with the Letter of Credit Agreement attached hereto as Exhibit 7.1(b) (which shall be executed simultaneously herewith), in the amount of \$3,700,000, or (ii) \$3,700,000 in cash ("Security Deposit") to secure the full and timely payment and performance of Tenant's obligations under this Lease. Tenant's failure to deliver the Letter of Credit or timely pay to Landlord the Security Deposit shall be deemed a Lease Default by Tenant. Landlord may retain the Security Deposit in such accounts as Landlord elects in its sole discretion and Landlord may commingle the Security Deposit with other funds of Landlord or its affiliates. Tenant shall have no right to any interest on the funds comprising the Security Deposit that it delivers to Landlord.

(iii) Sixty days prior to the anticipated Commencement Date, the funds in the controlled account number [REDACTED] at JPMorgan Chase Bank, N.A. (the "Bank") in the amount not less than \$1,000,000 shall be delivered by Tenant to Landlord and released by Tenant to Landlord to be held as an additional Security



Deposit by Landlord. The letter to Bank implementing the Tenant's obligations pursuant to the preceding sentence, attached hereto as Exhibit 7.1(c), which shall be held in escrow by Posternak, Blankstein & Land, shall be delivered by it to the Bank sixty days prior to the anticipated Commencement Date upon notice from Landlord.

(b) The term "Letter of Credit" shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit in favor of Landlord in form and content reasonably satisfactory to Landlord and entitling Landlord to draw thereon without the payment of any fees or charges in New York, New York, issued by a domestic banking institution or the U.S. agency or branch of a foreign banking institution; provided, that such banking institution has a long term senior unsecured debt obligation rating of at least "AA" by S&P. The Letter of Credit shall have an expiration date of the date that is the first anniversary of the date hereof. The Letter of Credit shall provide that it shall be deemed automatically renewed (without amendment) for consecutive periods of one year each thereafter during the Term unless the issuing bank sends written notice to Landlord and Tenant by certified mail, return receipt requested, not less than thirty (30) days preceding the then expiration date of the Letter of Credit that it elects not to have such Letter of Credit renewed. If such notice is sent, then at least twenty (20) days prior to the expiration of the Letter of Credit (and each subsequent or replacement Letter of Credit), Tenant shall deliver to Landlord a new Letter of Credit in the same amount and a failure to do so shall entitle Landlord to draw upon the existing Letter of Credit and to receive the proceeds therefrom and hold such proceeds as a cash Security Deposit pursuant to this Section 7.1 pending delivery of a new Letter of Credit.

(c) Upon a Lease Default, Landlord shall have the right, but not the obligation, in Landlord's sole and absolute discretion, to draw upon the Security Deposit and/or Letter of Credit and apply some or all of the funds to remedy such default or occurrence and to compensate Landlord for any loss or damage resulting therefrom, without prejudice to any other rights or remedies of Landlord under this Lease or at law or in equity. Upon any such application by Landlord, Tenant shall promptly deposit with Landlord an amount in cash equal to the amount from the Security Deposit so utilized by Landlord. Landlord shall at all times have, as security hereunder, Letter of Credit and cash Security Deposit in the amounts stated in Section 7.1(a). Upon the termination or expiration of this Lease, as long as Tenant has performed all of its obligations pursuant to this Lease and no Lease Default has occurred which is continuing, the remaining amount of the Security Deposit shall be returned or refunded to Tenant, without interest, subject in all events to Landlord's right to apply the Security Deposit as provided herein.

(d) Upon the occurrence of a Lease Default, Landlord may use, apply or retain the whole or any part of the Security Deposit or draw under a Letter of Credit to the extent required for the payment of any Rent or any other sums due to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the reletting of all or any portion of the Leased Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the Security Deposit, Tenant shall upon demand immediately deposit with Landlord a sum equal to the amount so used, applied or retained. In the event of any sale or financing of Landlord's interest in the Leased Premises, Landlord shall have the right to assign its interests in the

Security Deposit to the transferee, assignee or mortgagee, as the case may be, and if Landlord has given notice to Tenant of the assignment of Landlord's interest in the Security Deposit and if assignee or transferee of the Security Deposit has accepted liability for the Security Deposit, Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof; and Tenant shall look solely to the new landlord or mortgagee for the return or payment of the same. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit and neither Landlord, nor its successors or assigns, shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Section 7.2 Access to Leased Premises. Tenant shall permit Landlord, Mortgagee and their agents to enter upon the Leased Premises at all reasonable times during ordinary business hours and upon at least twenty-four (24) hours advance oral notice (except that in the case of emergency, Landlord may enter at any time and without prior notice) to inspect and examine the Leased Premises, to perform repairs as to Landlord's Work pursuant to Section 5.1, and to inspect and copy any operating manuals, procedures manuals, training manuals, and other books and records concerning unemployment, workers' compensation, insurance, tax, and any other business issues pertaining to the Leased Premises (subject to applicable laws and regulations governing patient confidentiality and privacy and the confidentiality of medical records) and any information necessary for audit relating to cost reimbursement, collections, general financial matters, litigation, inquiries and related activities (as may be necessary in connection with the Lease or the Leased Premises or any matters relating to periods prior to the Commencement Date). Any access by Landlord to patient records or medical records shall be strictly governed by Laws governing patient confidentiality and privacy and the confidentiality of medical records and all appropriate consents and/or waivers from residents or their guardians or representatives shall have been obtained before access to such records shall be granted. Landlord shall make reasonable efforts not to materially interfere with or materially disrupt Tenant's business and use and enjoyment of the Leased Premises during any such inspection or examination. Landlord shall also have the right but not the obligation to conduct a physical inspection of the Facility and from time to time and within ninety (90) days prior to the expiration of the Term or earlier termination of the Lease, upon twenty-four (24) hours advance oral notice. If Landlord reasonably determines based on this inspection that the Facility, or any portion of the Facility, requires repairs or maintenance so that the condition of the Facility is in compliance with this Lease and all Laws, then within thirty (30) days of notification by Landlord, Tenant shall commence making said repairs and diligently pursue such repairs to completion. Should Tenant fail to do so, within seven (7) days of notification by Landlord, Tenant shall pay to Landlord a deposit of funds in an amount equal to Landlord's reasonable estimate of the costs of such repairs or maintenance, which funds shall be released to Tenant from time to time during the progress of such repairs and maintenance based on submission by Tenant of evidence reasonably satisfactory to Landlord that such work is complete and all costs and expenses incurred to date have been paid in full. Tenant and Landlord acknowledge that the operations of the Facility and its maintenance are the sole and absolute responsibility of Tenant. Landlord shall have no liabilities or obligations with respect to the Facility, including no liabilities or obligations with respect to inspections of the Facility or the failure by Landlord to inspect the Facility.

Notwithstanding anything to the contrary in this in this Lease, Landlord and Tenant agree that all information, records and data collected or maintained regarding Facility

residents shall be confidential. Landlord, Tenant, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable New York and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) and the regulations issued in connection therewith (collectively, "HIPAA"). No employee or agent of Landlord or Tenant shall discuss, transmit or narrate in any manner the Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility's assets, or otherwise fulfilling its obligations under this Lease or under law. The obligations under this Section 7.2 shall survive the termination of this Lease, whether by rescission or otherwise.

**Section 7.3 Changes in Licensure and Certification Status.** As of the Commencement Date, Tenant represents and warrants that the number of beds licensed or certified for the Facility is one hundred sixty (160). Tenant shall not increase or decrease the licensed or certified number of beds, or change the license or certification thereof, without the consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; Tenant may increase the number of licensed or certified beds of the Facility upon thirty (30) days prior written notice to Landlord, but without the prior written consent of Landlord. If required, Tenant shall not increase the number of beds without the consent of the Commissioner and/or the DOH and Tenant agrees to return to Landlord upon the expiration of the Lease, the Leased Premises. Should Tenant increase the number of licensed beds at the Facility, the Fixed Rent payable for the Facility shall be increased proportionately for such additional beds. In no event shall the Fixed Rent be reduced in the event the number of Licensed Beds at the Facility is reduced. Landlord and Tenant acknowledge that the Leased Premises are, and at all times under the Term of this Lease are, the sole and absolute property of Landlord. Upon any termination of this Lease or any Lease Default by Tenant hereunder (which breach or default is not cured within any applicable grace period), and subject to the approval of the DOH, Landlord shall have the right to cause the Facility's licenses to be reissued in Landlord's name or in the name of Landlord's designee upon application therefor to, and the receipt of approval from, the DOH and to further have the right to have any and all Medicare, Medicaid and any other provider and/or third party payor agreements issued in Landlord's name or in the name of Landlord's designee. In the event Landlord exercises its rights pursuant to this Section 7.3, Tenant and Guarantors shall cooperate with Landlord in transferring the aforementioned issues to Landlord's name or for the benefit of Landlord or as Landlord may direct pursuant to the terms of this Lease.

**Section 7.4 Reporting and Other Obligations.**

(a) During the Term, Tenant shall and shall cause all Subtenants, sub-subtenants and any operators of the Facility to provide (without duplication) Landlord and Mortgagee with the following reports, statements, and inspections:

(i) **Annual Budget.** Within 60 days prior to the projected Substantial Completion Date, and no later than thirty (30) days prior to the end of each calendar year thereafter, Tenant shall submit to Landlord an annual budget (each an "Annual Budget") covering the operations of and proposed capital expenditures to be made with respect to the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Annual Budget).

(A) Capital Expenditures. The Annual Budget shall include a capital budget (the "Capital Budget") outlining a program of capital expenditures as may be required by Laws, any order to Landlord, or Tenant's reasonable business judgment during the next calendar year (or the remainder of the current calendar year, in the case of the initial Capital Budget), in which each proposed capital expenditure will be designated as either mandatory, highly recommended or desirable. Tenant shall be responsible for designating as a "mandatory capital expenditure" any expenditure which, if not made would, in Tenant's reasonable judgment: (a) cause the Facility to lose or put at risk its License; (b) place at risk the safety of a patient or resident or employee of the Facility; (c) cause the ineligibility of the Facility under any third party payor program applicable to the Facility; (d) cause the issuance of a formal notice that any of the operating licenses for the Facility or any substantial portion of the Facility will be revoked or suspended or qualified in any material adverse respect; or (e) subject Landlord or Tenant to criminal prosecution. Tenant shall make during the calendar year, or calendar quarter for which they are budgeted, all capital expenditures approved by Landlord. On and after the Commencement Date, Tenant shall expend at least Five Hundred Twenty-Three Dollars (\$523.00) per bed per month for capital expenditures at the Facility, including amounts expended to comply with the licensure and other expenditures required by any Governmental Authority or such other amounts as may be required by Mortgagee from time to time. If Mortgagee requires Landlord to deposit sums for capital expenditures, replacements and/or refurbishments relating to furniture, fixtures, equipment and/or improvements to the Facility, then Tenant shall pay to Landlord, as Additional Rent hereunder, all reserve or escrow amounts, sums and/or deposits which Landlord is required to pay to such Mortgagee with respect to such capital expenditures, replacements and/or refurbishments. Tenant shall pay any and all of such amounts and sums to or as directed by Landlord as Additional Rent hereunder together with each payment of Fixed Rent hereunder. Tenant acknowledges that as of the date hereof, Mortgagee requires a monthly deposit of Five Hundred Twenty-Three Dollars (\$523.00) per bed with respect to the Facility. In the event that such deposits are made by Tenant hereunder, Landlord shall use its reasonable efforts, subject to the terms and conditions of the loan agreements with Mortgagee, to obtain disbursements of such funds to be used for the payment of or reimbursement for the costs of such capital expenditures, replacements and/or refurbishments.

(B) Operating Budget. The Annual Budget shall include an operating budget (the "Operating Budget") setting forth an estimate of operating revenues and expenses for the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Operating Budget), together with an explanation of anticipated changes in the Facility. Tenant shall provide to Landlord upon written request such other reports, including a cost comparison report, and all appropriate Medicare and Medicaid reports, as may be required under these programs, as are normally provided by Tenant to the owners of other similar rehabilitation hospitals, psychiatric hospitals, and skilled nursing facilities leased by Tenant.

(ii) Financial Reporting. Tenant will keep and maintain or will cause to be kept and maintained on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Tenant and all items of income and expense in connection with the operation on an individual basis of the Facility. Notwithstanding the foregoing, Tenant's interim unaudited financial statements shall be prepared in accordance GAAP for interim financial information, but may not include all information or notes required by GAAP for a complete set of financial statements; such financial statements

shall include all adjustments and reclassifications of a normal recurring nature considered necessary for a fair and comparable presentation; all such interim financial statements shall be read in conjunction with most recent audited financial statements. Landlord and Mortgagee shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Tenant or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Landlord and/or Mortgagee shall desire. After the occurrence of a Lease Default, Tenant shall pay any costs and expenses incurred by Landlord and/or Mortgagee to examine Tenant's accounting records with respect to the Facility, as Landlord and/or Mortgagee shall reasonably determine to be necessary or appropriate in the protection of Landlord and/or Mortgagee's interest.

(ii) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, as soon as available, and in any event (A) within thirty (30) days after each calendar month's end, unaudited monthly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the month then-ended and year to date, prepared on a basis consistent with the annual statements; monthly census and revenue information of the Facility as of the end of such month and year to date in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average monthly census of the Facility and year to date; an aged accounts receivable report from the Facility in sufficient detail to show amounts due from each class of patient-mix by the account age classifications of 30 days, 60 days, 90 days, 120 days, and over 120 days; (B) within forty-five (45) days after the end of each calendar quarter, unaudited quarterly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the quarter then-ended, prepared on a basis consistent with the annual statements; quarterly census and revenue information of the Facility as of the end of such quarter in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average quarterly census of the Facility; (C) no later than 120 days after the end of each calendar year of Tenant, audited annual financial statements of Tenant, prepared by an independent certified public accounting firm reasonably acceptable to Landlord, prepared in accordance with generally accepted accounting principles, with an unqualified opinion, and including a balance sheet, a statement of income and expenses for the year then ended, a statements of cash flow, and a schedule audited by such independent certified public accountant reconciling Tenant's net operating income to net cash flow, which shall itemize all adjustments made to net operating income in arrive at net cash flow deemed material by such independent certified public accountant.

(iv) Each financial report provided by Tenant shall reconcile and show variances between the actual experience incurred during each such reporting period with respect to each metric to the metric shown on the Operating Budget and Capital Budget for such period.

(v) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, any other reports and certificates reasonably requested by Landlord or Mortgagee from time to time.

(vi) In addition, Tenant shall prepare and deliver to Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, a written report providing an operational overview of significant events and circumstances at the Facility during the prior month, during the first six months of the Term and then quarterly thereafter, including, but not limited to, clinical events, employee relations and staffing matters and provide such other information as Mortgagee may require from time to time. Tenant shall provide Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, with a copy of all federal income tax returns of Tenant and its Subtenants within fifteen (15) days after filing thereof. Whenever practicable, all reports shall be delivered to Landlord electronically in a format usable by Landlord.

(b) All unaudited financial reports from Tenant shall include an Officer's Certificate certifying that such financial statements present fairly the financial condition and the results of the operations of Tenant and the properties being reported upon and that such financial statements have been prepared in accordance with the Tenant's customary accounting procedures. The Officer's Certificate accompanying the annual audited financial statements of Tenant shall also include a statement that they have been prepared in accordance with GAAP and whether there exists an event or circumstance which constitutes a default or an event of default under the Lease, the nature thereof, the period of time it has existed, and the action then being taken to remedy the same.

(c) Tenant shall furnish Landlord and Mortgagee, within five (5) days of the receipt by Tenant, any and all notices (regardless of form) from any Health Care Authority that Tenant's license, Medicare or Medicaid certification, or VA or other governmental program participation is being, or could be revoked or suspended, that action is pending, being considered or being taken to revoke or suspend the Tenant's license or certification or to fine or penalize the Tenant, or that action is pending, being considered, or being taken, to discontinue, suspend, deny, decrease or reduce any payments due, made or coming due to Tenant or related to the operation of the Facility other than in the ordinary course of business related to billing adjustments.

(d) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the receipt by Tenant, any and all notices (regardless of form) from any Governmental Authority or third party payor (i) alleging that the Facility has three or more deficiency(ies) of a scope and severity of "G" or hire, or one or more deficiency(ies) of a scope and severity of "J" or higher, (ii) alleging that the residents of the Facility are in jeopardy, (iii) freezing admissions to the Facility or (iv) denying reimbursement for any class of residents by any third party payor.

(e) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the sending or receipt by Tenant of any communication copies thereof, including a plan of correction, with respect to the matters referenced to Section 7.4(d).

(f) Tenant shall file all required reports, including without limitation, Medicare or Medicaid cost reports, on or prior to the date such reports are due (such due date to include approved regulatory extensions allowed by the applicable Governmental Authority for the filing of such reports) and shall furnish Landlord and Mortgagee, within thirty (30) days of the date of filing, a complete and accurate copy of the annual Medicare or Medicaid cost report

for Tenant, which will be prepared by Tenant and accompanied by an Officer's Certificate of Tenant certifying as of the date thereof that such report is accurate, complete and not misleading, and promptly furnish Landlord and Mortgagee any amendments filed with respect to such reports and all notices, responses, audit reports or inquiries with respect to such reports.

(g) Tenant shall furnish Landlord and Mortgagee, within thirty (30) days of the receipt by Tenant, the annual Medicaid and Medicare provider agreement(s) and the annual Medicaid and Medicare reimbursement rate sheets for the Facility.

(h) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt but at least five (5) days prior to the earliest date on which Tenant is required to take any action with respect thereto or would suffer any adverse consequence, a copy of any Medicare, Medicaid or other licensing or accreditation or rating agency or entity survey, report, warning letter, or notice, and any statement of deficiencies, and within the time period required by the particular agency for furnishing a plan of correction also furnish or cause to be furnished to Landlord and Mortgagee a copy of the plan of correction generated from such survey, report, warning letter, or notice to Tenant and any subsequent correspondence related thereto, and correct or cause to be corrected any deficiency, the curing of which is a condition of continued licensure or of full participation in Medicare or Medicaid or a care program offered by an insurance company, managed care company, or other third-party payor by the date required for cure by such agency or entity (plus extensions granted by such agency or entity).

(i) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any other notices or charges issued relating to the non-compliance by Tenant with any Governmental Authority, insurance company, managed care company, or other third-party payor laws, regulations, requirements, licenses, permits, certificates, authorizations or approvals, but only such matters which could reasonably be expected to have a material adverse effect on the financial condition of such Person or the operation of the Facility.

(j) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any new, revised or amended Medicare or Medicaid reimbursement rate sheets which may be issued subsequent to the annual reimbursement rate sheets.

(k) Tenant shall notify Landlord within five (5) days of any condition or event that constitutes a breach of any term, condition, warranty, representation or provision of this Lease or any other agreement between Landlord or its Affiliates and any Tenant, any Guarantor or any of their Affiliates, and of any adverse change in the financial condition of any Tenant, any Guarantor or any Affiliate of any Tenant or any Guarantor and of any Event of Default. Additionally, Tenant shall notify Landlord within seven (7) days after receipt of any formal or informal written notice or advice from its insurance carrier, reinsurance provider, accountants, actuary, any Governmental Authority, or any third party payor program provider of any actual, pending, threatened or contemplated increase in Tenant's reserves for expenses relating to malpractice or professional liability claims or any material increase in the premium costs for malpractice or professional liability insurance.

(l) To the extent performed, Tenant shall furnish Landlord and Mortgagee, a copy of written external consultant reports (including environmental, operations,



quality assurance, physical plant, property inspection, etc.) (which shall be delivered promptly upon receipt from the consultant).

(m) Tenant shall furnish Landlord and Mortgagee, a copy of cost reports as filed by Tenant.

(n) Any supporting documents or data requested by Landlord in connection with the items in this Section 7.4.

(o) Within 10 days of event of any of the following, Tenant shall deliver to Landlord, notice of:

(i) any rate appeal brought before any Governmental Authority or any administrator of any third party payor program or referral source;

(ii) any reimbursement appeals or recoupment claims made or contests pending or threatened as a result of any audits by any third party payor, and

(iii) any claim, requirement or demand (excluding all claims, requirements, and demands, if any, that have been waived) of any Governmental Authority, third party payor or insurance body or carrier having or claiming any licensing, certifying, supervising, evaluating or accrediting authority over the Leased Premises to rework or redesign the Leased Premises, its professional staff or its professional services, procedures or practices in any material respect or to make any of the Leased Premises conform to or comply with a legal requirement.

(p) The receipt by Landlord of any reports, statements, financial information, surveys or otherwise from Tenant or its Affiliates shall not in any way impose any obligation or liability upon Landlord to act or take any action upon any information, facts or circumstances which may be disclosed or shown therein and Landlord shall have no liability for its failure to act thereon or as a result thereof.

(q) Financial Covenants. Tenant covenants and agrees to the following, as may be amended time to time as required by Landlord's 1st or 2nd Mortgagee:

(i) Commencing the third full quarter of the Term Tenant's Current Ratio shall not be less than 1.1 to 1.0. The term "Current Ratio" means the current assets of Tenant divided by the current liabilities of Tenant determined in accordance with GAAP.

(ii) For each quarter of the Lease Term commencing the third full quarter following the Commencement Date, Tenant's Lease Coverage Ratio shall be not less than 1.25 to 1.0.

(iii) For each quarter of the Lease Term commencing the second full quarter following the Commencement Date, the Facility shall have achieved the EBITDAR benchmarks as described in Schedule 7.4, attached hereto. The term "EBITDAR" is defined in Schedule 7.4.

Section 7.5 Payment in the Ordinary Course. Tenant shall pay in full: (a) prior in each case to the date when penalties would attach, all Impositions (except only those so long as and to the extent that the same shall be contested in good faith by appropriate and timely proceedings and for which adequate reserves have been established in accordance with GAAP), provided that (i) Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) for which Tenant may be or become liable; (ii) no Lease Default has occurred and remains uncured, (iii) such proceeding shall suspend the collection of such Impositions or the Impositions shall have been paid, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Tenant is subject and shall not constitute a default thereunder, (v) no part of or interest in the Leased Premises will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Tenant shall have furnished such security as may be required in the proceeding, or as may be requested by Landlord or Mortgagee, to insure the payment of any such Impositions, together with all interest and penalties thereon, which shall not be less than 125% of the unpaid Impositions being contested and (vii) Tenant shall promptly upon final determination thereof pay the amount of such Impositions, together with all costs, interest and penalties; (b) all of Tenant's wage obligations to Tenant's employees in compliance with the Fair Labor Standards Act (29 U.S.C. §§ 206-207) or any comparable provisions under federal, state or local law; (c) all obligations owed in connection with any claim, demand or notice of any overpayment received from Medicare, Medicaid or other third party payor; and (d) all of Tenant's obligations calling for the payment of money (except only those so long as and to the extent that the same shall be contested in good faith and for which adequate reserves have been established in accordance with GAAP, provided that Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) before such payment becomes overdue.

Section 7.6 Security Agreement. In order to secure the payment and performance of all of Tenant's obligations under this Lease and all of Tenant's obligations to Landlord, and all and all other documents contemplated thereby, Tenant hereby grants to Landlord a first priority security interest in and lien upon, all of the assets of Tenant including, without limitation, (i) all trade fixtures, equipment, furniture, merchandise, inventory and other personal property located from time to time in or upon the Leased Premises (including the proceeds thereof), and (ii) to the fullest extent permitted by applicable law, all accounts, accounts receivable, licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, certificates of need, and other authorizations issued to or held by Tenant with respect to the operation of the Facility skilled nursing facility and Tenant's interest in and rights under all third party payor provider agreements with respect to the Facility (the items listed in clauses (i) and (ii), together with the proceeds of same, are collectively, "Collateral"). The security interest granted to Landlord with respect to Tenant's tangible personal property is intended to be subordinate to any purchase money security interest or capital lease on any of Tenant's tangible personal property provided that Tenant has notified Landlord of the creation of such security interest or capital lease prior to the creation thereof and Landlord has approved same. Landlord agrees to subordinate its lien on Tenant's accounts receivable in favor of Tenant's accounts receivable lender, which shall be a nationally recognized nursing home accounts receivable lender with experience acceptable to HUD or Mortgagee on at least 20 nursing homes, securing up to a \$2,000,000.00 accounts receivable loan, provided such lender enters into an Intercreditor agreement reasonably acceptable to Mortgagee and Landlord. Should

Mortgagee require a subordination of the priority of Landlord's security interest in the Collateral, Landlord and Tenant shall execute such documents as Mortgagee may request to subordinate Landlord's lien to the Mortgagee's security interest in the collateral. In addition, Tenant's members shall grant to Landlord a first lien pledge (subject to the following sentence) of the membership interests of Tenant. To the extent required by Tenant's accounts receivable lender, Landlord agrees to subordinate its lien on Tenant's membership interests to a lien in favor of such lender securing up to a \$2,000,000.00 accounts receivable loan; provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. On or before the Commencement Date, Tenant shall provide Landlord with a detailed list and description of all the Collateral. Upon a Lease Default by Tenant, Landlord shall have all the rights and remedies of a secured party under the laws of the State of New York. Tenant, as debtor, shall cause to be executed (if appropriate or necessary) and delivered to Landlord, as the secured party, upon execution of this Lease by Tenant, UCC-1 Financing Statements in proper form, and thereafter, from time to time, deliver to Landlord such extensions and/or updates of such financing statements as are required for the purpose of perfecting and maintaining the priority of the security interest granted to Landlord herein, and to perform any other acts reasonably necessary to the perfection of such security interest. Tenant and Tenant's members consent to Landlord's preparation of and the filing of such financing statements by Landlord and agrees that the provisions of this Section 7.6 shall constitute a security agreement for the purposes contemplated hereby. The security interest granted by this Section 7.6 shall be in addition to any lien of Landlord that may now or at any time hereafter be provided by law. In the event Landlord exercises its remedies to foreclose the security interest created under this Section 7.6, or elsewhere in this Lease, Tenant shall cooperate with Landlord in transferring all of the aforementioned items promptly as requested by Landlord in Landlord's or its designee's name or for the benefit of Landlord. Tenant covenants and agrees that it shall not sell, move, surrender, cancel, modify, transfer, assign, relocate, pledge, grant a security interest in, convey or in any other manner encumber any assets of Tenant including, without limitation, the personal property, the certificate of need approval or any of the licensed or Medicare- and/or Medicaid-certified beds at the Facility, or any licenses for the Facility, or attempt at any time to do so, except as expressly provided hereunder and with the written consent of Landlord. This Section 7.6 and Landlord's rights and remedies hereunder shall survive the termination of the Lease.

Section 7.7 Working Capital. As of the Effective Date, Tenant shall have and maintain until the Commencement Date in accounts, acceptable to Landlord in its sole and complete discretion, an amount of funds equal to the greater of ("Working Capital") (i) any debt service reserve required by Mortgagee, (ii) the aggregate negative net operating income of Tenant for the period of months from the Commencement Date to the first day of the first two month period in which aggregate net income from operations exceeds zero, all as reflected in the projections attached hereto as Schedule 2.2 ("Cash Requirement"); for the purpose of this calculation net operating income shall be determined on a cash basis, and (iii) 4.5 million dollars. Working Capital shall not include any accounts or reserves established to satisfy the requirements of Section 7.1(a) (i) and (k). From and after the Commencement Date, the Working Capital, subject to any requirement of the Mortgagee, may be used by Tenant only to fund the Cash Requirement.

7.8 Refinance. Tenant shall fully cooperate with Landlord in its efforts to Refinance from time to time, including without limitation, providing all information and executing all

documents required by Landlord or its lender(s). On and after each Refinance Date the Fixed Rent for each twelve month period shall equal the sum of the amounts provided for in clauses (a) through (e): (a) the annual debt service payments (principal, interest, and mortgage insurance premiums, if any) that Landlord is required to pay to Lender pursuant to the first Mortgage (the "Mortgage Debt"), plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations; (b) the annual aggregate debt service payments or preferred equity payments that the Landlord is required to pay pursuant to the Junior Debt (or replacement thereof) (with the Mortgage Debt, the "New Debt Service"); plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations under the Junior Debt (or replacement thereof); (c) an annual amount equal to \$1,390,115; (d) an additional amount of \$250,000 per year prior to the fourth year of the Term; \$350,000 per year during Lease Years 4 and 5; and \$400,000.00 per Lease Year thereafter until the end of the Term, including all Extension Terms; and (e) an additional amount equal to one-half of the amount that (i) a sum equal to the last 12 months interest payment on the original Mortgage and Junior Debt exceeds (ii) New Debt Service.

ARTICLE VIII

PERSONAL PROPERTY

Section 8.1 Landlord's Personal Property. Upon the expiration or termination of this Lease, Tenant shall leave all personal property leased to Tenant hereunder, as required, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, in or on the Leased Premises, except for ordinary wear and tear. Any and all restorations, alterations or replacements of, or repairs, reconstructions or additions to, the personal property at the Facility made by Tenant shall become part of Landlord's personal property, and any and all security interests (except in favor of Landlord) in Tenant's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Tenant shall pay off in full the remaining payments due on all personal property leased by Tenant and such personal property shall become part of Landlord's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Any of Tenant's software, software licenses, proprietary information, and policies, and procedures of Tenant ("Retained Assets") shall not become part of Landlord's personal property except in the event of the termination of this Lease as a result of a Lease Default, in which case the Retained Assets shall become the personal property of Landlord; provided, however, upon request of Landlord, in consideration of a payment by Landlord or its designee of Ten Dollars (\$10.00) and any applicable lease, rent, or license fees owed to any third parties during the Transition Period (hereinafter defined), Tenant shall license Landlord or its designee(s) (at Tenant's cost with no mark-up) to utilize the Retained Assets for a period of one hundred twenty (120) days (the "Transition Period") in connection with the transition of operations from Tenant and Landlord's new operator(s). To the extent Tenant or any Subtenants are obligated under license agreements with third party vendors supplying software (and/or computer hardware which Tenant does not own or lease) to such Tenant, Tenant shall use its best

efforts to arrange for Landlord or Landlord to enter into licensing agreements with such third party vendors to allow Landlord or its designee to utilize such software and computer hardware supplied by such third party vendors for the duration of the Transition Period.

Section 8.2 Tenant's Retained Assets. At the termination of the Lease, Landlord shall have the right to purchase all or a portion of Tenant's Retained Assets located at the Facility at the lower of its fair market value or book value. To the extent any of Tenant's Retained Assets is subject to a license, Landlord shall have the right but not the obligation to assume some or all of such license Landlord's sole cost and expense and at no additional liability to Tenant.

ARTICLE IX

INDEMNIFICATION

Section 9.1 Tenant's Indemnification (a) During the Term of this Lease and after the surrender of the Leased Premises in accordance with Section 5.5 of this Lease, Tenant shall protect, defend (at Landlord's request), indemnify and hold harmless Landlord, Landlord's members, managers, officers, owners, directors, employees, agents, representatives, and Mortgagee and their respective agents, executors, heirs, representatives and assigns, and any entity providing financing which is secured by the Leased Premises (collectively the "Landlord's Indemnitees"), from and against any claims, losses, costs, penalties, damages, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) imposed or resulting from, arising out of or attributable in whole or in part to any of the following: (i) any violation of any Law, order of Governmental Authority, whether occasioned by the intentional act, omission, or negligence of Tenant or those holding under Tenant, (ii) any accident or other occurrence on or about the Leased Premises on or after the Commencement Date causing injury to any person or property whatsoever or whatsoever, including but not limited to patient care claims or elder abuse, (iii) any failure of Tenant in any respect to comply with or perform any term, condition, covenant, requirement and/or provision of this Lease, or a breach of this Lease by Tenant, including, but not limited to, a breach of any of Tenant's representations and warranties under Section 19.1 of this Lease, (iv) in any way relating to Tenant's use, operation and/or maintenance of the Facility (including, without limitation, third-party claims, whether by the State of New York, the United States, private insurer, private parties, for recoupment, false claims, or any other claims, assumption of and use by Tenant of Landlord's permits, variances, waivers, and certificate of need approval or its possession of the Leased Premises and/or (v) any liability under Section 20.14. The indemnity provided for herein shall survive the expiration of this Lease or the surrender of the Leased Premises for the period of the relevant statute of limitations.

(b) Any amounts which become payable by Tenant under this Article IX shall be paid within ten (10) days after liability therefor is determined by litigation or otherwise, and if not timely paid shall bear interest at the Prime Rate plus 5% (the "Overdue Rate") from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or may compromise or otherwise dispose of the same as Tenant sees fit provided that Landlord receives a full and complete release with respect to such claim, action or proceeding. Any legal

counsel selected by Tenant to defend Landlord shall be reasonably satisfactory to Landlord. All indemnification covenants are intended to apply to losses, damages, injuries, claims, costs, penalties, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) incurred directly or indirectly by the indemnified parties and their property, as well as by the indemnifying party or third party, and their property. For purposes of this Article IX, any acts or omissions of Tenant, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant. It is understood and agreed that payment shall not be a condition precedent to enforcement of the foregoing indemnification obligations. The "Prime Rate" shall mean on any date, a rate equal to the annual rate on such date publicly announced by Citibank, N.A. as its prime, base or reference rate. Such rate need not be the lowest rate charged by Citibank, N.A. If Citibank, N.A. discontinues its use of such prime, base or reference rate or ceases to exist, Landlord shall designate the prime, base or reference rate of another state or federally chartered bank with offices in New York, N.Y. to be used for the purpose of calculating the Prime Rate hereunder.

## ARTICLE X

### USE OF LEASED PREMISES

Section 10.1 Compliance with Laws and Regulations. Tenant shall use the Leased Premises solely as a licensed Medicare- and Medicaid-certified skilled nursing facility with at least the number of licensed and verified beds existing at the Facility on the Commencement Date, and for no other purpose (the "Intended Use"). On or before the Commencement Date, Tenant shall have acquired, and thereafter Tenant shall maintain all licenses, certificates, accreditations, approvals, permits, variances, waivers, provider agreements and other authorizations needed to operate the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility. Tenant hereby covenants, warrants and represents to Landlord that as of the Commencement Date and throughout the Term: (a) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be validly licensed and Medicare and Medicaid certified to operate a skilled nursing facility in accordance with the applicable rules and regulations of the DOH, federal governmental authorities and accrediting bodies, including, but not limited to, the United States Department of Health and Human Services ("DHHS"), CMS, and the DOH; (b) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be, certified by and the holder of valid provider agreements with Medicare and Medicaid issued by DHHS, DOH and/or CMS and shall remain so certified and shall remain such a holder in connection with its operation of the Leased Premises as a licensed and Medicare and Medicaid certified skilled nursing facility; (c) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be in compliance with and shall remain in compliance with all applicable Laws with regard to the operation of the Facility, including, without limitation, compliance under Laws governing patient confidentiality and privacy and the confidentiality of medical records; (d) Tenant (and any subtenant, operator or manager of Tenant) shall operate the Facility in a manner consistent with high quality skilled nursing services and sound reimbursement principles under the Medicare and Medicaid programs and as required under Laws; and (e) Tenant (and any subtenant, operator or manager of Tenant) shall not abandon, terminate, vacate or fail to renew any licenses,

certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or any other authorization which relates to the operation of the skilled nursing facility business or other permitted operations on the Leased Premises or in any way commit any act which will or may cause any such licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or other authorization to be revoked by any Governmental Authority or accrediting body having jurisdiction thereof.

Section 10.2 No Waste. Tenant shall not commit or suffer to be committed any waste on the Leased Premises nor shall Tenant cause or permit any nuisance thereon.

Section 10.3 Hazardous Materials and Hazardous Waste. (a) Tenant shall not place or hold any Hazardous Materials on or at the Leased Premises, except as is necessary for the ordinary course of its business as a skilled nursing facility in compliance with Section 10.1. If Tenant's business requires the use of any Hazardous Materials, other than such cleaning materials as are typically found in skilled nursing facilities in compliance with Section 10.1, Tenant shall notify Landlord in writing and shall comply with hazard communication and notification requirements of the Occupational Safety and Health Act ("OSHA") and all Laws which require notification of employees, the community or any governmental agency of the hazardous properties of such Hazardous Materials. For purposes of this Lease, "Hazardous Materials" means and includes any hazardous substance defined as such in OSHA, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous substance or material, as now or at any time hereafter in effect.

(c) Tenant shall not cause or allow any asbestos or any asbestos containing materials to be incorporated into any improvements or alterations which it makes or causes to be made on or to the Leased Premises. Tenant shall obtain and maintain O&M Programs for the Facility if the Facility is determined to contain asbestos or asbestos containing materials and upon Landlord's request, shall furnish copies of same to Landlord, Mortgagee or their designee(s).

(d) Tenant shall not place, hold or dispose of any Hazardous Waste on, under or at the Leased Premises except as specifically allowed in this Section 10.3. Tenant further agrees that it shall not use the Leased Premises as a treatment, storage, or disposal (whether permanent or temporary) facility for Hazardous Waste. If Tenant, in the ordinary course of its business as a skilled nursing facility generates Hazardous Waste, then Tenant shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to the appropriate use, storage, transportation and disposal of Hazardous Waste. For the purposes of this Lease, "Hazardous Waste" means and includes any hazardous material that has entered the waste stream or any contaminant or pollutant as defined as such in the Resource Conservation and Recovery Act, CERCLA, as amended, any so-called "Superfund" or "Superfund" law, the TSCA, or any other Law, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste. Tenant further agrees that it shall properly dispose in accordance with Laws of all "infectious waste" such as laboratory waste, pathological waste, blood specimens or products, patient or resident waste including, without

limitation, bandages and disposable gowns, sharp waste and any material generated by the production or testing of biological agents. Immediately upon receipt of any Environmental Notice (as hereinafter defined) from any Person, Tenant shall deliver to Landlord a true, correct and complete copy of same. "Environmental Notice" shall mean any note, notice, or report of any suit, proceeding, investigation, order, consent order, injunction, writ, award, or action related to or affecting or indicating the treatment, storage, handling, disposal, generation, spill, release or discharge of any Hazardous Waste or Hazardous Materials in, upon, under, from or affecting the Leased Premises. All of the terms, covenants, warranties and indemnifications contained in this Section 10.3 shall survive the expiration or termination of this Lease.

(e) Without in any way limiting Tenant's obligation to indemnify Landlord and Landlord's Indemnitees under Section 9.1 of this Lease, Tenant shall indemnify, defend (at Landlord's request) and hold harmless Landlord and Landlord's Indemnitees from and against any claims, losses, costs, damages or expenses of any and every kind whatsoever (including reasonable attorney's fees and expenses and consultant's and expert's fees and expenses) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord and/or Landlord's Indemnitees for, with respect to, or as a direct or indirect result of: (a) a breach by Tenant of the covenants set forth in Section 10.3 or, (b) caused, permitted or allowed by Tenant or any agent, employee, business, or licensee of Tenant, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, onto, or into the Leased Premises, the atmosphere, or any watercourse, body of water, or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, as amended, any so-called "Superfund" or "Superfund" law, or any other Law, relating to or imposing liability or standards of conduct concerning, any Hazardous Material) occurring from and after the Commencement Date; and the provisions of and undertakings and indemnification set out in this Section 10.3(d) shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever. If required by Mortgagee, Tenant shall enter into an agreement to indemnify, defend and hold harmless Mortgagee with respect to matters contained in this Section 10.3 and other similar matters pursuant to a form of agreement reasonably acceptable to Mortgagee. In no event however shall Tenant have any liability to Landlord or Landlord's Indemnitees for Hazardous Materials located at or under the Leased Premises prior to the Commencement Date or for the remediation of same.

(f) If Tenant or its employees, agents, or contractors violate the provisions of this Section 10.3, then, in addition to any other duty or obligation of Tenant hereunder, at law or in equity, Tenant shall be obligated to clean up, remove, and dispose of the material causing the violation, in compliance with all applicable environmental laws and repair any damage to and remediate the Leased Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord; provided that such work shall commence no later than thirty (30) days from the date of such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time and procedure for any clean-up, remediation or removal of material causing the violation under this provision, and Landlord shall have the right to require reasonable changes in such method, time or procedure.

(k) Landlord reserves the right from time to time, but not more than once a year, except in the event of an emergency or during the occurrence and continuation of an uncured Lease Default during the Term hereof, at Landlord's cost and expense (except that, in the event of a continuing and uncured Lease Default, at Tenant's sole cost and expense), to have the Leased Premises inspected by environmental engineers and/or specialists for the purpose of determining compliance by Tenant with any environmental laws, rules and regulations applicable to Tenant's operations in or about the Leased Premises and with the terms and conditions of this Lease dealing with environmental matters, including without limitation, the provisions of this Section 10.3. If the environmental assessment or report resulting from such inspection discloses any non-compliance with Laws, Tenant shall immediately, following receipt of the environmental assessment, take all such steps as are necessary to put the Leased Premises into compliance, including without limitation, cleaning up any spills or other emissions of Hazardous Wastes or Hazardous Materials, and reimburse Landlord for the costs of its inspection.

(l) Upon the expiration of the Term, or the earlier termination thereof, subject to the last sentence of Section 10.3(d) above, Tenant shall forthwith remove all Hazardous Materials and Hazardous Waste from the Leased Premises or any portion thereof in accordance with applicable Law. Landlord shall have the right to inspect the Leased Premises with regard to the management and disposal of Hazardous Materials and Hazardous Waste at all reasonable times during the Term.

## ARTICLE XI

### DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction. Tenant shall immediately notify Landlord of any casualty, fire, damage, destruction or injury ("Casualty") affecting the Facility, including a description of the Casualty, and whether the Casualty is such as to cause the Leased Premises to be unusable, in whole or in part, for the intended Use. Tenant shall proceed with reasonable diligence to repair or reconstruct the Leased Premises and Tenant shall be liable for any costs of repair or replacement to the Leased Premises, whether or not such Casualty, or the costs of repairing such Casualty, are fully covered by the proceeds of Tenant's insurance required to be carried hereunder. If such Casualty renders the Facility unusable for the purpose of this Lease and if Landlord's Mortgagee so requires, Landlord, upon notice to Tenant, Landlord may terminate this Lease and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance to the extent such difference results from Tenant's breach of Article VI. Notwithstanding the foregoing, if Landlord's obligations to its Mortgagee have been satisfied in full and the DOH approves and agrees to reimburse the costs of rebuilding the Facility, Landlord shall not so terminate this Lease with respect to the Facility, and Tenant shall repair or reconstruct the Leased Premises in substantially the same condition as just prior to the incident with the proceeds of the property casualty insurance carried by Tenant, as required hereunder (if not otherwise paid to the Mortgagee), and/or with funds of Tenant. Regardless of any Casualty, except as provided above, this Lease shall continue in full force and effect without any abatement of Rent, and Tenant shall

not be entitled to surrender possession of the Leased Premises as a result of such casualty. Landlord's receipt of Rent from Tenant's rental interruption insurance shall be credited against Rent payments due from Tenant hereunder. If Tenant fails to commence such repair or reconstruction within thirty (30) days of the Casualty, Landlord shall have the option, subject to the approval of the DOH if required by Laws, to either terminate this Lease upon written notice to Tenant or repair and reconstruct the Leased Premises in substantially the same condition just prior to the incident and costs and expenses incurred as a result thereof shall be deemed Additional Rent hereunder and shall be payable to Landlord by Tenant, upon demand. Upon payment of all such sums demanded by Landlord, Tenant may re-enter and resume possession of the Leased Premises pursuant to the terms of this Lease. All insurance proceeds collected under the Policies shall be paid to Landlord, and made available to Tenant to pay for or reimburse Tenant for the costs and expenses for such repairs and reconstruction subject to the terms, conditions and provisions of any mortgage or other loan documents encumbering the Leased Premises. If Mortgagee does not make the insurance proceeds available to Landlord, then Landlord may terminate this Lease upon thirty (30) days' notice to Tenant, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance.

Section 11.2 Precedence of Rights of Mortgagee. All provisions contained in the loan documents between Landlord and Mortgagee, or any other document in connection therewith which concern or pertain to the restoration of the Leased Premises, the application of insurance proceeds and any and all matters concerning a casualty, shall take precedence over and be in lieu of any contrary provision provided for in this Lease, and in all respects are binding upon Tenant who agrees to and acknowledges the same.

Section 11.3 Tenant hereby waives the provisions of Section 227 of the Real Property Law of the State of New York and acknowledges that the terms of this Article XI shall govern in lieu thereof.

**ARTICLE XII**

**EMINENT DOMAIN**

Section 12.1 Eminent Domain. (a) In the event that all or substantially all of the Leased Premises, or such portion of the Real Property which renders the balance of the Facility unsuitable for the purpose of this Lease, shall be taken by condemnation or right of eminent domain, this Lease shall terminate as of the day the taking authority takes possession of the Leased Premises, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except as otherwise expressly provided in this Lease. In the event only a portion (and less than substantially all) of the Leased Premises is taken by condemnation or right of eminent domain and the portion so taken does not render the balance of the Leased Premises unsuitable for the purposes of this Lease, as determined by Landlord, this Lease shall not terminate. In such an event, Tenant shall restore the Leased Premises with reasonable diligence with its own funds and with the proceeds of any award from the applicable public or quasi-public authority, or private corporation or individual having the

power of condemnation ("Award") to an architectural unit as nearly like its condition prior to such taking as shall be practicable. Notwithstanding anything to the contrary herein, this Section 12.1(a) is subject to the terms, conditions and provisions of any mortgage and other loan documents encumbering the Leased Premises.

(i) Notwithstanding anything to the contrary contained in Section 12.1(a), Landlord may cancel this Lease with no further liability to Tenant, in the event that following a taking by condemnation or right of eminent domain, Mortgagee elects to require Landlord to repay the mortgage on the Leased Premises.

(j) Tenant shall not be entitled to any part of any award or settlement of damages representing the value of land and buildings appropriated, the value of this Lease or any estate therein, or damage to the residue of the Leased Premises or other property of Landlord; it being agreed as between Landlord and Tenant any such award shall be the sole property of Landlord. No appropriation of part or all of the Leased Premises or cancellation of this Lease pursuant to this Article XII shall be deemed an eviction of Tenant or a breach of any covenants of Landlord hereunder.

ARTICLE XIII

NOTICES

Section 13.1 Notice. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if (a) hand delivered or sent by (b) certified or registered United States mail, postage prepaid, return receipt requested or (c) Federal Express or other nationally recognized overnight next business day courier service at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 13.1):

If to Tenant:

HBL SNP, LLC  
1280 Albany Post Road  
Crown-on-Hudson, New York 10520

with a copy to:

Michelman & Robinson  
800 Third Avenue, 24th Floor  
New York, NY 10022  
Attn: Mark Zafrit, Esq.  
Telephone: 212.730.7700

If to Landlord:

White Plains Healthcare Properties I, LLC,



2 Bourbon Street, Suite 200  
Peabody, Ma 01960

with a copy to:  
Gerald Y. Billow, Esq.  
Posternak Blankstein & Lund LLP  
800 Boylston Street, Suite 3200  
Boston, Massachusetts 02199

-and-

Howard Fensterman, Esq.  
Abrams Fensterman  
111 Marcus Avenue  
Lake Success, New York 11042

The effective date of such notices shall be as follows: (a) upon delivery or refusal of delivery if sent by personal delivery, (b) two (2) Business Days after mailing (or upon actual receipt, if earlier), if sent by certified or registered mail, (c) one (1) Business Day after deposit with the courier for next business day delivery, if sent by overnight courier. The term "Business Day" means any day other than (i) a Saturday or a Sunday, and (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

Section 13.2 Notice to Mortgagee. (a) Tenant hereby agrees, upon request of Mortgagee, to give to Mortgagee copies of all notices given by Tenant of default by Landlord under this Lease at the same time and in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord. Such Mortgagee shall have the right to remedy any default under this Lease, or to cause any default of Landlord under this Lease to be remedied, and for such purpose Tenant hereby grants such Mortgagee such period of time as may be reasonable to enable such Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default which is a default. Tenant shall accept performance by such Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No default by Landlord under the Lease shall exist or shall be deemed to exist: (i) as long as such Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (ii) if possession of the Leased Premises is required in order to cure such default, or if such default is not susceptible of being cured by such Mortgagee, as long as such Mortgagee, in good faith, shall have notified Tenant that such Mortgagee intends to institute proceedings under the mortgage and, thereafter, as long as such proceedings shall have been instituted and shall prosecute the same with reasonable diligence and, after having obtained possession, prosecutes the cure to completion with reasonable diligence. This Lease shall not be assigned by Tenant or modified, amended or terminated without Mortgagee's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed. In the event of the termination of this Lease by reason of any default thereunder or for any other reason whatsoever except the expiration thereof, upon such Mortgagee's written request, given

within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Mortgagee or its designee or nominee a new lease of the Leased Premises for the remainder of the Term of the Lease upon, at a minimum, all of the terms, covenants and conditions of this Lease. Neither such Mortgagee or its designee or nominee shall become liable under this Lease unless and until such Mortgagee or its designee or nominee becomes, and then only for so long as such Mortgagee or its designee or nominee remains, the fee owner of the Leased Premises or the owner of the leasehold interest of Landlord under this Lease. Such Mortgagee shall have the right, without Tenant's consent, to, as the case may be, foreclose its mortgage or to accept a deed in lieu of foreclosure of such mortgage.

(b) In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Mortgagee, and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such Mortgagee within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Mortgagee shall have become entitled under its loan documents with Landlord in connection therewith, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy).

ARTICLE XIV

QUIET ENJOYMENT

Section 14.1 Quiet Enjoyment. Landlord covenants, warrants and represents to Tenant that, provided no Lease Default exists under this Lease, Tenant shall at all times during the Term peacefully and quietly have, hold, occupy and enjoy the Leased Premises, subject to the terms and conditions of this Lease, without any hindrance, interference or molestation by Landlord or by, under or through Landlord.

ARTICLE XV

SUBLETTING AND ASSIGNMENT

Section 15.1 Subletting and Assignment (a) Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in the Landlord's sole and absolute discretion (and, if required by law, without the prior written consent of the Commissioner, which consent may be withheld in the Commissioner's sole and absolute discretion), transfer or assign this Lease or Tenant's interest in the Leased Premises or any part thereof or sublease all or any part of the Leased Premises. In all events of assignment, transfer or subletting, the prior approval of the DOH shall be required. Tenant shall not at any time, without the prior written consent of Landlord, which consent may be withheld or given in the sole and absolute discretion



of Landlord, pledge, mortgage, or hypothecate the leasehold estate hereby created or any interest of Tenant therein. The issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant aggregating to forty-nine percent (49%) or more of the stock, membership or ownership interest in Tenant or any subtenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; notwithstanding anything to the contrary, any change in the management or control of Tenant such that Lizer Josefovich does not control all of the decisions of Tenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof. Notwithstanding anything to the contrary, the issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant resulting in the aggregate interest of Lizer Josefovich, Marc Neuman, and their spouse or issue, or a trust for their benefit, equaling less than seventy-five percent (75%) of the stock, membership or ownership interest in Tenant or any subtenant to any person or entity shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; provided that any assignment by Lizer Josefovich to Joseph Josefovich made after five years after the Commencement date shall not be unreasonably denied by Landlord taking into account, among other things, the experience, performance record, and financial strength of Joseph Josefovich. The consent by Landlord to any transfer shall not constitute consent to any subsequent transfer or to any successive transfer. Further, subject to the provisions of Section 2.2, and without in any way limiting or otherwise affecting the provisions of this Lease, Landlord shall be permitted to assign this Lease and all agreements, duties, obligations and rights incidental thereto to any entity related to, or affiliated with Landlord, without any consent from Tenant. The term "transfer" shall mean any direct or indirect sale, conveyance, transfer, lease (including any amendment, extension, modification, waiver or renewal thereof), sublease, sub-sublease, assignment, mortgage, pledge, grant of a security interest or hypothecation, whether by operation of law or otherwise, whether voluntary or not, of or in (i) all or part of the Leased Premises (including any legal or beneficial direct or indirect interest therein) or (ii) any direct or indirect interest in Tenant. Notwithstanding anything to the contrary contained herein, Tenant may assign this Lease to, or enter into a sublease with, or transfer interests in an entity comprising Tenant to, an affiliate under common control with Tenant, or owned by Lizer Josefovich, Marc Neuman, or their spouse or issue, or a Trust for their benefit, without Landlord's consent, provided (x) Landlord is given thirty (30) days prior written notice of such intended transfer, assignment or sublease with copies of the organizational documents of the assignee, transferee or sublessee, (y) after such transfer, assignment or sublease, Lizer Josefovich controls all of the decisions of the assignee, transferee or sublessee, and (z) all required consents from, the Mortgagee, the DOH and/or the Commissioner (if required), have been obtained by Tenant. Notwithstanding the foregoing and any other provision contained herein to the contrary, no transfer or series of transfers of legal, economic, beneficial or equitable (direct or indirect) interest in the Lease or in Tenant's membership interest that requires DOH's consent shall occur without the prior written consent of Landlord and DOH. Tenant shall enter into such subordination agreements or subordination, non-disturbance agreements ("SNDAs") as Mortgagee may request from time to time.

Section 15.2 ~~Assignment and Related Matters~~. Any sublease shall be expressly subject and subordinate to all applicable terms and conditions of this Lease and provide that upon the expiration or earlier termination of this Lease, Landlord, at its option and without any

obligation to do so, may require any subtenant to ~~attorn~~ to Landlord, its successors and assigns, in which event Landlord shall undertake the obligations of Tenant, under such sublease from the time of the exercise of such option to the termination of such sublease; provided, however, that in such case Landlord shall not be liable for any prepaid rents, fees or other charges or for any prepaid security deposits paid by such subtenant to Tenant or for any other prior defaults of Tenant under such sublease. In the event that Landlord shall not require such attornment with respect to any sublease, then such sublease shall automatically terminate upon the expiration or earlier termination of this Lease, including any early termination by mutual agreement of Landlord and Tenant. In addition, any such sublease shall provide that in the event that the subtenant or other transferee receives a written notice from Landlord stating that a Lease Default has occurred or that an event or circumstance has occurred which with notice and/or passage of time would constitute a Lease Default, such subtenant or other transferee thereafter shall without further consent or instruction of Tenant pay all rentals accruing under such sublease directly to Landlord or as Landlord may direct; provided, however, that (a) as and to the extent that the amounts so paid to Landlord, together with other amounts paid to or received by Landlord on account of this Lease, exceed the amounts then due Landlord from Tenant under this Lease, the excess shall be promptly remitted to Tenant, and (b) at such time as the Lease Default has been cured and this Lease reinstated (if ever), Landlord shall notify and direct the subtenant(s) in writing to resume making payments of rentals under their sublease(s) directly to Tenant, or as Tenant may direct. Any such rentals collected from such subtenant or other transferee by Landlord shall be credited against the amounts owing by Tenant under this Lease in such order of priority as Landlord shall reasonably determine. Furthermore, any sublease or other agreement regarding a transfer shall expressly provide that the subtenant, assignee, manager or other transferee shall furnish Landlord, its lender, the Mortgagee, if applicable, the HUD Mortgagee, and/or the Commissioner, and for DOH, if applicable, with such financial, operational and other information about the Facility and subtenant, etc., as Landlord may request from time to time.

Section 15.3 Assignment of Subleases. To secure the prompt and full payment by Tenant of the Rent and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to the conditions hereinafter set forth and any required consent(s) from DOH, all of Tenant's right, title and interest in and to all permitted subleases, assignments, licenses and occupancy agreements, to the extent permitted by law, involving the Facility, as set forth on Schedule 15.3 attached hereto (the "Sublease", and the subtenant under a Sublease herein referred to as a "Subtenant") and hereby confers upon Landlord, its agents and representatives, a right of entry (subject to prior notice) in, and sufficient possession of, the Leased Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Sublease, and further agrees that the exercise of said right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Leased Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever; provided, however, that such assignment shall become operative and effective only if (a) a Lease Default shall occur and be continuing or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof or (c) there occurs a repossession under a dispossessionary warrant

or other re-entry or repossession by Landlord under the provisions hereof or (d) a receiver for all or a portion of the Leased Premises is appointed, and then only as to such of the subleases that Landlord may elect to take over and assume. At any time and from time to time within ten (10) days after Landlord's written demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants, with a photostatic copy of each of the Subleases. Upon request of Landlord, Tenant shall permit Landlord and its agents and representatives, and Mortgagee, its agents and representatives, to inspect all Subleases affecting the Leased Premises. Tenant covenants that each Sublease shall provide that the Subtenant thereunder shall be required from time to time, upon request of Landlord or Tenant, to execute, acknowledge and deliver, to and for the benefit of Landlord, an estoppel certificate confirming with respect to such Sublease the information set forth in Section 20.11 hereof.

**Section 15.4 Additional Sublease Requirements.** Tenant covenants and agrees that all Subleases hereafter entered into affecting the Leased Premises shall provide that (a) they are subject to this Lease and that the principals of the Subtenant acknowledge that they have read this Lease and accept the terms hereof, (b) the term thereof shall not end less than one (1) day prior to the Expiration Date hereof, unless Landlord shall consent otherwise, which consent may be withheld in Landlord's sole and absolute discretion, (c) the Subtenants will not do, authorize or execute any act, deed or thing whatsoever or fail to take any such action which will or may cause Tenant to be in violation of any of its obligations under this Lease, (d) the Subtenants will not pay rent or other sums under the Subleases with Tenant for more than one (1) month in advance, (e) the Subtenants shall give to Landlord at the address and otherwise in the manner specified in Section 13.1 hereof, a copy of any notice of default by Tenant as the landlord under the Subleases at the same time as, and whenever, any such notice of default shall be given by the Subtenants to Tenant; and (f) all of the representations, warranties and covenants given by Tenant to Landlord in this Lease, including but not limited to all reporting requirements and covenants set forth in Section 7.4 above, shall be made and given by each Subtenant for the benefit of Landlord, Mortgagee, and their respective successors and assigns.

**Section 15.5 Transfers in Bankruptcy.** (a) In the event of a transfer pursuant to the provisions of Title 11 of the United States Code or any statute of similar purpose or nature (the "Bankruptcy Code"), all consideration payable or otherwise to be delivered in connection with such transfer shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any consideration constituting Landlord's property pursuant to the immediately preceding sentence and not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. For purposes of this Section 15.5, the term "consideration" shall mean and include money, services, property and any other thing of value such as payment of costs, cancellation or forgiveness of indebtedness, discounts, rebates, barter and the like. If any such consideration is in a form other than cash (such as in kind, equity interests, indebtedness earn-outs, or other deferred payments, consulting or management fees, etc.), Landlord shall be entitled to receive in cash the then present fair market value of such consideration. If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment shall be given to Landlord by Tenant no later than fifteen (15) days after receipt of such offer by Tenant, but in any event no

later than ten (10) days prior to the date that Tenant shall file any application or motion with a court of competent jurisdiction for authority and approval to enter into such assumption and assignment. Such notice shall set forth (a) the name and address of the assignee, (b) all of the terms and conditions of such offer, and (c) the proposal for providing adequate assurance of future performance by such person under the Lease, including, without limitation, the assurance referred to in Section 365 of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease from and after the date of such assignment. Any such assignee shall execute and deliver to Landlord upon demand an instrument confirming such assumption.

(b) The term "adequate assurance of future performance" as used in this Lease shall mean (in addition to the assurances called for in Bankruptcy Code Section 365(1)) that any proposed assignee shall, among other things, (i) deposit with Landlord on the assumption of this Lease an amount equal to the greater of (x) two (2) times the then monthly Fixed Rent and Additional Rent or (y) such other amount deemed by the Bankruptcy Court to be reasonably necessary for the adequate protection of Landlord under the circumstances, as security for the faithful performance and observance by such assignee of the terms and obligations of this Lease, (ii) furnish Landlord with financial statements of such assignee for the prior three (3) calendar years, as finally determined after an audit and certified as correct by a certified public accountant, which financial statements shall show a net worth at least equal to the amount of the deposit referenced in (i) above, (iii) if determined by the Bankruptcy Court to be appropriate under the circumstances, grant to Landlord a security interest in such property of the proposed assignee as Landlord shall deem necessary to secure such assignee's future performance under this Lease, and (iv) provide such other information or take such action as Landlord, in its reasonable judgment, shall determine is necessary to provide adequate assurance of the performance by such assignee of its obligations under this Lease.

(c) If, at any time after Tenant may have assigned Tenant's interest in this Lease in a proceeding of the type described in Section 16.1 (iv) through (vii), this Lease shall be disaffirmed or rejected in any proceeding of the types described in Section 16.1 (iv) through (vii) hereof, or in any similar proceeding, or in the event of termination of this Lease by reason of any such proceeding or by reason of lapse of time following notice of termination given pursuant to Article XVI based upon any of the Lease Defaults set forth in said Section 16.1 (iv) through (vii) Tenant, upon request of Landlord given within thirty (30) days next following any such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord); shall (a) pay to Landlord all Rent due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant", enter into a new lease with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the expiration date of the term, unless sooner terminated as in such lease provided, at the same Fixed Rent and Additional Rent upon the then executory terms, covenants and conditions as are contained in this Lease, except that (i) Tenant's rights under the new lease shall be subject to the possessory rights, if any, of the assignee under this Lease and the possessory rights of any person claiming through or under such assignee or by virtue of any applicable Law, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant with due diligence, and (iii) such new lease shall require Tenant to

pay all Rent reserved in this Lease which, had this Lease not been so disaffirmed, rejected or terminated, would have accrued under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant shall default in its obligation to enter into said new lease for a period of ten (10) days next following Landlord's request therefor, then in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant as if Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 15.6 Management Agreement. Tenant agrees and acknowledges that it will not enter into any management agreements during the Term with regard to the Facility except with an entity (i) owned wholly by a an individual principal of Tenant which entity has been received establishment approval from the New York State Department of Health Public Health and Health Planning Council in compliance with 10 NYCRR 600.9(d)(1) and (ii) approved by HUD if the Facility is, or is about to be financed by a HUD program, and/or Mortgagee. Any such management agreement shall be subordinate to Landlord's rights hereunder, to the rights of Mortgagee and to the rights of the Commissioner. Tenant shall cause such manager to execute such documents as are required by Landlord or Mortgagee or by the Commissioner to effect such subordination.

Section 15.7 Memorandum of Lease. This Lease shall not be recorded, but either party may record a memorandum of lease in which shall describe the parties to this Lease, a description of the Leased Premises and a recitation of the Term. The party requesting that the memorandum of lease be recorded shall prepare and pay all costs of recording the memorandum of lease, and the other party agrees to execute at any and all times such instruments as may be reasonably required for such recording. Upon the expiration or earlier termination of this Lease, Landlord may release the memorandum of lease. For this purpose Tenant constitutes and appoints Landlord its true and lawful attorney in fact with full power of substitution to execute a release of such memoranda in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. To the extent any transfer tax, conveyance tax, excise tax, or similar tax is imposed by any Governmental Authority as a result of the recording of such Memorandum of Lease, or is otherwise due and payable as to Tenant's leasehold interest granted pursuant to this Lease, Tenant shall pay same to the applicable Governmental Authority.

ARTICLE XVI  
DEFAULT

Section 16.1 Default by Tenant and Remedies of Landlord. (a) Tenant shall be in default under this Lease upon the occurrence of any of the following events referred to herein individually or collectively as a "Lease Default" (any reference to such event occurring or involving Tenant shall be deemed to include any such event occurring or involving any of Tenant's Subtenants):

- (i) if Tenant fails to pay any installment of Rent within five (5) days after the date when due;
- (ii) if Tenant defaults in the prompt and full performance of any other of Tenant's covenants, obligations or agreements hereunder which are not specifically enumerated herein as a Lease Default and fails to correct such failure within thirty (30) days of receipt of written notice from Landlord of such default (unless such default cannot reasonably be cured within thirty (30) days, in which event such period shall be extended, provided Tenant shall have commenced in good faith to cure such default within the first such thirty (30) day period and shall proceed with all due diligence to correct such default thereafter but in no event more than ninety (90) days of receipt of such written notice);
- (iii) if the leasehold interest of Tenant shall be levied upon under execution or be liened or attached and such levy, lien or attachment is not removed within sixty (60) days of the date Tenant receives notice of it;
- (iv) in the event of a filing by or against Tenant of a petition under federal or state law pertaining to bankruptcy or insolvency or for a reorganization or other relief;
- (v) if Tenant shall admit in writing its inability to pay its debts generally as they become due;
- (vi) if Tenant is adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, with or without the consent of Tenant, a receiver or trustee of Tenant or of the whole or substantially all of its property;
- (vii) if Tenant makes any general assignment for the benefit of creditors;
  - (A) if Tenant abandons the Leased Premises or if, except as a result of damage, destruction or a partial or complete condemnation, Tenant ceases operations of the Facility, or Tenant closes any portion of the Facility;
- (viii) if Tenant receives a state or federal notice of termination of license or de-certification and such notice has not been suspended, extended, withdrawn or terminated prior to 30 days before the effective date of such termination or decertification by any Governmental Authority;
- (ix) if Tenant fails to maintain its qualifications for licensure as required by this Lease if failure to do so would result in an inability to operate the Facility or would result in the appointment of a receiver with respect to the Facility;
- (x) if any transfer or assignment of this Lease or Tenant's direct or indirect interest therein or a transfer of Tenant's direct or indirect equity ownership interests occurs in violation of this Lease;
- (xi) if any malpractice award or judgment exceeding any applicable malpractice insurance coverage and any applicable umbrella coverage by more than One Million

Dollars (\$1,000,000.00) shall be rendered against Tenant or any subtenant, and either (A) enforcement proceedings shall have been commenced by any creditor upon such award or judgment or (B) such award or judgment shall continue unsatisfied and in effect for a period of sixty (60) consecutive days without an insurance company reasonably satisfactory to Landlord having agreed to fund such award or judgment in a manner reasonably satisfactory to Landlord, or (C) such award or judgment has been appealed and without a bond having been posted to cover such amount that exceeds any insurance coverage, and in any case such award or judgment shall, in the reasonable opinion of Landlord, have a material adverse affect on the ability of Tenant or any subtenant to operate the Facility;

(xii) upon the denial, refusal to issue, or loss of any licenses, certifications, certificates, approvals, permits, variances, waivers, provider agreements and other authorizations necessary or required for Tenant to operate the Facility in accordance with the requirements of this Lease;

(xiii) if any of the representations or warranties made by Tenant under this Lease or any subtenant under its Sublease or otherwise proves to be untrue when made in any material respect;

(xiv) if any Governmental Authority having jurisdiction over the operation of the Facility removes ten percent (10%) or more of the patients or residents who reside in the Facility for violations of standards of care;

(xv) Tenant fails to give Landlord and Mortgagee timely notice or timely deliver copies of documents within the times required under Section 7.4 (c) through (o);

(xvi) Tenant's receipt of notice of an allegation or determination of "immediate jeopardy" (as such term is customarily used) or equivalent notice from any Governmental Authority or officer, acting on behalf thereof relating to the Facility;

(xvii) Tenant's receipt of notice of the freeze on admissions or the imposition of a denial of payment for new admissions or equivalent notice from any Governmental Authority or officer acting on behalf thereof relating to the Facility;

(xviii) Tenant's breach of its obligations under Section 3.5 including Tenant's failure to execute and deliver to Landlord within seven days of its request therefore any and all documents, certificates or agreement required or reasonably requested by Landlord, a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender or the Commissioner, including confirming the subordination required hereunder;

(xix) Tenant's breach of its obligations under Section 15.6 Management Agreement;

(xx) Tenant's breach of its obligations under Section 7.6 Security Agreement;



(xxi) Tenant fails to notify Landlord within twenty-four (24) hours after receipt of any notice from any Governmental Authority, terminating or suspending or threatening termination or suspension of any material license or certification relating to the Facility;

(xxii) a default beyond any applicable notice and cure periods under any Sublease, operating agreement, management agreement or any other material agreement relating to the Leased Premises or to which Landlord and Tenant are a party;

(xxiii) the creation of any indebtedness relating to the Leased Premises (other than trade payables which are not more than 30 days past due, not evidenced by a note and not in excess of One Million Dollars \$1,000,000.00);

(xxiv) the amendment, modification, restatement, termination or cancellation of any material contract relating to the Leased Premises, including but not limited to any Sublease, without Landlord's prior written consent, which consent shall not be unreasonably withheld;

(xxv) default or breach by Guarantor under the Guaranty beyond the expiration of any applicable cure period contained therein;

(xxvi) failure by Tenant to deposit all or any portion of the Security Deposit or Letter of Credit or to replace any portion of the Security Deposit or Letter of Credit utilized by Landlord;

(xxvii) a default or breach of any of the provisions set forth in Article XIX;

(xxviii) Tenant violates any term, covenant or condition of Tenant's Regulatory Agreement (with respect to a HUD financing) which violation is not cured within thirty (30) days of written notice to Tenant;

(xxix) a default or breach of the provisions set forth in Section 7.4(b) or a report required by Section 7.4 proves to be untrue in any material respect;

(xxx) any act or omission by Tenant or any Subtenant referenced in Section 7.4 that constitutes a default by Landlord under its loan documents with Mortgagee;

(xxxi) Tenant's failure to meet the covenants provided in Section 7.4 (g)

(xxxii) the sale or transfer or attempted sale or transfer of all or any portion of any certificate of need, bid or vote right or other similar authorization relating to any portion of the Facility or the Leased Premises, assignment or subleasing in violation of the provisions of Section 15.1;

(xxxiii) the use of any portion of the Premises other than for the intended Use;

(xxxiv) the Facility appears on the Special Focus Facility List, or similar list established by CMS;

(xxxv) Tenant fails to procure the insurance coverage, or less of the insurance coverage, required by this Lease;

(xxxvi) Tenant enters into any corporate integrity agreement, settlement or consent decree, or deferred prosecution agreement with any Governmental Authority;

(xxxvii) Any Governmental Authority assesses a fine or penalty against, or with, Tenant that imposes a payment or fine upon Tenant in excess of \$75,000;

(xxxviii) The conviction of, or plea of no contest or nolo contendere by, Tenant or any member or beneficial owner of Tenant with respect to (1) any felony or (3) any misdemeanor that involves any act of fraud, embezzlement, theft or misappropriation;

(xxxix) Tenant fails to comply with its obligations in Section 18.1(n) within 10 days after written notice from Landlord; or

(xxxxi) Tenant or any Subtenant fails or refuses to execute escrow certificate required pursuant to Section 20.11, or otherwise complying with the requirements of Section 2.1 within ten (10) days after Tenant's receipt thereof.

Upon the occurrence of a Lease Default, Landlord, may, if Landlord so elects, upon five (5) days written notice of such election, forthwith terminate this Lease and Tenant's right to possession of the Leased Premises and, at Landlord's sole and absolute discretion, accelerate the payment of all Rent for the balance of the Term and declare the same presently due and payable in full provided, however, that with respect to a Lease Default under Section 16.1(a)(iv), this Lease shall automatically terminate. In the event of such Lease termination, Tenant shall immediately pay Landlord the then present value of all such accelerated Rent. Landlord, in addition to all other remedies given to Landlord at law or in equity, may by written notice to Tenant, without terminating this Lease, cause Tenant to apply to the DOH to install a manager and/or management consultant and/or a receiver having the necessary approvals from Governmental Authorities, of Landlord's choice, at Tenant's sole cost and expense or to the extent permitted by applicable law, reenter the Leased Premises by summary proceedings or otherwise. In any event, upon a Lease Default, Landlord may require Tenant to consent to a so-called "Change of Ownership" and Landlord may dispossess Tenant upon approval of the Change of Ownership or Certificate of Need by DOH, it being the understanding that under no circumstances is this Lease to be an asset for Tenant's creditors by operation of law or otherwise. In the event of such reentry, Landlord may relet the Leased Premises without being obligated to do so, and in the event of a reletting may apply the Rent therefrom first to the payment of Landlord's cost and expenses, including consultant and/or expert and attorneys' fees and expenses incurred by reason of such Lease Default, and the cost and expense of reletting including, but not limited to, repairs, renovation, or alteration of the Leased Premises and then to the amount of Rent and all other sums due from or payable by Tenant hereunder, Tenant remaining liable for all other sums due from or payable by Tenant hereunder and for any deficiency. Tenant shall also be liable for and indemnify Landlord against all amounts owed to



Medicare, Medicaid, all applicable third-party payor programs, third party payors, or residents, including, but not limited to, any overpayments received by Tenant, relating to the Term. Any and all such deficiencies shall constitute Additional Rent hereunder and shall be payable by Tenant monthly on the date herein provided for the payment of Rent. In addition to the foregoing remedies, Landlord shall immediately be entitled to retain the Security Deposit and draw on and retain proceeds of the Letter of Credit, and thereafter Tenant shall have no further claim, right, title or interest therein to the extent of Landlord's claims only.

Landlord acknowledges that its rights of reentry onto the Leased Premises set forth in this Lease do not confer on Landlord the authority to operate a nursing facility as defined in Article 28 of the Public Health Law on the Leased Premises and agrees that except in the event of a Lease Default Landlord will give the DOH, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of its intent to reenter the Leased Premises or to initiate dispossession proceedings or that the Lease is due to expire at least thirty (30) days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least sixty (60) days before expiration of the Lease.

Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossession proceedings and sixty (60) days prior to the expiration of the Lease, Tenant shall immediately notify by certified mail the DOH, Tower Building, Empire State Plaza, Albany, NY 12237 (or its then current address), of the receipt of such notice or service of such process or that the Lease is about to expire.

(b) Except as provided in this Lease to the contrary, Rent and other sums not paid when due (unless paid within any applicable grace period) shall bear interest from the date when the same are first payable under the terms of this Lease until the same shall be paid at an annual rate of interest equal to the Overdue Rate.

(c) Upon the filing of a petition by or against Tenant pursuant to the Bankruptcy Code, Tenant, as debtor and as debtor-in-possession, and any trustee who may be appointed shall: (i) timely perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (ii) pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Leased Premises an amount equal to the Rent and other charges otherwise due pursuant to this Lease; and (iii) reject or assume this Lease within one hundred twenty (120) days after the filing of such petition under the Bankruptcy Code or within such time period as the Bankruptcy Code may allow. Tenant, as debtor and as debtor-in-possession, and any trustee shall be deemed to have rejected this Lease in the event of the failure to comply with any of the above. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor, in the event of assumption and/or assignment is the prior written consent of any mortgagee in which this Lease has been assigned as collateral security.

(d) In the event of termination of this Lease by reason of any Lease Default by Tenant, or upon the expiration of the Term, then, and in any of such events, Tenant, upon Landlord's written request, shall to the greatest extent permitted by law, transfer to Landlord or its designees or assigns, or cause its Subsidiaries and/or Affiliates, to transfer to Landlord or its designees or assigns, the following: (i) all federal, state or municipal licenses,

certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements (including non-governmental) and other authorizations which relate to the operation of the Facility; and (ii) the name of the Facility as then commonly known to the general public. Tenant shall also prepare and file all notices required by applicable law in connection with such termination and shall also prepare and timely file all final Medicare and Medicaid cost reports. In the event Tenant fails or refuses to transfer any such licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, other authorization or trade name, then this provision shall constitute an act of assignment by Tenant to Landlord or its assigns without the necessity of any further written instrument. For this purpose, Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to complete or undertake such replacements in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

(e) Landlord shall have the option of taking over the operation of the Facility, or having the operation of the Facility taken over by a designee, in the event of a termination of this Lease for any reason, without Landlord or designee assuming any of Tenant's liabilities or obligations, including Tenant's liabilities and obligations with respect to employees, such as vacation, sick leave, health insurance and pension liabilities and Tenant's obligations under applicable law to offer and provide group health continuation coverage. Landlord shall give Tenant written notice of Landlord's intent to exercise the right set forth above, in which event, upon the approval of the DOH of the Change of Ownership, Tenant shall and shall cause the Subtenant to immediately turn over possession and control of the Facility without any further action having to be taken on the part of Landlord. At the request of Landlord, Tenant shall and shall cause the Subtenant to turn over any or all of inventories, personal property (including computer and telecommunications equipment but excluding any leased equipment) vehicles, and material contracts (including hospital, transfer, vendor, and managed care contracts).

(f) No failure of Landlord to enforce any rights or remedies upon default of Tenant shall prejudice or affect the rights of Landlord upon any subsequent or similar default.

(g) In the event of a Lease Default by Tenant of any of the terms, covenants, conditions or provisions of this Lease, which Lease Default is not cured within any applicable grace or cure period, Landlord shall have the right to invoke any remedy permitted to Landlord at law, in equity or otherwise. All remedies available to Landlord are declared to be cumulative and concurrent and the exercise of one shall not preclude or waive the right to exercise any other. No termination of this Lease and no taking or recovering of possession of the Leased Premises shall deprive Landlord of any of its remedies or actions against Tenant and Tenant shall remain liable for all past or future Rent, including all taxes, insurance premiums and all other charges and Rent payable by Tenant under this Lease, during and for the balance of the Term hereof. The bringing of any action for Rent or other default shall not be construed as a waiver of the right to obtain possession of the Premises.

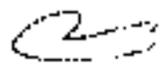
(h) If suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent, or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and breach shall be established, Tenant shall pay to Landlord all expenses,

including reasonable attorney fees, incurred therefor. This subsection shall survive termination of this Lease.

Section 16.2 Facility Operating Deficiencies. On written notice of a request therefor by Landlord to Tenant, upon a Lease Default and for a period of time necessary to fully remedy the Lease Default, Tenant shall engage the services of a consultant, unaffiliated with Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to review the management of the facility for the purpose of making recommendations to remedy the Lease Default. Subject to applicable legal requirements governing confidentiality of patient records, the consultant shall have complete access to the Facility, its records, offices and facilities, in order that it may carry out its duties. Tenant shall cause such consultant to prepare and deliver to Landlord and Tenant a written report of its recommendations within ten (10) days after its engagement. If Tenant shall fail to designate a consultant approved by Landlord as provided above within five (5) days after Tenant's receipt of Landlord's notice, Landlord may designate such consultant by further notice to Tenant. Tenant shall be responsible for payment of all fees and expenses reasonably charged and incurred by the consultant in carrying out its duties. Tenant shall promptly implement any and all reasonable recommendations made by such consultant in order to promptly correct or cure the Lease Default; provided, however, that in no event shall Tenant implement any such recommendations if the same would constitute a violation of applicable legal requirements, violate any rule or regulation of the DOH, or would otherwise cause a Lease Default hereunder (e.g., a transfer or change in use of the Leased Premises), unless Landlord consents in writing to such Lease Default, which consent may be given or withheld in Landlord's sole and absolute discretion. Nothing herein shall impose any liability or obligation on Landlord to (a) request the appointment of a consultant or (b) otherwise remedy the Facility Operating Deficiency(ies) nor shall it deem Landlord an operator of the Facility.

Section 16.3 Receivership

Tenant acknowledges that one of the rights and remedies available under applicable law for nursing facilities which fail to comply with the conditions of participation for Medicare or Medicaid is to apply to a court of competent jurisdiction for the appointment of a receiver to take possession of the Facility, to collect the rents, issues, profits and income of the Facility and to manage the operation of the Facility. Tenant further acknowledges that the revocation, suspension or material limitation of the certification of the Facility for provider status under Medicare or Medicaid (or successor programs) and/or the revocation, suspension or material limitation of a license relating to the operation of the Facility for its intended use under the laws of the State of New York will materially and irreparably impair the value of Landlord's investment in the Facility. Therefore, in the event of a Lease Default, and in addition to any other right or remedy of Landlord under this Lease, at the request of Landlord, Tenant shall request DOH to, or to the extent permissible under law, Tenant shall, petition any appropriate court, for the appointment of a receiver to take possession of the Facility, to manage the operation of the Facility under Tenant's licenses and certifications, to collect and disburse all rents, issues, profits and income generated thereby and to preserve or replace to the extent possible any such license and provider certification for the Facility or to otherwise substitute the licensee or provider thereof. The receiver shall be entitled to a reasonable fee for its services as a receiver. All such fees and other expenses of the receivership estate shall be added to the



monthly Rent due to Landlord under this Lease as Additional Rent. Tenant hereby irrevocably stipulates to the voluntary appointment of a receiver under such circumstances and for such purposes and agrees not to contest such appointment.

Section 16.4 Tenant's Waiver, Mitigation. In connection with the exercise by Landlord of any of its remedies under this Section 16, including the termination of this Lease, in whole or in part, Tenant waives, to the maximum extent permitted by applicable Laws, (1) any right of redemption, re-entry or repossession, (2) the benefit of any moratorium laws or any laws now or hereafter in force exempting property from liability for rent or for debt, (3) any duty on the part of Landlord to mitigate the damages recoverable from Tenant on account of any Lease Default by Tenant, except that notwithstanding the foregoing or anything in this Lease to the contrary, Landlord agrees to comply with any duty to mitigate damages where applicable Laws do not allow Tenant to waive such right, (4) the right to interpose any counterclaim (other than compulsory counterclaims) in any summary proceeding instituted by Landlord against Tenant in any court or in any action instituted by Landlord in any court for unpaid Rent under this Lease, and (5) any other right provided to Tenant under applicable Laws relating to a breach of or Lease Default under this Lease, including any rights to cure such breach or Lease Default.

ARTICLE XVII

ENTRY AND REIMBURSEMENT RIGHTS OF LANDLORD

Section 17.1 Entry and Reimbursement Rights of Landlord. In addition to those rights set forth in Section 7.2 of this Lease, Landlord reserves the right at all reasonable times during business hours and upon at least twenty-four (24) hours' advance oral notice to go upon and inspect the Facility and every part thereof (subject to applicable Laws pertaining to patient confidentiality and privacy and the confidentiality of medical records). If Landlord shall make any payments or perform any repairs on behalf of Tenant which are Tenant's obligation and which Tenant has failed to make after applicable notice from Landlord, then any reasonable amounts so paid by Landlord are agreed and declared to be Additional Rent, and shall be due and payable to Landlord by Tenant upon submission to Tenant of an invoice, bill, or statement therefor, together with interest charged at the Overdue Rate commencing on the date of such invoice, bill, or statement. Nothing in this Section 17.1 shall impose any liability or obligation upon Landlord.

ARTICLE XVIII

REPRESENTATIONS AND WARRANTIES

Section 18.1 Tenant's Representations, Warranties and Additional Covenants. Tenant represents, warrants and covenants to Landlord and agrees (all of which shall survive the delivery and execution of this Lease) as follows (all of Tenant's representations, warranties, and covenants shall be deemed to include, in addition to that specified herein, the identical warranties, representations, and covenants of all Subtenants, which Tenant agrees to set forth in any Sublease and which are hereby incorporated herein by reference as if set forth in full herein):

(a) Corporate. Tenant is a limited liability company duly formed and validly existing and in good standing under the laws of the State of New York, and has the limited liability company power and authority to own its property and assets and to carry on its business as now being conducted or as will be conducted on and after the Commencement Date.

(b) No Breach of Statute or Contract. The execution, delivery and performance of this Lease by Tenant and any Sublease by a subtenant will not breach any statute or regulation of any Governmental Authority, and will not as of the Commencement Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of Tenant's articles of organization, operating agreement, other material agreements, or any order, writ, injunction, decree, agreement or instrument to which Tenant is a party, or by which it or its property, may be bound.

(c) Authorization of Lease. The execution, delivery and performance of this Lease, and all Subleases, has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Tenant and this Lease constitutes the valid and binding obligation of Tenant, fully enforceable in accordance with its terms.

(d) No Litigation or Adverse Events. Except as set forth on Schedule 1B, (d) attached hereto and incorporated herein, there is no suit, claim, action or legal, administrative, arbitration, or other proceeding or governmental investigation pending or threatened, by or against Tenant, and there exists no event or condition of any character, which could prevent the consummation of the transactions contemplated by this Lease or materially adversely affect Tenant's performance of the terms and conditions hereunder.

(e) Conduct of Business. Subject to the express provisions herein, at all times after the Effective Date, Tenant shall, and cause its subtenants to (i) operate the Leased Premises (after the Commencement Date) and otherwise conduct its/their business in the ordinary course, and in compliance with all statutory and regulatory requirements of any federal, state or local authority, (ii) continue to operate the Leased Premises after the Commencement Date and maintain it in substantially its condition as of the Commencement Date, reasonable wear and tear excepted, including but not limited to repairs and replacements permitted or required under this Lease, and in a lawful manner, (iii) not encumber all or any portion of its assets or properties or the Leased Premises, including without limitation, certificates of need, bed rights, or provider agreements, (iv) preserve the goodwill of the Facility, (v) not take any action from an accounting perspective which would materially adversely affect the reimbursement formula or tax benefits with respect to the Leased Premises or any portion thereof, (vi) utilize the Leased Facility only for the Intended Purpose, (vii) not relinquish or attempt to transfer the location of or sell the skilled nursing facility license, certificate of need approval, Medicare or Medicaid certification or any other licenses, certifications, accreditations, approvals, permits, variances, waivers, provider agreements or other authorizations, (viii) not refuse to admit patients without 30 days' written notice of intent to, and prior written consent of, Landlord, (ix) not dissolve, merge or consolidate with or into any other person or entity, or otherwise change its identity or company or capital structure, or (x) not change its name or its business address.

(f) Continued Existence. At all times on and after the Effective Date, Tenant shall cause to be done all things needed to preserve its rights and franchises and comply with all Laws applicable to it, and to continue to conduct its business in the ordinary course.

(g) Payment of Obligations. At all times on and after the Effective Date, Tenant shall timely pay, and cause its subtenants to timely pay, all of its/their obligations, indebtedness, taxes, charges and impositions, whether or not relating to the Leased Premises or this Lease, as they become due unless contested in good faith and diligently pursued only if permitted under and subject to the terms and conditions of this Lease.

(h) Notice of Default. At all times on and after the Effective Date, Tenant shall promptly notify Landlord of (i) any material default by Tenant relating to any indebtedness or obligation of Tenant, whether or not relating to the Leased Premises or this Lease, and (ii) any material violations by the Facility of any applicable Law.

(i) Compliance with Law. At all times on and after the Effective Date, Tenant shall comply in all respects, and cause its subtenants to comply in all respects, with all applicable Laws, including Medicare and Medicaid conditions of participation, to which it is subject or which are applicable to the Leased Premises and to Tenant's operation of the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility.

(j) Beds and CON. Tenant has been awarded a CON for construction and operation of 160 skilled nursing facility beds for use at the Lease Premises by DOH and such CON may be used in connection with this Lease.

(k) Tenant, on behalf of itself and its Subtenants, makes the Health Care warranties and representations set forth in Schedule 18(b) attached hereto and incorporated herein, to Landlord, its successors and assigns, which warranties and representations shall be true and correct as of Commencement Date and at all times during the Term.

(l) Except for the Subleases of the Leased Premises to the Operators, there are no subleases or sub-subleases or occupancy agreements (other than residence agreements with patients or residents) for any portion of the Leased Premises.

(m) Tenant shall maintain and comply at all times with all O&M Plans (Operation and Maintenance Plans covering the handling, treatment or maintenance of asbestos or Hazardous Materials) relating to the Leased Premises, or that shall be required in the future by Mortgagee or any HUD mortgagee or, where applicable, the Commissioner.

(n) Obligations prior to Commencement Date. In addition to all of Tenant's obligations provided in this Lease, Tenant shall:

(i) as soon as practical after the Effective Date, apply for all and rigorously pursue until obtained all Health Care Licenses;

(ii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain from DOH the maximize total project cost for the Facility approvable by DOH;



(iii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain the highest possible reimbursement rate with respect to the Medicare and Medicaid programs;

(iv) as soon as practical after the Effective Date, apply for and vigorously pursue until obtained provider agreements with third party payors providing reimbursement for skilled nursing facility services in the geographic area of the Facility;

(v) after the Effective Date take all actions requested by Landlord in order for Landlord to finance and complete Landlord's Work.

(vi) as soon as practical prior to the Commencement Date, hire, employ and train a staff adequate to provide services to the residents of the Facility immediately after the Commencement Date;

(vii) as soon as practical prior to the Commencement Date, purchase a sufficient inventory of food, medicines and other perishable items necessary to provide services to the residents of the Facility immediately after the Commencement Date;

(ix) as soon as practical prior to the Commencement Date, purchase and deliver to the Facility all small wares necessary provide services to the residents of the Facility immediately after the Commencement Date;

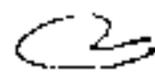
(x) six months after the Effective Date and thereafter every six months until the Commencement Date, deliver to Landlord a detailed projected statement of income and expenses and cash flow for a three year period.

Section 18.2 Representation and Warranties. Landlord hereby represents and warrants to Tenant, all of which shall survive the delivery and execution of this Lease, and agrees, as follows:

(a) No Breach of Statute or Contract. The execution, delivery, and performance of this Lease will not violate any provision of law, any order of any court or other agency of federal or state government or any provision of any indenture, agreement, or other instrument to which Landlord is a party or by which it or any of its properties or assets are bound; conflict with, result in a breach of, or constitute (with passage of time or delivery of notice, or both), a default under any such indenture, agreements or other instrument; or result in the creation or imposition of any lien or other encumbrance of any nature whatsoever upon any of the properties or assets of Landlord.

(b) Authorization of Lease. This Lease has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Landlord and this Lease constitutes the valid and binding obligation of Landlord, fully enforceable in accordance with its terms.

(c) No Litigation or Adverse Events. There is no action, suit, examination, review, or proceeding by or before any governmental instrumentality or agency now pending or, to the knowledge of Landlord, threatened against Landlord, which, if adversely determined,



would materially impact the right of Landlord to carry on the business as contemplated under this Lease.

(d) No Default. Landlord is not in default in the performance, observation, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which it is a party relating to the Leased Premises and which default would have a material adverse effect on the Leased Premises; and

(e) Corporate. Landlord is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of New York and is qualified to do business in the State of New York, and has the limited liability company power and authority to own its properties and assets and to carry on its business as now being conducted.

ARTICLE XIV

OPERATION, MERGER AND CONSOLIDATION RESTRICTIONS

Section 19.1 Intentionally Omitted

Section 19.2 SPE Provisions. At all times during the term of this Lease, Tenant represents, warrants and covenants that Tenant and each Subtenant, and all successors and assigns of Tenant and Subtenants, is, shall be and shall continue to be a "Special Purpose Entity" as defined in Schedule 19.2. The Operating Agreement of Tenant and each subtenant shall include the Special Purpose Entity provisions set forth in Schedule 19.2.

Section 19.3 Injunctive Relief. Notwithstanding anything to the contrary set forth in this Lease, the Parties hereto understand and agree that: (a) each term of Article XIX of this Lease is fully required to protect Landlord's interests, and that no such term confers a benefit on Landlord that is disproportionate to the detriment imposed on Tenant, if any; (b) the remedy at law for any breach by Tenant of Article XIX would be inadequate; (c) the damages flowing from such breach are not readily susceptible to measurement in monetary terms; and (d) Landlord shall be entitled to immediate injunctive relief restraining any breach thereof. Nothing in this Agreement shall be deemed to limit Landlord's remedies at law or in equity for any such breach by Tenant of any term or provision of Article XIX of this Lease.

Section 19.4 Equity Interests. In the event that Tenant or any constituent entity under this Lease is ever a form of entity other than a limited liability company, the term "membership interest" as used in Articles XIX and XX hereof shall be deemed to mean the analogous form of equity ownership interest in such other type of entity, such as capital stock, partnership interest, beneficial interest or the like.

Section 19.5 No Merger or Consolidation. Except as expressly provided elsewhere in this Lease, Tenant shall not sell, or offer for sale, its assets or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity other than selling non-material assets in the ordinary course of business, to any other entity, business or activity involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and

representatives. Except as expressly provided elsewhere in this Lease, Tenant, Subtenants, Guarantor(s) and their Affiliates, shall not sell or offer to sell, assign, transfer, convey, pledge, or encumber its/their membership interests to, or otherwise attempt to merge with or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity, business or activity, whether involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and representatives, or otherwise.

ARTICLE XX

MISCELLANEOUS

Section 20.1 GOVERNING LAW. (a) ALL MATTERS PERTAINING TO THIS LEASE OR THE LEASED PREMISES SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS LEASE, AND THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LANDLORD OR TENANT ARISING OUT OF OR RELATING TO THIS LEASE MAY AT LANDLORD'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF WHITE PLAINS, COUNTY OF WESTCHESTER, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND TENANT WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TENANT HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. TENANT DOES HEREBY DESIGNATE AND APPOINT:

Lizer Joscfovic  
HBL SNE, LLC  
1200 Albany Post Road  
Croton-on-Hudson, New York 10520

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO TENANT IN THE MANNER PROVIDED IN ARTICLE XIII OF THIS LEASE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON TENANT IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE

STATE OF NEW YORK, TENANT (A) SHALL GIVE PROMPT WRITTEN NOTICE TO LANDLORD OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREINAFTER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE, IN THE FORM OF A WRITTEN NOTICE TO LANDLORD, A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN WHITE PLAINS, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR AND NOTIFY LANDLORD IN WRITING OF SUCH SUBSTITUTION.

Section 20.2 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Lease shall not operate as, or be construed to be a waiver of, any subsequent breach of the same or other provision hereof. No waiver shall be effective unless set forth in writing and signed by the party against whom such waiver is asserted.

Section 20.3 Delay Not a Waiver. Neither any failure nor any delay on the part of any party hereto in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or any other document or instrument entered into or delivered in connection herewith or pursuant hereto, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. A waiver of one default with respect to any Person shall not be construed to be a waiver of any subsequent default with respect to such Person or any other Person or to impair any remedy, right or power consequent thereon.

Section 20.4 Force Majeure. Neither party shall be liable nor deemed to be in default (other than monetary defaults) for any delay or failure in performance under this Lease or other interruption of service or employment deemed resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Parties' employees, or any similar or dissimilar cause beyond the reasonable control of either party ("Force Majeure").

Section 20.5 Severability. In the event any provision of this Lease is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Lease so long as the intent of the parties under this Lease can still be effected, which shall remain in full force and effect and enforceable in accordance with its terms.

Section 20.6 Entire Agreement; Amendments. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such Parties are merged into and expressed in this instrument, and any and all prior agreements between such Parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Landlord and Tenant.

Section 20.7 Counterpart Execution; Electronic Execution. This Lease may be executed in any number of counterparts with the same effect as if the Parties hereto had signed the same document. All counterparts will be construed together and shall constitute one lease. Signatures transmitted by email as PDFs shall have the same effect as original signatures.

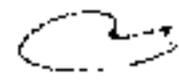
Section 20.8 Survival of Representations and Warranties. Except as specifically provided otherwise in this Lease, all representations and warranties of Landlord and Tenant shall survive the Term of this Lease.

Section 20.9 Use of Brokers. Landlord and Tenant each represent and warrant to the other that no broker, finder or other person has been involved in regard to this Lease. Landlord and Tenant hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind (including the injured party's reasonable attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of a party to this Lease in connection with the transactions contemplated herein. The provisions of this Section 20.9 shall survive the expiration and termination of this Lease.

Section 20.10 Owner for Federal Tax Purposes. It is hereby agreed between Landlord and Tenant that for federal, state and local income tax purposes Landlord will be the owner of the Leased Premises and Tenant will be the lessee thereof, and each party hereto agrees to characterize this Lease as a lease for federal, state and local income tax purposes and to file all tax returns consistent therewith.

Section 20.11 Extended Certificates. Tenant shall, without charge, at any time and from time to time, within ten (10) days after written request by Landlord or Mortgagee, deliver a written instrument to Landlord or any other person specified by Landlord, duly executed and acknowledged, certifying the following and such other matters as may be reasonably required by Landlord, including without limitation, current financial information relating to Tenant:

- (a) That Tenant has accepted and is in possession of the Leased Premises;
- (b) That this Lease is unmodified and in full force and effect or, if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (c) Whether or not there are then existing any setoffs or defenses in favor of Tenant against the enforcement of any of the terms, covenants, and conditions of this Lease by Landlord and, if so, specifying the same, and also whether or not Landlord has observed and performed all of the terms, covenants, and conditions on the part of Landlord to be observed and performed and, if not, specifying same;
- (d) That no Lease Defaults exist or are continuing; and
- (e) The dates to which Rent and all other charges hereunder have been paid.



**Section 20.1.2 Confidentiality.** (a) Landlord and Tenant agree to keep all aspects of (but not the existence of) this Lease confidential, and shall not disclose to any person other than the members, managers, owners, directors, officers, employees, agents, advisors, affiliates, brokers, lenders, attorneys or accountants (collectively the "Representatives") of the Parties hereto on a need-to-know basis, or to any Governmental Authority pursuant to regulatory authority, any confidential or proprietary information, knowledge or data concerning the business, affairs, operations, secrets, dealings or finances of the other party furnished directly or indirectly by such other party (collectively referred to as the "Confidential Information"). As used in this Lease, the term "Confidential Information" does not include any information which: (i) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by either party or their Representatives); (ii) was available to either party on a non-confidential basis from a source other than a party to this Lease or its Representatives, provided that such source is not and was not bound by a confidentiality agreement with the party hereto; (iii) has been independently acquired or developed by either party or their Representatives without violating any of the obligations hereunder; (iv) is required by law to be disclosed; or (v) relates to the tax structure, tax strategy or tax planning of this transaction.

(d) In the event that either party or any of the Representatives receives notice of a legal request for disclosure of any of the Confidential Information (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), the party receiving such notice ("Receiving Party") shall promptly notify the other party ("Notified Party") so that the Notified Party may seek a protective order or other appropriate remedy if it chooses to do so. Failure by the Notified Party to take action to seek a protective order or other remedy and to notify the Receiving Party of such action prior to the required disclosure date, shall be deemed a waiver of the provisions of this section. In the event that a protective order or other remedy is not obtained or that the Notified Party waives compliance with the provisions hereof, the Receiving Party shall exercise its best efforts to obtain a confidentiality agreement or protective order concerning the Confidential Information, and in the absence thereof, shall disclose only that portion of the Confidential Information which it is advised by written opinion of counsel is legally required to be disclosed, or which is compelled by court order.

(g) In the event of any breach or threatened breach hereof, Landlord or Tenant shall be entitled to equitable relief, including a temporary preliminary and permanent injunction and specific performance, in addition to all other remedies available to them at law or in equity.

(h) Notwithstanding anything herein to the contrary, Landlord (and each employee, agent, or other Representative of Landlord) may disclose to any and all persons, without limitation, of any kind, the tax treatment and tax structure of this Lease, related documents and all materials of any kind (including opinions or other tax analyses) that are provided to Landlord relating to such tax treatment and tax structure. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income tax treatment of the transaction and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of the transaction.

**Section 20.13 Holdover.** If, at the expiration of the Term, or earlier termination of the Lease, Tenant continues to occupy the Leased Premises except during a Reimbursement Period, with Landlord's consent, such holding over shall not constitute a renewal of this Lease, but Tenant shall be a Tenant from month-to-month at 300% of the most recent Rent payable by Tenant hereunder, at Landlord's sufferance, and under the same terms and conditions as were in force and effect at the expiration of the Term (except only as to the Term), and except that in the event Tenant shall continue to occupy the Leased Premises after the expiration of the Term, without a duly executed extension agreement in writing having been entered into by and between Landlord and Tenant, then if Landlord shall suffer any damage, loss, cost or expense as a result of such holdover, then Tenant, in addition to such increased Rent, shall pay the amount thereof to Landlord immediately on demand. The provisions of this Section shall be deemed to be "an agreement expressly provided" otherwise as provided in Section 232-C of the Real Property Law of the State of New York, Holding Over. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the Expiration Date or earlier termination of this Lease, nor shall anything contained herein be deemed to limit Landlord's remedies.

**Section 20.14 Tenant's Waiver of Claim for Physical Injury.** Landlord and Landlord's Indemnities shall not be liable for, and Tenant waives and indemnifies Landlord and Landlord's Indemnities against all claims for, damage or injury to person or property sustained by Tenant or any person claiming through Tenant, or otherwise, resulting from any accident or occurrence in, about, or upon the Leased Premises, whether occurring as a result of Landlord's active or passive negligence, or otherwise.

(a) Such waiver shall include, but not be limited to, claims for damage resulting from: (i) any equipment or appliances becoming out of repair or any other capital improvement, replacement, repair or maintenance; (ii) injury done or occasioned by wind; (iii) any defect in or failure of plumbing, heating, or air conditioning equipment, electric wiring, gas, water and steam pipes, stairs, rail or walks; (iv) broken glass; (v) the backing up of any sewer pipe or washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Leased Premises; (vi) the escape of steam or hot water; (vii) water, snow or ice being upon, falling from or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Leased Premises; (viii) the falling of any fixture, plaster, drywall or stucco; and (ix) any act, omission or negligence of trespassers.

**Section 20.15 Binding Effect.** This Lease does not constitute an offer to lease and shall not bind Landlord or Tenant unless and until each such party elects to be bound hereby by executing and delivering to the other party an executed original counterpart hereof.

**Section 20.16 Default by Landlord.** Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within sixty (60) days of when they are due to be performed, except in cases when documents are required or consents needed in less than sixty (60) days in which case failure to render timely shall be deemed to be approval or consent of Landlord (or such additional time as is reasonably required to correct any such default) except for Landlord's default in making timely payment of taxes and interest, in which case Landlord shall be in default when such payments are delinquent or past due. Tenant agrees to give to the

holder of record of any mortgage covering the Leased Premises notice simultaneously with any notice given to Landlord to correct any default of Landlord as hereinabove provided and agrees that the holder of record of any mortgage shall have the right, after receipt of notice of such default, within sixty (60) days after the expiration of Tenant's applicable cure period with respect thereto, to correct or remedy such default before Tenant may take any action under this Lease by reason of such default. Landlord shall also give to the holder of any mortgage copies of any notices of default which it may give or send to Tenant.

Section 20.17 Liens. Tenant shall not do or suffer anything to be done whereby the Leased Premises, or any portion thereof, or any interest therein, may be encumbered by any liens of mechanics, laborers, or materialmen, chattel mortgages or any other liens. Tenant shall, whenever and as often as any such liens are filed against the Leased Premises, or any portion thereof, purporting to be for labor or material furnished or to be furnished to Tenant, discharge the same of record within thirty (30) days after the date of filing by payment, bonding or otherwise, as provided by law. In the event of the default of Tenant in procuring the discharge, as aforesaid, of any such lien, Landlord may, with five (5) days prior notice, procure such discharge and the expenses incurred by Landlord in obtaining such discharge shall be paid by Tenant as Additional Rent within ten (10) days after notice from Landlord of the amount thereof.

Section 20.18 Publicity. All news releases, publicity or advertising by Tenant or their Affiliates through any media intended to reach the general public which refers to Landlord, or its Affiliates, this Lease or the purchase of the Real Property shall be subject to the prior written approval of Landlord.

Section 20.19 Trial by Jury. TENANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS LEASE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TENANT.

Section 20.20 Construction and Interpretation. The Parties have each negotiated the terms and conditions hereof and reviewed this Lease carefully. It is the intent of the Parties that each word, phrase, sentence and other part hereof shall be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part hereof against the draftsman, by virtue of being the draftsman, shall not apply.

Section 20.21 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than shall be due hereunder, shall be deemed to be other than a payment on account nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be given any effect or be deemed an accord and

satisfaction, and Landlord may accept such checks without prejudice to any other rights or remedies which Landlord may have.

**Section 20.22 Captions and Headings.** The captions and headings set forth in this Lease are included for convenience and reference only, and the words obtained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of, or the scope or intent of, this Lease, or any parts hereof or thereof.

**Section 20.23 Time is of the Essence.** Time is of the essence of each and every term, condition, covenant and warranty set forth herein or in any of the other Lease Documents.

**Section 20.24 Successors and Assigns.** This Lease and the other Lease Documents shall (a) be binding upon Tenant and Tenant's legal representatives and permitted successors and permitted assigns, and (b) inure to the benefit of Landlord and any other person or entity who may now or hereafter hold the interest of Landlord under this Lease and their respective successors and assigns.

**Section 20.25 No Third Party Beneficiaries.** This Lease is solely for the benefit of Landlord, its successors and assigns, and Tenant, and nothing contained herein shall confer upon any person other than Tenant or Landlord or their respective successors and assigns, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein, except only as may be otherwise specifically provided for in this Lease. All conditions to the obligations of Landlord to advance or make available proceeds of insurance or condemnation are imposed solely and exclusively for the benefit of Landlord, its successors and assigns. No other person or entity shall have standing to require satisfaction of such conditions in accordance with their terms, and no other person or entity shall, under any circumstances, be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Landlord at any time, if in Landlord's sole and absolute discretion, Landlord deems it advisable or desirable to do so.

**Section 20.26 Non-Competition and Non-Solicitation.**

Tenant agrees to the following restrictive covenants and agreements which covenants are not severable from this Lease and which are included to protect the value of the Leased Premises. Accordingly, Tenant agrees that it and their Affiliates will not, during the Term of this Lease at any time for a period of two (2) years after the expiration or early termination of this Lease, directly or indirectly, together or alone or in conjunction with any others, engage in the following:

(i) compete with the business conducted at the Facility, and for those purposes will not own, manage, operate, join, control or participate in, or be connected as an officer, employee, partner, director, trustee or otherwise in any manner with a company which owns or operates (or provides consulting and/or management services to any skilled nursing facility located within the Primary Market of the Facility or (ii) any company providing hospice services in the Commonwealth of Massachusetts, or, otherwise lend credit to a person, firm or entity of a type which they prohibited from owning.

(ii) solicit or hire any then current or former (having provided services during the period commencing one year prior to each date of solicitation or hire) employees of the Facility (except for employment at the Facility).

(iii) solicit or cause any then current resident of the Facility to move to another nursing facility unless, except during the Term of this Lease the Facility can no longer provide adequate care for such resident.

Tenant acknowledges and agrees that the remedy at law for any breach or threat of breach of the foregoing agreements will be inadequate and that Landlord shall be entitled to injunctive relief in addition to any rights or remedies available to it for any breach or threat of breach hereof. The foregoing covenants shall be deemed to be severable and if the same be held invalid by reason of length of time or area covered, or both, the Tenant agrees that such length of time or area covered, or either of them, shall be reduced to the extent necessary to cure such invalidity and the provisions hereof shall be enforceable to the fullest extent permitted by law.

**Section 20.27 Subdivision.** If the Leased Premises are in excess of that which is required to operate the Facility in accordance with the Intended Use, Landlord may subdivide the Leased Premises and amend this Lease to include only so much of the Leased Premises as is necessary to operate the Facility in accordance with the Primary Intended Use. If Landlord subdivides the Leased Premises there shall be no change in the Rent payable hereunder. After any such subdivision, Tenant shall have no rights to any land which is no longer part of the Leased Premises and Landlord may sell, lease or develop any land which is no longer part of the Leased Premises. If Landlord elects to subdivide the Leased Premises Tenant shall cooperate with Landlord and take all actions reasonably requested by Landlord to effect such subdivision.

**Section 20.28 Landlord Not in Control; No Partnership.** None of the covenants or other provisions contained in this Lease shall, or shall be deemed to, give Landlord the right or power to exercise control over the affairs or management of Tenant, the power of Landlord being limited to the rights to exercise the remedies referred to in this Lease. The relationship between Tenant, on the one hand, and Landlord, on the other hand, is, and at all times shall remain, solely that of landlord and tenant. No covenant or provision of this Lease is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand. Landlord undertakes or assumes no responsibility or duty to Tenant or to any other person with respect to the Facility or this Lease, except as expressly provided in this Lease; and notwithstanding any other provision of this Lease (a) Landlord shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Tenant or its stockholders, members, or partners and Landlord never intends to ever assume such status; (b) Landlord shall not in any event be liable for any debts, expenses or losses incurred or sustained by Tenant; and (c) Landlord shall not be deemed responsible for or a participant in any acts, omissions or decisions of Tenant or their stockholders, members, or partners. Landlord, on the one hand, and Tenant, on the other hand, disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand, or any sharing of liabilities, losses, costs or expenses.

**Section 20.29 Tenant Cooperation.** Tenant agrees to cooperate with Landlord in providing, and upon request by Landlord or its lender, Tenant shall provide or cause its subtenants to provide, such documents, information, financial reports, and such other items as may be required by Mortgagee in connection with Landlord's loan or loans to acquire the Leased Premises. Tenant agrees to cause its outside counsel to provide updated healthcare opinions required by Mortgagee in connection with the healthcare operations by Tenant or its subtenants at the facility, and if required by Mortgagee, an opinion of counsel as to the due formation of Tenant and its subtenants and the execution by said parties, and Tenant Affiliates, of the Lease, all subleases, all guaranties of the Lease, and any other documents executed by such parties in connection with the loan(s) from Mortgagee to Landlord. Tenant agrees to execute, and cause the subtenants to execute, SNDAs in form and substance required by Mortgagee and by its prospective lender who will be making HUD-insured loans to Landlord. Tenant further agrees to cooperate with Landlord and with its lenders who are processing and will be making HUD Loans to Landlord.

**Section 20.30 Capitalized Terms.** To the extent capitalized terms used herein are not defined, they shall have the same meaning as capitalized terms in the Loan Documents.

**Section 20.31 Affiliates.** The term "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

## ARTICLE XXI

### REMEDIES CUMULATIVE

**Section 21.1** The rights and remedies set forth under this Lease are in addition to all other rights and remedies afforded to Landlord under any of the other documents contemplated under this Lease ("Lease Documents") or at law or in equity, all of which are hereby reserved by Landlord, and this Lease is made and accepted without prejudice to any such rights and remedies. All of the rights and remedies of Landlord under each of the Lease Documents shall be separate and cumulative and may be exercised concurrently or successively in Landlord's sole and absolute discretion.

## ARTICLE XXII

### LIMITATION OF LIABILITY

**Section 22.1 Liability.** No member, manager, officer, shareholder, employee or agent of Landlord or its respective affiliates shall be held to any personal liability, jointly, or severally, for any obligation of, or claim against Landlord under this Lease. All persons dealing with Landlord, in any way, shall look only to the assets of Landlord for the payment of any sum or the performance of any obligations.

Section 22.2 Consequential Damages. Under no circumstances shall Landlord be liable to Tenant or any subtenant or Affiliate of Tenant for any consequential, specified, exemplary or permitted damages.

Section 22.3 Liability Limited to Interest in Premises. Tenant shall look solely to Landlord's interest in the Leased Premises owned by Landlord to satisfy any liability arising under this Lease. It is specifically agreed that no constituent partner in Landlord or officer, director, member, manager or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. Except as otherwise expressly provided herein, in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause.

ARTICLE XXIII

REGULATORY ACTIONS

Section 23.1 Notice of Litigation. (a) Promptly after receipt by Tenant or its Affiliates of notice of the commencement thereof, Tenant shall provide Landlord with notice of all actions, suits, and proceedings before any Governmental Authority affecting Tenant, or its Affiliates or its Subtenants, which, if determined adversely to Tenant, its Affiliates or its Subtenants, could result in a judgment equal to or greater than Fifty Thousand Dollars (\$50,000.00).

(b) Notice of Regulatory Actions. Promptly after receipt by Tenant or its Affiliates of the notice of commencement thereof, Tenant shall provide Landlord with notice of (i) any audit, investigation, claim (excluding adjustments, complaints, and corrective activity in the ordinary course of business), proceeding, settlement, judgment, consent order, or corporate integrity agreement by or imposed by any Governmental Authority, (ii) any suspension, debarment or disqualification of Tenant, its officers and members, or its Affiliates from being a health care provider, government contractor, holder of any health care license or recipient of reimbursement from any third party payor, (iii) any suspension, termination, or revocation of any health care license of Tenant or any or any of Tenant's Affiliates or (iv) any self or voluntary disclosure of any overpayment to a third party payor by Tenant or any of Tenant's Affiliates.

(c) Notice of Settlement Negotiations. Tenant shall provide Landlord with reasonable notice of any and all settlement discussions and/or negotiations (excluding adjustments, complaints and corrective activity in the ordinary course of business) between representatives of Tenant and/or its Subtenants and any Governmental Authority, including without limitation negotiations with respect to any claim, settlement agreement, consent order or corporate integrity agreement between Tenant and its Affiliates and any Governmental Authority ("Settlement Discussions"). In connection with Settlement Discussions, (i) Tenant shall timely provide Landlord with copies of any and all documents that Tenant and/or its Subtenants intends to submit, or that Tenant and/or its Subtenants receives, in connection with any Settlement Discussions, and (ii) Tenant shall advise Landlord as to the status of the Settlement Discussions.

No receipt of any such notice under subsections (a), (b) and (c) shall impose any obligation on Landlord to take any action or to enforce its rights hereunder or otherwise remedy the circumstances leading to such notice.

#### ARTICLE XXIV

##### ANTI-TERRORISM AND ANTI-MONEY LAUNDERING COMPLIANCE

Section 24.1 Compliance with Anti-Terrorism Laws Tenant represents and warrants to Landlord that it is not, and, after making due inquiry, that no person who owns a controlling interest in or otherwise controls Tenant is, (i) listed on the Specially Designated Nationals and Blocked persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (ii) a person (a "Designated Person") either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "Anti-Terrorism Laws". Tenant represents and warrants that it requires, and has taken reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Tenant is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section 24.1 shall not apply to any person to the extent that such person's interest in Tenant is through a U.S. Publicly-Traded Entity. As used in this Lease, "U.S. Publicly-Traded Entity" means a person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person.

Section 24.2 Funds Invested in Tenant. Tenant represents and warrants that it has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in Tenant, to assure that funds invested by such holders in Tenant are derived from legal sources ("Anti-Money Laundering Measures"). The Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq. ("BSA"), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, "Anti-Money Laundering Laws").

Section 24.3 No Violation of Anti-Money Laundering Laws. Tenant represents and warrants to Landlord, to its actual knowledge after making due inquiry, that neither Tenant nor any holder of a direct or indirect interest in Tenant (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties

under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

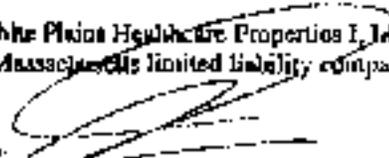
Section 24.4 Tenant Compliance with Anti-Money Laundering Laws. Tenant represents and warrants to Landlord that it has taken reasonable measures appropriate to the circumstances (in any event as required by law), to ensure that Tenant is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking.

[SEE ATTACHED SIGNATURE PAGES]

IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

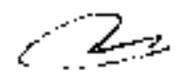
White Plains Healthcare Properties I, LLC,  
a Massachusetts limited liability company

By:   
\_\_\_\_\_  
\_\_\_\_\_, Manager

**TENANT:**

HBL SNF, LLC,  
a New York limited liability company

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



IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

White Plains Healthcare Properties I, LLC, a  
Massachusetts limited liability company

By: \_\_\_\_\_, Manager

**TENANT:**

HBL SNF, LLC, a  
New York limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

SCHEDULE 1B(k)

Health Care Representations

**Health Care Representations.** Tenant, for itself, and for the Subtenants, do hereby represent and warrant to Landlord, its successors and assigns, as of the date of the Lease, that:

(a) All Medicare and Medicaid provider agreements, certificates of need, if applicable, certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by Health Care Authorities (as defined in the Lease) for the legal use, occupancy and operation of the Facility (collectively, the "Health Care Licenses") for the Facility have been obtained by the party required to hold such Health Care Licenses and are in full force and effect, including approved provider status in any approved third-party payor program. Each Subtenant (hereinafter "Operator") owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all such Health Care Licenses and will operate or cause the Facility to be operated in such a manner that the Health Care Licenses shall remain in full force and effect;

(b) The Facility is duly licensed as a skilled nursing facility as required under the applicable laws of the State of New York. The licensed bed capacity of the Facility and the actual bed count operated at the Facility is 160. The Tenant has not applied to reduce the number of licensed or certified beds of the Facility or to move or transfer the right to any and all of the licensed or certified beds of the Facility to any other location or to amend or otherwise change the Facility and/or the number of beds approved by the DOH or other applicable state licensing agency, and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility;

(c) The Health Care License with respect to the Facility (i) has not been and will not be (A) transferred to any location other than the Facility or (B) pledged as collateral security (other than any pledge as collateral security to Tenant's accounts receivable lender approved by Landlord which pledge is subject to the interests of (x) Landlord under the Lease and (y) Mortgagee, including the liens and security interests of the Loan Documents), (ii) is and will continue to be held free from restrictions or known conflicts that would materially impair the use or operation of the Facility as intended, and (iii) is not provisional, probationary, or restricted in any way, except in instances where a Governmental Authority or Health Care Authority has issued a provisional, probationary or restricted license, permit or certification in the ordinary course pending issuance of a final license, permit or certification;

(d) Tenant has or will take any action to rescind, withdraw, revoke, amend, modify, supplement or otherwise alter the nature, tenor or scope of any Health Care

License or applicable provider payment program participation other than non-material alterations effected in the ordinary course of business;

(e) Tenant and the operation of the Facility are in material compliance with the applicable provisions of the Laws and all orders, standards, policies, restrictions or rules of any Health Care Authority having jurisdiction over the ownership, use, occupancy or operation of the Facility, including (i) staffing requirements, (ii) health and fire safety codes including quality and safety standards, (iii) accepted professional standards and principles that apply to the Operator's provision of services at the Facility, (iv) federal, state or local laws, rules, regulations or published interpretations or policies relating to the prevention of fraud and abuse, (v) insurance, reimbursement and cost reporting requirements, government payment program requirements and disclosure of ownership and related information requirements, (vi) requirements of applicable Health Care Authorities, including those relating to the Facility's physical structure and environment, licensing, quality and adequacy of nursing facility care, distributions of pharmaceuticals, rate setting, equipment, personnel, operating policies, and additions of Facility and services, and (vii) any other applicable laws, regulations or agreements for reimbursement for the type of care or services provided by Tenant and/ with respect to the Facility. As used herein, "material compliance" means a level of compliance that would keep Tenant and/ (and the operation of the Facility) free from any final orders or sanctions by any Governmental Authority or Health Care Authority having jurisdiction over the operation of the Facility and would not adversely affect Tenant's and/'s operations, including, but not limited to, its right to receive reimbursement or insurance payments;

(f) Tenant and the Facility are each in material compliance with the requirements for participation in the Medicare and Medicaid programs with respect to the Facility that currently participates in such programs and has a current provider agreement under Title XVIII and/or XIX of the Social Security Act which is in full force and effect. Facility has not had any deficiencies on its most recent survey (standard or complaint) that would result in a denial of payment for new admissions with no opportunity to correct prior to termination. The Facility had not any deficiencies at "level G" or above on its most recent survey (standard or complaint), nor has Tenant been cited with any substandard quality of care deficiencies (as that term is defined in Part 488 of 42 C.F.R.) for the past two consecutive surveys. The Facility has not been designated as a Special Focus Facility (as such term is defined by the Centers for Medicare and Medicaid Services Special Focus Facility Program);

(g) Neither Tenant nor the Facility is a target of, participant in, or subject to any action, proceeding, suit, audit, investigation or sanction by any Health Care Authority or any other administrative or investigative body or entity or any other third party payor or any patient or resident (including, without limitation, whistleblower suits, or suits brought pursuant to federal or state False Claims Acts, and Medicaid/Medicare/State fraud/abuse laws, but excluding medical malpractice claims and other civil liability lawsuits for which the Facility is maintaining insurance coverage in the ordinary course of business) which may result, directly or indirectly or with the passage of time, in the imposition of a fine, penalty, alternative, interim or final sanction, a lower rate

certification, recoupment, recovery, suspension or discontinuance of all or part of reimbursement from any Health Care Authority, third-party payor, insurance carrier or private payor, a lower reimbursement rate for services rendered to eligible patients, or any other civil or criminal remedy, or which could reasonably be expected to have a material adverse effect on Landlord, Tenant, or the operation of the Facility, including the Facility's ability to accept or retain residents, or which could result in the appointment of a receiver or manager, or in the modification, limitation, annulment, revocation, transfer, surrender, suspension or other impairment of a Health Care License, or affect Tenant's participation in the Medicare, Medicaid, or third-party payor program, as applicable, or any successor program thereto, or current rate certification, nor has any such action, proceeding, suit, investigation or audit been threatened;

(h) There are no agreements with residents of the Facility or with any other persons or organizations that deviate in any material adverse respect from or that conflict with, any statutory or regulatory requirements. All resident records at the Facility, including patient and/or resident accounts records, are true, complete, and correct in all material respects;

(i) Other than the Medicare, Medicaid, and Veteran Administration programs, Tenant is not a participant in any federal, state or local program whereby any federal, state or local government or quasi-governmental body, or any intermediary, agency, board or other authority or entity may have the right to recover funds with respect to any Individual Property by reason of the advance of federal, state or local funds, including, without limitation, those authorized under the Hill-Burton Act (42 U.S.C. 291, et seq.). Tenant has received no notice, and is not aware of any violation of applicable antitrust laws;

(j) Tenant's private payor, Medicaid, Medicare, and/or managed care company, insurance company or other third-party insurance accounts receivable with respect to the Facility are free of any liens and Tenant has not pledged any of its receivables as collateral security for any loan or indebtedness;

(k) Tenant is not a party to any collective bargaining agreement or other labor contract applicable to persons employed by it at the Facility and there are no threatened or pending labor disputes at the Facility;

(l) Tenant has instituted, and the Facility is operated in material compliance with, a compliance plan which follows applicable guidelines established by Health Care Authorities;

(m) Tenant is in compliance with the Health Care Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder;

(n) There is no threatened or pending revocation, suspension, termination, probation, restriction, limitation, or non-renewal affecting Tenant and/or the Facility or provider agreement with any third-party payor, Medicare or Medicaid;

(o) All Medicare, Medicaid, and private insurance cost reports and financial reports submitted by or on behalf of the Facility are and will continue to be materially accurate and complete and have not been and will not be misleading in any material respects;

(p) The Facility and the use thereof complies in all material respects with all applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements and no waivers of such physical plant standards exist at the Facility;

(q) Any existing agreement relating to the management or operation of the Facility is in full force and effect and is not in default by any party. In the event any management or operating agreement is terminated or in the event of foreclosure or other acquisition, the subsequent operator need not obtain a certificate of need prior to applying for and receiving a license to operate the Facility or prior to receiving Medicare or Medicaid payments, as applicable;

(r) There are no actions, suits, or proceedings at law or in equity by any person or entity, including any Governmental Authority or any Health Care Authority or other agency now pending or threatened against or affecting Tenant and/or the Facility, which actions, suits or proceedings, individually or collectively, if determined against Tenant and/or the Facility, might materially adversely affect the condition (financial or otherwise) or business of Tenant and/or the condition, ownership or operation of the Facility.

SCHEDULE 19.2

"Special Purpose Entity" shall mean a corporation, limited partnership or limited liability company (such entity sometimes referred to herein as the "Company") which at all times on and after the date hereof:

(d) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Leased Premises, entering into this Lease with Landlord, subleasing the Leased Premises to affiliated subtenants; and (ii) transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(e) is not engaged and will not engage, directly or indirectly, in any business unrelated to those activities required or permitted to be performed under the Lease, including pursuant to this definition of "Special Purpose Entity" and Subsection (a) above, as applicable;

(f) does not have and will not have any assets other than those (i) related to the Leased Premises or its partnership interest in the limited partnership or the member interest in the limited liability company that operates the Leased Premises or acts as the general partner or managing member thereof, as applicable, and (ii) incidental personal property necessary for the conduct of its business, as applicable;

(g) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendments of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(h) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(i) has not failed and will not fail to correct any known misunderstanding regarding its separate identity;

(j) has maintained and will maintain its accounts, books and records separate from those of any other person, individual or entity (a "Person") and maintain its bank accounts separate from those of any other Person. To the extent required by law to file a tax return, will file its own tax returns, except to the extent it is required to file consolidated tax returns by law;



(k) has maintained and will maintain its own records, books, resolutions and agreements;

(l) has not commingled and will not commingle its funds or assets with those of any other Person and has not participated and will not participate in any cash management system with any other Person other than pursuant to its ~~insert any credit facilities or accounts receivables financings~~;

(m) has held and will hold its assets in its own name;

(n) has conducted and will conduct its business in its name;

(o) has maintained and will maintain its financial statements, accounting records and other entry documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(p) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees, if any, in light of its contemplated business operations and in accordance with all Laws;

(q) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(r) has and will have no indebtedness other than (i) liabilities under this Lease or any Sublease (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Leased Premises and the routine administration of Tenant, and (iii) such other liabilities that are permitted under this Lease;

(s) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Lease;

(t) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(u) has allocated and will allocate fairly, reasonably and in accordance with all Laws, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(v) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Tenant or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity;

(w) has not pledged and will not pledge its assets for the benefit of any other Person;

(x) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(y) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(z) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity;

(aa) has not identified and will not identify its partners, members or shareholders, or any Affiliates of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(ab) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (A) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are in compliance with all Laws and no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party and (B) in connection with this Lease;

(ac) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Rent payable under this Lease and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Rent is insufficient to pay such obligation;

(ad) it shall consider the interests of its creditors in connection with all limited liability company actions;

(ae) does not and will not have any of its obligations guaranteed by any Affiliate except obligations under this Lease;

(af) if such entity is a limited liability company, it shall have its own board of directors or board of managers, and shall cause such board to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other corporate formalities;

(ag) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct;

(ah) has not and will not permit any other Person independent access to its bank accounts;

(ii) has caused and will cause all representatives of Tenant to act at all times with respect to Tenant consistently and in furtherance of the foregoing; and

(iii) has not and will not form, acquire, or hold any subsidiary or own any equity interest in any other entity.

2025446-5/17057-d



# Exhibit H

## to Donnellan Aff.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X  
LIZER JOZEFOVIC, :  
: Index No. : 655549/2020  
: :  
Plaintiff, : ANSWER WITH CROSS-CLAIM  
: :  
v. :  
: :  
WHITE PLAINS HEALTHCARE PROPERTIES :  
I, LLC, HOWARD FENSTERMAN, and :  
METROPOLITAN COMMERCIAL BANK, :  
: :  
Defendants. :  
----- X

Defendant Metropolitan Commercial Bank ("MCB"), by its attorneys, Winuels Marx Lane & Mittendorf, LLP, as and for its Verified Answer With Cross-Claim in response to the Summons and Complaint, dated October 22, 2020 (the "Complaint"), filed by plaintiff Lizer Jozefovic ("Plaintiff"), alleges as follows:

**INTRODUCTION**

1. No response is necessary to the allegations in paragraph 1 of the Complaint. To the extent that a response is necessary, MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint.
2. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint.
3. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint.
4. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint.

5. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint, except admits that Plaintiff assigned his interest in Waterview Acquisition 1, LLC to MCB as part of a financing arrangement.

6. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint, except denies the allegations in paragraph 6 of the Complaint concerning the contents of the purported Notification of Disposition of Collateral and respectfully refers the Court to the document for the terms thereof.

7. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint, except admits that defendants White Plains Healthcare Properties 1, LLC ("WPHP") and Howard Fensterman ("Fensterman") have no right or ability to sell Plaintiff's interest in Waterview Acquisition 1, LLC, and respectfully refers all questions of law to the Court.

8. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint.

9. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint.

10. MCB admits the allegations in paragraph 10 of the Complaint.

**THE PARTIES**

11. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint.

12. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint.

13. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint.

14. MCB admits the allegations in paragraph 14 of the Complaint.

15. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint, and respectfully refers all questions of law to the Court.

16. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint, and respectfully refers all questions of law to the Court.

**FACTUAL ALLEGATIONS**

**The Collateral Assignment**

17. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint.

18. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint.

19. MCB denies the allegations in paragraph 19 of the Complaint and respectfully refers the Court to the Collateral Assignment for the terms thereof.

20. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint.

21. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint.

22. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint, and respectfully refers all questions of law to the Court.

23. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Complaint.

24. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint.

25. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint.

26. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint.

27. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Complaint, and respectfully refers all questions of law to the Court.

**Assignment of the Membership Interest to MCB**

28. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint.

29. MCB denies the allegations in paragraph 29 of the Complaint and respectfully refers the Court to the then governing Operating Agreement of Waterview Acquisition 1, LLC for the terms thereof.

30. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint.

31. MCB admits the allegations in paragraph 31 of the Complaint.

32. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Complaint, except admits that in December 2019, Plaintiff assigned the Membership Interest to MCB in connection with a \$3,000,000.00 loan as part of a financing arrangement.

33. MCB admits the allegations in paragraph 33 of the Complaint.

34. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Complaint.

35. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Complaint.

36. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Complaint.

**Distribution of the Notification and Resulting Harm**

37. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

38. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations the allegations in paragraph 38 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

39. MCB denies the allegations in paragraph 39 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

40. MCB denies the allegations in paragraph 40 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

41. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Complaint.

42. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the Complaint.

43. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 of the Complaint.

44. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Complaint.

45. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 of the Complaint.

46. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the Complaint.

47. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Complaint.

48. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 of the Complaint.

49. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 of the Complaint.

50. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaint.

51. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 of the Complaint.

52. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 of the Complaint.

53. MCB admits the allegations in paragraph 53 of the Complaint.

54. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 of the Complaint.

**FIRST CAUSE OF ACTION**  
**Declaratory Judgment**  
**(All Defendants)**

55. In response to paragraph 55 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 54 with the same force and effect as though fully set forth herein.

56. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Complaint and respectfully refers the Court to the Collateral Assignment for the terms thereof.

57. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 of the Complaint.

58. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 of the Complaint.

59. MCB admits the allegations in paragraph 59 of the Complaint.

60. MCB admits the allegations in paragraph 60 of the Complaint.

61. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 of the Complaint, except admits that (a) the Membership Interest has been assigned to MCB and (b) WPHP and Mr. Fensterman have no right or claim to the

Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest.

**SECOND CAUSE OF ACTION**  
**Breach of Contract**  
**(WPHP and Mr. Fensterman)**

62. In response to paragraph 62 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 61 with the same force and effect as though fully set forth herein.

63. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 of the Complaint.

64. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 of the Complaint.

65. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint.

66. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the Complaint.

67. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 of the Complaint.

68. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 of the Complaint.

69. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 69 of the Complaint.

**THIRD CAUSE OF ACTION**  
**Fraud**  
**(WPHP and Mr. Fensterman)**

70. In response to paragraph 70 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 69 with the same force and effect as though fully set forth herein.

71. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Complaint.

72. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 72 of the Complaint, except denies the allegations concerning the content of the Notification, and respectfully refers the Court to the Notification for the contents thereof.

73. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 of the Complaint, except admits that WPHP and Fensterman have no right to sell the Membership Interest.

74. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 74 of the Complaint.

75. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 75 of the Complaint.

**THIRD /SIC/ CAUSE OF ACTION**  
**Defamation**  
**(WPHP and Mr. Fensterman)**

76. In response to paragraph 76 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 75 with the same force and effect as though fully set forth herein.

77. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77 of the Complaint.

78. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78 of the Complaint, except denies the allegations concerning the content of the Notification, and respectfully refers the Court to the Notification for the contents thereof.

79. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 of the Complaint.

80. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 80 of the Complaint.

81. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 of the Complaint.

82. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 82 of the Complaint.

**FOURTH /SIC/ CAUSE OF ACTION**  
**Breach of Fiduciary Duty**  
**(Mr. Fensterman)**

83. In response to paragraph 83 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 82 with the same force and effect as though fully set forth herein.

84. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 of the Complaint and respectfully refers all questions of law to the Court.

85. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 85 of the Complaint.

86. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86 of the Complaint.

87. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87 of the Complaint.

**FIFTH [SIC] CAUSE OF ACTION**  
**Legal Malpractice**  
**(Mr. Fensterman)**

88. In response to paragraph 88 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 87 with the same force and effect as though fully set forth herein.

89. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 89 of the Complaint.

90. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 90 of the Complaint and respectfully refers all questions of law to the Court.

91. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91 of the Complaint and respectfully refers all questions of law to the Court.

92. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92 of the Complaint.

93. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93 of the Complaint.

**SIXTH /SIC/ CAUSE OF ACTION**  
**Judiciary Law Section 487**  
**(Mr. Fensterman)**

94. In response to paragraph 94 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 93 with the same force and effect as though fully set forth herein.

95. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 95 of the Complaint.

96. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 of the Complaint.

97. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 97 of the Complaint.

98. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 98 of the Complaint.

99. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 99 of the Complaint.

**DEFENSES**

100. MCB reserves the right to rely upon any of the following or any additional defenses to the extent that such defenses are supported by information developed through discovery or evidence at trial. MCB presently has insufficient knowledge or information upon which to form a belief as to whether there may be, as yet unstated, defenses available to MCB and thus, expressly reserves the right to (a) amend or supplement this answer, defenses and all other pleadings, and (b) assert any and all additional defenses under any applicable federal and state law in the event that discovery indicates such defenses would be appropriate. By asserting the matters below, MCB

does not admit that Plaintiff is relieved of his burden to prove each element of its claims and the damages or relief sought.

**AS AND FOR A FIRST DEFENSE**

101. MCB has a fully perfected security interest in the Membership Interest and the certificates constituting the Membership Interest that is senior to all other persons.

**AS AND FOR A SECOND DEFENSE**

102. MCB has a possessory right in the certificates constituting the Membership Interest that is superior to all other persons.

**AS AND FOR A THIRD DEFENSE**

103. Given that MCB is the creditor with the fully perfected senior secured interest in the Membership Interests and certificates constituting the Membership Interest, and also has possession of the certificates (and cannot be dispossessed of same), defendants WPHP and Fensterman cannot conduct a commercially reasonable sale of the Membership Interest and thus, they cannot proceed with a sale of said Membership Interest.

**AS AND FOR A FOURTH DEFENSE**

104. Upon information and belief, WPHP and Fensterman never had a valid security interest in the Membership Interest and thus, they cannot foreclose or sell same.

**AS AND FOR A FIFTH DEFENSE**

105. Upon information and belief, assuming *arguendo* WPHP and Fensterman had a valid security interest in the Membership Interest, said security interest has since terminated and thus, they cannot foreclose or sell same.

**AS AND FOR A CROSS-CLAIM  
AGAINST WHITE PLAINS HEALTHCARE  
PROPERTIES I, LLC AND HOWARD FENSTERMAN  
(Declaratory Judgment)**

106. MCB repeats and re-alleges the foregoing paragraphs as though fully set forth herein.

**MCB's Security Interest in the Membership Interest**

107. On or about December 19, 2019, MCB loaned \$3 million to, among others, Waterview Acquisition I, LLC ("Waterview") and in connection therewith Waterview executed and delivered to MCB a Promissory Note and Loan Agreement each dated December 19, 2019.

108. To secure repayment of Waterview's obligations to MCB, among other things, Plaintiff executed and delivered to MCB a Guaranty Of Payment dated December 19, 2019 (the "Guaranty").

109. Plaintiff secured his obligations under his Guaranty by executing and delivering to MCB, among other things, the Assignment And Pledge Of Membership Interests dated December 19, 2019 (the "Pledge Agreement").

110. Pursuant to the Pledge Agreement, Plaintiff, among other things, "pledge[d], collateral[ly] assign[ed], transfer[red] and convey[ed], and grant[ed] a security interest in and lien on, in favor of [MCB], all of [Plaintiff's] right, title and interest in, to, and under ... , whether now owned or existing or hereafter acquired or arising [Seventy and one-tenths percentage (70.1%) of the membership interests ... owned by HERBERT JOZEFOVIC ... in WATERVIEW ACQUISITION I, LLC ....]". In other words, by the Pledge Agreement, Plaintiff pledged his Membership Interests to MCB.

111. To authorize, permit and facilitate the pledge of Plaintiff's Membership Interests to MCB, Plaintiff's Membership Interests were certificated (the "Certificates") and the Amended

And Restated Operating Agreement Of Waterview Acquisition I, LLC was amended pursuant to the Second Amendment To Amended And Restated Operating Agreement Of Waterview Acquisition I, LLC dated December 19, 2019 (collectively, the "Operating Agreement"). After obtaining a senior secured interest in Plaintiff's Membership Interests and Certificates, MCB fully perfected same by filing a UCC Financing Statement on December 23, 2019 and taking possession of the Certificates.

112. All of Plaintiff's rights and interests in and to the Membership Interests are merged with and in the Certificates.

**The Certificates**

113. MCB remains in possession of the Certificates.

114. MCB has a possessory interest in the Certificates that is superior to all other persons and thus, cannot be dispossessed of the Certificates.

115. The Certificates, moreover, states as follows: "This certifies that Herbert Lizer Jozefovic is the registered owner of Seventy and 1/10 (70.1%) Percent of the membership in the Limited Liability Company transferable only on the books of the Company in accordance with the Company's Operating Agreement and pursuant to the provisions of Section 2801-a(4)(b) of the New York State Public Health Law."

116. Pursuant to Article XII of Waterview's Operating Agreement, a pledge or transfer of a membership interest is prohibited absent consent of the Public Health Council of the State of New York and the members of Waterview.

117. Likewise, Section 2801-a(4)(b) of the New York State Public Health Law requires the consent of the New York Public Health and Health Planning Council.

**The Notice of Sale**

118. On or about October 6, 2020, MCB and its counsel Windels Marx Lane & Mittendorf, LLP received a Notification Of Disposition Of Collateral pursuant to which WPHP and Fensterman purported to sell WPHP's interests in and to Plaintiff's Membership Interests and Certificates (the "Notice of Sale").

119. The Notice of Sale allegedly relates to an August 11, 2017 collateral assignment, pledge and security agreement between Plaintiff and WPHP. However, WPHP did not file a UCC Financing Statement until September 15, 2020.

120. Even if WPHP and Fensterman were to have a valid security interest in the Membership Interest, it would be junior to MCB's security interest by virtue of the fact that MCB perfected its interest before WPHP's September 15, 2020 UCC Financing Statement.

**The UCC Requires that any Sale be "Commercially Reasonable"**

121. Pursuant to NY UCC 9-610(b), "Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable."

122. In order to conduct a commercially reasonable sale of the Membership Interests, WPHP and Fensterman must have possession of the Certificates.

**Declaratory Relief is Necessary**

123. As evidenced by the Notice of Sale, and the subsequent refusal by WPHP and Fensterman to withdraw the Notice of Sale, there exists a genuine controversy and dispute as to whether WPHP and Fensterman have the authority to sell Plaintiff's Membership Interest given that (a) WPHP and Fensterman never had a security interest in the Membership Interests and if they did, then said security interest long ago terminated, and even if they did and still have a security interest in the Membership Interests, then (b) (i) MCB has a fully perfected security

interest in the Membership Interest and Certificates that is senior to all other persons, (ii) MCB is in possession of the Certificates, (iii) MCB has a possessory right in the Certificates that is superior to all other persons, (iv) MCB cannot be dispossessed of the Certificates given its superior possessory right in same, (v) the Certificates limit any transfer of same except in compliance with the Operating Agreement, which requires the consent of Waterview's members, and the Public Health Law, which requires the consent of the Public Health Council; (vi) all of Plaintiff's rights and interests in and to the Membership Interests are merged with and in the Certificates, and (vii) in order to conduct a commercially reasonable sale, WPHP and Fensterman must have possession of the Certificates.

124. A judicial determination of these issues is necessary.

125. This controversy is ripe, genuine, actually justiciable and MCB has no adequate remedy at law.

126. MCB is entitled to a declaratory judgment stating that WPHP and Fensterman are prohibited from selling Plaintiff's Membership Interest pursuant to the Notice of Sale or otherwise because: (a) WPHP and Fensterman never had a security interest in the Membership Interests and if they did, then said security interest long ago terminated, and even if they did and still have a security interest in the Membership Interests, then (b) (i) MCB has a fully perfected security interest in the Membership Interest and Certificates that is senior to all other persons, (ii) MCB is in possession of the Certificates, (iii) MCB has a possessory right in the Certificates that is superior to all other persons, (iv) MCB cannot be dispossessed of the Certificates given its superior possessory right in same, (v) the Certificates limit any transfer of same except in compliance with the Operating Agreement, which requires the consent of Waterview's members, and the Public Health Law, which requires the consent of the Public Health Council; (vi) all of Plaintiff's rights

and interests in and to the Membership Interests are merged with and in the Certificates, and (viii) in order to conduct a commercially reasonable sale, WPHP and Fensterman must have possession of the Certificates.

127. WHEREFORE, MCB demands judgment as follows:

(a) Granting Plaintiff's request for a judgment declaring that (i) the Collateral Assignment to WPHP and Fensterman is null and void following the establishment of the Rent Security; (ii) the Membership Interest has been properly assigned to MCB; and (iii) WPHP and Fensterman have no right or claim to the Membership Interest, nor can WPHP, Fensterman, or counsel sell or otherwise transfer the Membership Interest;

(b) Granting MCB's request for a judgment declaring that WPHP and Fensterman are prohibited from selling Plaintiff's Membership Interest pursuant to the Notice of Sale or otherwise because: (1) WPHP and Fensterman never had a security interest in the Membership Interests and if they did, then said security interest long ago terminated, and even if they did and still have a security interest in the Membership Interests, then (2) (i) MCB has a fully perfected security interest in the Membership Interest and Certificates that is senior to all other persons, (ii) MCB is in possession of the Certificates, (iii) MCB has a possessory right in the Certificates that is superior to all other persons, (iv) MCB cannot be dispossessed of the Certificates given its superior possessory right in same, (v) the Certificates limit any transfer of same except in compliance with the Operating Agreement, which requires the consent of Waterview's members, and the Public Health Law, which requires the consent of the Public Health Council; (vii) all of Plaintiff's rights and interests in

and to the Membership Interests are merged with and in the Certificates, and (viii) in order to conduct a commercially reasonable sale, WPHP and Fensterman must have possession of the Certificates; and

(c) Granting MCB such other relief as the Court may deem fair, just and proper.

Dated: January 8, 2020  
New York, New York

**WINDELS MARX LANE & MITTENDORF, LLP**

By:  \_\_\_\_\_  
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*Attorneys for Defendant/Cross Claimant  
Metropolitan Commercial Bank*

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**60278/2020** - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

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1	<a href="#">SUMMONS + COMPLAINT</a>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
2	<a href="#">EXHIBIT(S)</a> - 1 <i>Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
3	<a href="#">EXHIBIT(S)</a> - 2 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
4	<a href="#">EXHIBIT(S)</a> - 3 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
5	<a href="#">EXHIBIT(S)</a> - 4 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
6	<a href="#">EXHIBIT(S)</a> - 5 <i>Notice of Default</i>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
7	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> <i>Affidavit of service upon defendant HBL SNF Inc</i>	<a href="#">Coleman, W.</a> Filed: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>

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8	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> affidavits of service of summons and complaint - all defendants	<a href="#">Coleman, W.</a> Filed: 10/07/2020 Received: 10/07/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
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12	<a href="#">EXHIBIT(S)</a> - 2 (Motion #1) Affidavit of Service	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Index No. 60278/2020

**MEMORANDUM OF LAW IN SUPPORT OF MOTION  
FOR LEAVE TO AMEND COMPLAINT**

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-and-

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**PRELIMINARY STATEMENT**

Plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”) by its attorneys, DelBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, respectfully submit this memorandum of law in support of its motion, pursuant to CPLR § 3025(b), granting WPH Properties leave to file an amended complaint.

WPH Properties is moving for leave to amend because the defendants rejected an amended complaint served on November 30, 2020, 25 days, not 20 days, after they filed their answer. The relevant facts are set forth in the accompanying affirmation of Alfred E. Donnellan, Esq. For the reasons that follow, WPH Properties respectfully submits that leave to amend should be granted.

**ARGUMENT**

**I**

**THE COURT SHOULD GRANT LEAVE TO FILE THE AMENDED COMPLAINT.**

Pursuant to CPLR 3025(b), a party “may amend his pleading, or supplement it . . . at any time by leave of court” and leave “shall be freely given upon such terms as may be just . . . .” CPLR § 3025(b); *Sentry Ins. Co. v. Kero-Sun, Inc.*, 122 A.D.2d 204, 204 (2d Dep’t 1986) (“As a general rule, leave to amend should be freely given absent prejudice or surprise resulting directly from the delay.”). “Thus, leave to amend a pleading should be granted where the amendment is neither palpably insufficient nor patently devoid of merit, and the delay in seeking amendment does not prejudice or surprise the opposing party.” *Ulster Savings Bank v. Fiore*, 165 A.D.3d 734, 735 (2d Dep’t 2018). “Prejudice . . . is not found in the mere exposure of the defendant to greater liability. Instead, there must be some indication that the defendant has been hindered in the preparation of his case or has been prevented from taking some measure in support of his position.”

*Abdelnabi v. New York City Transit Authority*, 273 A.D.2d 114, 115 (1st Dep’t 2000) (citing *Loomis v. Civetta Corrinno Construction Corp.*, 54 N.Y.2d 18, 24 (1981)).

Granting leave to amend the complaint here would result in no prejudice or surprise whatever to the defendants. Discovery in this case has only just commenced. Defendants served their first set of interrogatories and request for the production of documents on December 18, 2020. Donnellan aff., ¶8 Pursuant to the Courts preliminary conference order, responses to those discovery requests are due on February 26, 2021. Depositions have not yet commenced. Donnellan aff., ¶8 Since leave is being sought at the commencement of discovery, the defendants cannot plausibly claim that they somehow changed their position in reliance on the original complaint, or even that the amended complaint would somehow cause them significant trouble or expense.

Indeed, Courts have held that leave should be granted to amend a complaint even close to the eve of trial. *See Kimso Apartments, LLC v. Gandhi*, 24 N.Y.3d 403 (2914). In *Sunken Pond Estates Homeowners Ass’n v. Sunken Pond Estate, Inc.*, No. 43653/08, 2012 WL 2742825, \*6 (Sup. Ct. Suffolk Cty. June 21, 2012), for example, the defendants opposed leave to amend the complaint, asserting that “the proposed amendment is unfair because it is made almost on the eve of trial and will cause unreasonable expense and delay if it leads to additional discovery is insufficient to make such a showing.” *Id.* The Court granted leave to amend, stating:

Mere lateness is not a barrier to an amendment. It must be lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine. There must be some indication that the defendants have been hindered in the preparation of their case or prevented from taking some measure in support of their position. The defendants' conclusory assertion that the proposed amendment is unfair because it is made almost on the eve of trial and will cause unreasonable expense and delay if it leads to additional discovery is insufficient to make such a showing.

*Id.* (citations omitted).

The lack of surprise to the defendants is further reinforced by the fact that the amended complaint does nothing more than add a cause of action against Jozefovic individually for HBL's breach of the same provisions in the lease agreement as alleged in the original complaint. Jozefovic pledged the Waterview membership interest as security to ensure HBL's compliance with the lease. The amended complaint seeks to enforce the security agreement and the lease. Because the facts supporting WHP Properties' claims against Jozefovic individually are based on the same breaches of HBL's obligations under the lease, there is cannot possibly be any surprise to the defendants of the facts alleged that support the new claims.

Finally, "the established rule is that the legal sufficiency or merits of proposed amendments will not be examined on a motion to amend unless the insufficiency or lack of merit is clear and free from doubt." *Sentry Ins. Co. v. Kero-Sun, Inc.*, 122 A.D.2d at 204; *see also Yong Soon Oh v. Hua Jin*, 124 A.D.3d 639, 640 (2d Dep't 2015) ("[I]n the absence of prejudice or surprise to the opposing party, leave to amend pleadings should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit."); *Sample v. Levada*, 8 A.D.3d 465, 467-68 (2d Dep't 2004) ("The legal sufficiency or merits of a proposed amendment to a pleading will not be examined unless the insufficiency or lack of merit is clear and free from doubt."). The fifth cause of action easily satisfies that standard.

The basis for the fifth cause of action in the amended complaint is Jozefovic's breach of the security agreement. The fifth cause of action alleges as follows:

- Under the Jozefovic Security Agreement, Jozefovic pledged the Waterview Collateral in order to secure the obligations under the Jozefovic Security Agreement and under the Lease;
- The Jozefovic Security Agreement provides that Jozefovic has not and will not enter into any assignment, mortgage, pledge or other instrument that

transfers or encumbers all or any part of the Waterview Collateral, Donnellan aff., ex. C, ¶39, and further provides that Jozefovic agrees not to subsequently further amend or voluntarily permit the amendment of the security agreement and/or the rights of WPH Properties. Donnellan aff., ex. C, ¶ 40;

- Notwithstanding his agreement not to pledge or assign the Waterview Collateral in a manner that would materially adversely affect WPH Properties, Jozefovic assigned the MCB to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB. Donnellan aff., ex. C, ¶ 39;
- To effectuate Jozefovic's assignment of his Waterview interest to MCB, Jozefovic agreed to and voluntarily permitted the amendment of the Waterview Operating Agreement. Donnellan aff., ex. C, ¶ 42;
- Jozefovic breached his obligations under the security agreement by agreeing to and voluntarily permitting the amendment of the Waterview operating agreement and by assigning his Waterview interest to MCB. Donnellan aff., ex. C, ¶ 44;
- Jozefovic further breached the security agreement by failing to take all of the necessary steps to add Howard Fensterman, a principal of WPH Properties, as a co-signatory to the JP Morgan Chase accounts identified therein as required by the security agreement. Donnellan aff., ex. C, ¶ 45;
- Jozefovic and HBL breached their obligation to post the \$1,600,000 additional security deposit required by the security agreement and the lease. Donnellan aff., ex. C, ¶ 46;
- The failure of Jozefovic and HBL failure to satisfy the obligation to post the \$1.6 million additional security deposit constitutes a breach of the security agreement and the lease. Donnellan aff., ex. C, ¶ 48;
- Under the UCC and the security agreement, WPH Properties is entitled, in the event of a default, to, among other remedies, to sell Jozefovic's Waterview interest at a public sale, subject to MCB's senior security interest in the collateral. Donnellan aff., ex. C, ¶¶ 50, 52;
- Jozefovic's breach of the security agreement has therefore caused WPH Properties damages in the amount of \$3,000,000, which is the amount of Jozefovic's obligation to MCB secured by Jozefovic's illicit assignment of the same collateral to MCB. Donnellan aff., ex. C, ¶ 53;

The defendants have no credible argument that the “insufficiency or lack of merit” of the fifth cause of action “is clear and free from doubt.” In fact, those claims are based on the clear and unambiguous provisions of the security agreement and lease, and many of the allegations contained in the fifth cause of action are indisputable. For example, MCB has asserted in an Answer with Cross-Claims filed in *Jozefovic v. White Plains Healthcare Properties I, LLC*, Index no. 655549/2020 (Sup. Ct. N.Y. Cty) (the “New York County Action”), that Jozefovic pledged the Waterview Collateral to MCB to secure his loan obligation to MCB and that the Waterview Operating Agreement was amended to permit that pledge. *Donnellan aff., ex. H*, ¶¶ 107-111. Jozefovic has also admitted in the New York County action that, after pledging the Waterview Collateral to WPH Properties, he “subsequently transferred the [Waterview] Membership Interest to Defendant Metropolitan Commercial Bank (“MCB”) as part of a financing arrangement. *Donnellan aff., ex. H*. As alleged in the amended complaint’s fifth cause of action, the pledge to MCB of the Waterview Collateral – which Jozefovic had already pledged to WPH Properties – as well as amending the Waterview operating agreement to facilitate the pledge to MCB were clear violations of the security agreement.

As the parties have also discussed with this Court, it is also indisputable that Jozefovic and HBL have breached their obligation to post the \$1,600,000 additional security deposit required by the Jozefovic Security Agreement and the Lease. As alleged in the fifth cause of action of the amended complaint, this was another breach of the security agreement.

In a letter from his counsel dated December 2, 2020, *Donnellan aff., ex. E*, Jozefovic opposed the amended complaint on the basis that he had instituted the New York County action seeking declaratory judgment regarding WHP Properties’ rights to enforce the Jozefovic Security

Agreement. Jozefovic’s argument is unavailing because: (i) the New York County Action was filed after this action was commenced in Westchester; (ii) venue for the New York County Action is improper because the only connection to New York County is the place of business of MCB, a nominal party, and (iii) WHP Properties already moved to change venue and consolidate the New York County Action No. 2. The motion to change venue and consolidate has been fully briefed and submitted before Hon. Nancy Bannon, J.S.C. and the parties are awaiting the Court’s decision on the motion.

Because the fifth cause of action added in the amended complaint -- far from being palpably insufficient or patently devoid of merit -- is clearly meritorious and will result in no prejudice or undue surprise, the Court should grant leave to file the amended complaint.

**CONCLUSION**

For all of these reasons, WPH Properties respectfully request that the Court grant it leave to file its amended complaint and award such other relief as the Court deems just.

Dated: White Plains, New York  
January 26, 2021

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains  
Healthcare Properties I, LLC*

By: /s/ Alfred E. Donnellan  
Alfred E. Donnellan, Esq.  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Tel.: (914) 681-0200

-and-

ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, FORMATO, FERRARA, WOLF &  
CARONE, LLP

*Co-Counsel for Plaintiff White Plains  
Healthcare Properties I, LLC*

Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
Tel: (914) 607-7010

*Attorneys for White Plains Healthcare  
Properties I, LLC*

**CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, ALFRED E. DONNELLAN, ESQ., an attorney at law licensed to practice in the State of New York, and counsel of record herein, certify that this document contains 1,822 words, exclusive of the caption page, table of contents and table of authorities and signature block, as counted by the word count of the word-processing system used to prepare this document.

Dated: White Plains, New York  
January 26, 2021

/s/ Alfred E. Donnellan  
ALFRED E. DONNELLAN

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,  
- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Index No. 60278/2020  
**NOTICE OF MOTION**

PLEASE TAKE NOTICE that upon the annexed affirmation of Alfred E. Donnellan Esq. dated February 3, 2021, the memorandum of law dated February 3, 2021, and the exhibits annexed thereto, plaintiff, White Plains Healthcare Properties I, LLC, will move this Court, located at 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, in the Commercial Division, before the Honorable Gretchen Walsh, on February 19, 2021, at 9:30 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to CPLR § 3211(a)(5) and 3211(a)(7) dismissing the counterclaims and third-party complaint asserted by defendants/third-party plaintiffs, HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, and granting such further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that opposition papers shall be served upon the undersigned at least two (2) days prior to the return date of this motion pursuant to CPLR § 2214(b).

Dated: White Plains, New York  
February 4, 2021

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains  
Healthcare Properties I, LLC*

By: /s/ Alfred E. Donnellan  
Alfred E. Donnellan, Esq.  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Tel.: (914) 681-0200

-and-

ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, FORMATO, FERRARA, WOLF &  
CARONE, LLP  
*Co-Counsel for Plaintiff White Plains  
Healthcare Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
Tel: (914) 607-7010

*Attorneys for White Plains Healthcare  
Properties I, LLC*

To: Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> floor  
New York, New York 10022

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Index No. 60278/2020

**AFFIRMATION OF  
ALFRED E. DONNELLAN**

Alfred E. Donnellan, an attorney duly admitted to practice in the courts of the State of New York, affirms the following to be true under the penalty of perjury:

1. I am a member of the law firm of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, lead counsel for the plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”), and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, “third-party defendants”).

2. I submit this affirmation in support of the motion of WPH Properties for an order dismissing the counterclaims and third-party claims (collectively, the “Claims”) asserted by defendants/third-party plaintiffs, HBL SNF, LLC (“HBL”), Lizer Jozefovic (“Jozefovic”) and Mark Neuman (“Neuman”) (collectively, “defendants”).

3. This action concerns a nursing home facility developed, financed, constructed and owned by WPH Properties located at 116-120 Church Street, White Plains, New York. WPH Properties has leased the nursing home to HBL, an entity controlled by Jozefovic, which is the operator of the facility. WPH Properties commenced this action on September 18, 2020 seeking to recover the amounts due from HBL to WPH Properties as a result of HBL's defaults under the lease, and a related letter of intent. The defendants filed an answer on November 5, 2020 asserting the Claims for an accounting, interest, breach of contract, fraud, fraud in the inducement and bad faith. In essence, the defendants assert that that WPH Properties and the third-party defendants failed to meet their obligations under a development agreement and the lease with respect to development, financing and construction of the nursing home facility.

4. The Claims should be dismissed, pursuant to CPLR 3211(a)(5) and (a)(7) because they have been released as against WPH Properties and fail to state viable causes of action.

5. First, WPH Properties and HBL are parties to the development agreement, which expressly provides that WPH Properties has fulfilled all its obligations and responsibilities. Pursuant to the development agreement, the Claims against WPH Properties -- asserted in the first, second and third causes of action -- were released and discharged upon substantial completion of the nursing home, which occurred long ago. The Claims were released as against WPH Properties pursuant to the lease as well. Under the lease, the defendants waived any claims they may have against WPH Properties in law or equity with respect to any aspect of the nursing home facility. The Claims asserted against WPH Properties in the first, second and third causes of action should therefore be dismissed pursuant to CPLR 3211(a)(5).

6. The defendants' first, second, fourth, fifth and sixth causes of action should be dismissed as well under CPLR 3211(a)(7) for failure to state a claim.

7. The first cause of action demanding an accounting should be dismissed because the defendants do not and cannot allege a fiduciary relationship between the parties, which is necessary to obtain an accounting.

8. The second cause of action seeks “imputed interest” on a purported loan of \$2,200,000 made by HBL to WPH Properties, but that claim is not viable because, even assuming that the \$2,200,000 was in fact a loan, the second cause of action expressly pleads that the parties made no provision for interest on the alleged loan.

9. The fourth, fifth and sixth causes of action alleging fraud in the inducement, bad faith and fraud should be dismissed because they: (i) are duplicative of the defendants’ breach of contract claim; (ii) fail to satisfy the applicable pleading standard of CPLR 3016(b), and (iii) fail to state viable claims for fraud, bad faith or fraud in the inducement.

10. A true and correct copy of the summons and complaint in this action is attached as **Exhibit A**.

11. A true and correct of defendants’ Answer asserting the counterclaims and third-party claims is attached as **Exhibit B**.

12. A true and correct copy of the Development Agreement between WPH Properties and HBL dated as of November 19, 2015 is attached as **Exhibit C**.

13. A true and correct copy of the amended and restated operating lease between WPH Properties and HBL dated as of November 19, 2015, as amended July 12, 2017 is attached as **Exhibit D**.

14. A true and correct copy of the temporary certificate of occupancy for the Facility (“the “TCO”) is attached as **Exhibit E**.

15. A true and correct copy of the AJA Form 0704 refenced in Article VIII of the

Development Agreement is attached as **Exhibit F**.

16. A true and correct copy of a communication from the New York State Department of Health approving the Facility as constructed to accept patients. The DOH approval is annexed as **Exhibit G**.

WHEREFORE, I respectfully request that this Court grant the motion of WPH Properties in its entirety.

Dated: White Plains, New York  
February 3, 2021

/s/ Alfred E. Donnellan  
Alfred E. Donnellan

# Exhibit B

## to Donnellan Aff.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278 2020

-against-

HBL SNE, LLC, LIZER JOZEFVIC AKA LIZER  
JOZOVIC and MARK NEUMAN,

VERIFIED ANSWER  
WITH AFFIRMATIVE  
DEFENSES, COUNTER-  
CLAIMS AND THIRD-  
PARTY COMPLAINT

Defendants and  
Third-Party Plaintiff.

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

-----X

Defendants, HBL SNE, LLC, LIZER JOZEFVIC AKA LIZER JOZOVIC and  
MARK NEUMAN (collectively, "Defendants"), by and through their counsel Michelman &  
Robinson, LLP, hereby assert the following verified answer with affirmative defenses,  
counterclaims, and third-party complaint and allege upon information and belief as follows:

**ANSWER TO COMPLAINT**

1. Defendants deny the allegations in paragraphs "1," "2," and "3."
2. Defendants admit the allegations in paragraphs "4" through "11."
3. Defendants deny the allegations in paragraphs "12" and "13."
4. In response to the allegations in paragraphs "14" through "20," Defendants assert

that the document speaks for itself.

5. Defendants admit the allegations in paragraphs “21” and “22.”
6. In response to the allegations in paragraph “23,” Defendants assert that the document speaks for itself.
7. Defendants deny the allegations in paragraphs “24,” “25,” and “26.”
8. In response to the allegations in paragraphs “27” through “32,” Defendants assert that the document speaks for itself.
9. Defendants deny the allegations in paragraph “33.”
10. In response to the allegations in paragraphs “34” through “37,” Defendants assert that the document speaks for itself.
11. Defendants deny the allegations in paragraphs “38” through “53.”
12. In response to the allegations in paragraph “54,” Defendants assert that the document speaks for itself.
13. Defendants admit the allegations in paragraph “55.”
14. In response to the allegations in paragraphs “56” through “59,” Defendants assert that the document speaks for itself.
15. Defendants deny the allegations in paragraphs “60,” “61,” and “62.”
16. Defendants lack sufficient information to form a belief regarding the allegations and, on that basis, deny the allegations in paragraphs “63” and “64.”
17. Defendants deny the allegations in paragraph “65.”
18. In response to the allegations in paragraphs “66” and “67,” Defendants assert that the document speaks for itself.
19. Defendants deny the allegations in paragraphs “68” through “75.”

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

20. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “75” as if fully set forth herein.

21. Defendants deny the allegations in paragraphs “76” and “77.”

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

22. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “77” as if fully set forth herein.

23. Defendants deny the allegations in paragraphs “78” and “79.”

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

24. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “79” as if fully set forth herein.

25. Defendants deny the allegations in paragraphs “80” and “81.”

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

26. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “81” as if fully set forth herein.

27. Defendants deny the allegations in paragraphs “82” and “83.”

**AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses, without admitting that Defendants would bear the burden of proof on any of these or any other affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE  
(Plaintiff's Breach)**

1. Plaintiff's claims for relief are barred, in whole or in part, because plaintiff is in breach of its obligations under the Lease and the integrated development agreements.

**SECOND AFFIRMATIVE DEFENSE  
(Failure to Perform)**

2. Plaintiff failed to perform its obligations under the Lease and integrated Project documents and is not entitled to performance by the Defendants.

**THIRD AFFIRMATIVE DEFENSE  
(Terms Too Indefinite To Enforce)**

3. Certain terms within the Lease which plaintiff seeks to enforce are not clear and not definite and are therefore unenforceable.

**FOURTH AFFIRMATIVE DEFENSE  
(Payment)**

4. Defendants have made various substantial pre-payments of rent which have not been credited to their account.

**FIFTH AFFIRMATIVE DEFENSE  
(Not Entitled to Enforcement)**

5. Plaintiff's failure to deliver the Project in compliance with NYSDOH approvals renders the Lease unenforceable.

**SIXTH AFFIRMATIVE DEFENSE  
(Offsets)**

6. Defendants are entitled to substantial offsets against the rents due under the Lease.

**SEVENTH AFFIRMATIVE DEFENSE  
(Fraud In The Inducement)**

7. Plaintiff induced the Defendants to enter into the Lease and guarantee agreements by making fraudulent representations and failing to disclose material facts.

**EIGHTH AFFIRMATIVE DEFENSE  
(Waiver)**

8. Plaintiff has accepted performance by Defendants and waives any and all right to sue for breach of contract.

**NINTH AFFIRMATIVE DEFENSE  
(Bad Faith/Unclean Hands)**

9. The plaintiff is not entitled to the relief it seeks as it has acted in bad faith and with unclean hands.

**TENTH AFFIRMATIVE DEFENSE  
(Other Affirmative Defenses)**

10. Defendants reserve the right to supplement or amend this Verified Answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this litigation.

**COUNTERCLAIMS AGAINST WHITE PLAINS  
HEALTHCARE PROPERTIES I, LLC  
AND  
THIRD-PARTY CLAIMS AGAINST CCC EQUITIES, LLC,  
PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, AND WILLIAM NICHOLSON**

Now and for their counterclaims against plaintiff and third-party complaint against third-party defendants, Defendants, upon information and belief, allege the following:

1. CCC Equities, LLC is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

2. Project Equity Consulting is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

3. The Congress Companies is a corporation duly organized and existing under the laws of the State of Massachusetts with an address and place of business at 2 Bourbon Street, West Peabody Executive Center, Peabody, Massachusetts 01960 and regularly conducts business within the State of New York.

4. Howard Fensterman is an individual residing at 4 Pond Lane, Sands Point, New York 11050 with a business address and place of business at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

5. Through the period complained of herein, Fensterman acted as both a principal in the transaction and legal counsel to certain parties including the defendant Lizer Jozefovic.

6. William Nicholson is an individual residing at 12 Long Meadow Drive, Ipswich, Massachusetts 01938 with a business address and place of business at 2 Bourbon Street, West Peabody Executive Center, Suite 200, Peabody, Massachusetts 01960.

7. This case involves the development of a new state-of-the-art 160-bed skilled nursing facility on Church Street in White Plains, New York (the "Facility.")

8. The Facility was proposed by the defendant, HBL SNF, LLC, and its principals Lizer Jozefovic and Mark Newman (the “Jozefovic Team”) to the New York State Department of Health (“NYSDOH”) in August 2009.

9. The Facility is dedicated to providing specialized services to “difficult to place patients,” including but not limited to, patients who exhibit psychiatric behaviors, patients who are undocumented, patients with developmental and physical disabilities, and patients who have no means of financial support and require charity care.

10. The Facility was intentionally located in White Plains to service high-density minority and high-density poverty populations as compared to surrounding regions.

11. In order to obtain a Certificate of Need from NYSDOH, the Jozefovic Team acquired skilled nursing bed licenses from other area nursing facilities including Hebrew Hospital Home of Westchester, Bethel Nursing Home, and Taylor Care Center.

12. After full review of the Jozefovic Team’s application, NYSDOH determined that the Jozefovic Team was a successful operator of nursing facilities that are authorized to care for the elderly and individuals with long-term physical care needs and has an established history of achieving high occupancy at the facilities it operated.

13. NYSDOH further determined that the Facility was unique and necessary as it provided care to patients not accepted by other facilities because of their special needs.

14. At the time the Jozefovic Team proposed the Facility, the Plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and the third-party defendants Howard Fensterman (“Fensterman”), William Nicholson (“Nicholson”), and their companies CCC Equities LLC (“CCCE”), Project Equity Construction (“PEC”), and The Congress Companies (“Congress”), approached the Jozefovic Team and proposed that they act as developers for the new Facility.

15. Led by third-party defendant Fensterman, these parties represented that they were capable of performing all aspects of development of the Facility including construction and financing (hereafter “the Project.”)

16. In fact, the Project costs for the Facility presented to NYSDOH by the Jozefovic Team were costs calculated and submitted by Fensterman and Nicholson.

17. Importantly, these costs established a total Project cost of \$56, 631,759.

18. The Project costs for the Facility were itemized by Fensterman and Nicholson as follows:

Land acquisition	\$ 4,528,333
New construction	\$37,282,722
Design Contingency	\$ 1,864,136
Construction Contingency	\$ 1,864,136
Architect/Engineering Fees	\$ 2,982,618
Construction Manager Fees	\$ 745,654
Other Fees (Consultant)	\$ 750,000
Movable Equipment	\$ 1,480,000
Financing Costs	\$ 2,112,000
Interim Interest Expense	\$ 2,710,400
CON Application Fee	\$ 2,000
CON Processing Fee	\$ 309,760
Total Project Cost	\$56,631,759

19. Many of these costs were to be paid to Fensterman and Nicholson directly, as well as Fensterman’s law firm, and other costs to their entities as fees, interest costs, and other Project expenses.

20. In addition, Fensterman and Nicholson represented that they could arrange for 100% of the Project financing.

21. More specifically, Fensterman and Nicholson specifically represented and agreed in writing that they could secure a HUD insured mortgage in the amount of \$42,240,000 with an interest rate of 5.5% and a term of thirty (30) years.

22. A description of this mortgage was included in the projected Medicaid Reimbursement submitted to NYSDOH as part of the Project feasibility forecast.

23. Furthermore, Fensterman represented that he could provide the necessary project equity in the amount of \$9,863,246 through his company CCC Equities, LLC.

24. The Jozefovic Team presented this financing arrangement to NYSDOH in support of its request for approval of the Facility and these costs became part of NYSDOH's Project approval.

25. Given that Fensterman and Nicholson agreed to develop, finance, and own the Project, the Jozefovic Team agreed to enter into a Lease Agreement to occupy and operate the Facility.

26. To accomplish this, Fensterman and Nicholson proposed that their company White Plains Healthcare Properties I, LLC become the landlord for the operating company owned by the Jozefovic Team known as HBL SNF, LLC.

27. The Lease was to be for a twenty (20) year term.

28. The rent was to be calculated as an amount equal to the debt service of the HUD insured mortgage to be obtained by Fensterman and Nicholson plus a return of cash equity to WPHP on the account of the equity contributions through CCCE.

29. The annual rent proposed by Fensterman and Nicholson and presented to NYSDOH equaled \$4,318,000 annually or \$360,000 per month.

30. The amount of annual rent as calculated above was eligible for reimbursement to HBL SNF, LLC through the NYSDOH.

31. The Project as proposed to the NYSDOH was to be completed in approximately twenty (20) months.

32. The NYSDOH gave approval for the Project on the terms described above in October 2012.

33. Throughout the NYSDOH application process, the Jozefovic Team relied upon representations made by Fensterman and Nicholson.

34. However, shortly after receiving approval from NYSDOH, the Jozefovic Team learned that Fensterman and Nicholson did not have the capital necessary to commence or complete the Project as presented.

35. As a result of this lack of capital the Project was delayed for years.

36. In an attempt to overcome this lack of capital, on November 15, 2015, HBL SNF, LLC entered into a Development Agreement with White Plains Healthcare Properties I, LLC (the “Development Agreement.”)

37. On the same date, HBL SNF, LLC entered into a Lease with White Plains Healthcare Properties I, LLC (the “Lease”) for the Facility in order to enable WPHP to obtain its Project financing.

38. The Development Agreement and Lease are essential parts of the same transaction and are constitute integrated agreements.

39. Pursuant to the Development Agreement, the Project was to be “turn-key” meaning that the plaintiff and third-party defendants would deliver a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place in accordance with the approval granted by NYSDOH.

40. However, because Fensterman and Nicholson lacked sufficient capital to complete the Project on a turn-key basis, they induced the Jozefovic Team to withdraw its equity from

another nursing facility which it owned and operated known as Waterview Nursing Home and to contribute that equity to the Project so that the Project could move forward in 2016.

41. In particular, the Jozefovic Team made the following capital contributions to the Project as memorialized in a Term Sheet dated November 20, 2015:

- a) \$2,200,000 paid to WPHP to be used by Congress for pre-development costs;
- b) \$197,072 to CCC Equities, LLC to be used in the discretion of Fensterman;
- c) \$1,595,368.32 into a control account in the name of HBL SNF.

42. Despite repeated requests since 2015, Fensterman, Nicholson, Congress, and CCCE have failed or refused to provide an accounting of the use of the predevelopment and discretionary funds paid to them.

43. In consideration for the \$2,200,000 contribution to WPHP, WPHP agreed that these funds constituted a loan to WPHP to be repaid to HBL SNF, LLC.

44. No provision was made for the payment of interest on the loan notwithstanding that WPHP had the use of such funds since 2015.

45. WPHP agreed to repay the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") in the amount of \$1,500,000 for the Project and by giving HBL SNF, LLC a future credit against Lease payments.

46. When advancing these funds to Fensterman, Nicholson, CCC Equities and Congress, the Jozefovic Team anticipated that the Facility would be delivered in September 2017.

47. The Facility was not delivered until December 2019.

48. Despite repeated requests, WPHP has never provided an accounting for purchases of the required FF&E or any documentation evidencing repayment of \$1,500,000 of the loan amount to HBL SNF, LLC.

49. In the absence of such an accounting, HBL SNF, LLC cannot determine how much of its loan amount, if any, has been repaid and how much of the remaining loan balance should be credited to current Lease payments.

50. In addition, accrued interest on the \$2,200,000 loan must be calculated from November 2015 and either paid to HBL SNF, LLC or credited to payments due under the Lease.

51. The Development Agreement required that the Project be substantially completed within twenty-two (22) months or before September 2017.

52. The plaintiff breached its obligations to HBL SNF, LLC by failing to complete the Project until December 2019.

53. The delay in completing the Project caused HBL SNF, LLC to lose substantial revenue.

54. In addition, by delivering the Project in December 2019, HBL SNF, LLC encountered market conditions during its start-up phase in 2020 caused by the COVID-19 pandemic which adversely affected HBL SNF LLC's operations as it has nursing homes throughout the region.

55. HBL SNF, LLC would not have encountered these adverse financial conditions but not for the delay caused by plaintiff and third-party defendants.

56. In addition to the Project being completed more than two (2) years late, plaintiff and third-party defendants delivered the Project well over budget.

57. The Development Agreement required the plaintiff to enter into a construction contract with Congress and to secure a 100% performance bond to guarantee the performance of the construction contract.

58. However, unbeknownst to HBL SNF, LLC, Congress could not secure a performance bond.

59. Fensterman and Nicholson never disclosed to HBL SNF, LLC or any of its principals that Congress could not obtain a bond.

60. As a result, WPHP entered into a contract without approval or consent from HBL SNF, LLC for a creation of a joint venture agreement with a third-party contractor.

61. The joint venture, among other reasons, added substantial costs to the Project.

62. These substantial additional costs exceeded the capital expenditures approved by NYSDOH and are not reimbursable through NYSDOH.

63. Upon information and belief, Congress's inability to secure the performance bond is related to certain judgments taken against its principal Nicholson arising from claims for diversion of project funds in a skilled nursing project located in Milwaukee, Wisconsin dating back to 2015, the time when the Jozefovic Team advanced monies to Nicholson and Congress.

64. Neither Fensterman nor Nicholson disclosed these adverse proceedings to the Jozefovic Team.

65. In fact, Nicholson was adjudged to have committed conversion and civil theft in the amount of \$1,903,452, and that judgement was affirmed on appeal to the Seventh Circuit Court of Appeals.

66. The Development Agreement required that plaintiff and third-party defendants deliver the Project at the costs approved by NYSDOH.

67. Only in the event of a change order, authorized by HBL SNF, LLC, would HBL SNF, LLC have responsibility for any cost higher than the cost approved by the NYSDOH.

68. There were no approved change orders.

- 69. The approved Project cost is \$57,000,000.
- 70. The plaintiff and third-party defendants caused the Project to exceed the approved costs by more than \$5,000,000.
- 71. The plaintiff and third-party defendants breached their obligations to HBL SNF, LLC under the Development Agreement by causing the Project to be over budget.
- 72. As a result, HBL SNF, LLC is not eligible for reimbursement of its rent payments as originally intended - a loss of eligibility that will cause substantial harm to HBL SNF, LLC.
- 73. Given these costs overruns and the loss of eligibility for reimbursement, the Lease is unenforceable.
- 74. As part of the “turn-key” delivery of the Project, plaintiff was obligated to provide permanent financing for the Project on the terms of the HUD insured loan submitted by plaintiff as part of the Project approved by NYSDOH.
- 75. The plaintiff and third-party defendants have failed to provide such permanent financing and are in breach of the Development Agreement and the Lease.
- 76. In connection with the permanent financing, the plaintiff and third-party defendants were required to demonstrate sufficient equity invested in the Project for HUD or any other lender of permanent financing to grant a thirty (30) year loan to the Project.
- 77. Plaintiff and third-party defendants have failed to demonstrate sufficient equity in the Project.
- 78. Upon information and belief, Fensterman procured financial contributions from individual third parties who contributed capital to CCCE to meet the equity requirement.
- 79. Although this capital is required to be and has, in fact, been represented by Fensterman to be in the nature of equity, upon information and belief, these contributions from

individual third-parties are loans at high rates of interest which are overdue as a result of the Project delays.

80. Fensterman, CCCE, and plaintiff have caused additional financial burden to the Project and have attempted to pass along to HBL SNF, LLC and the Jozefovic Team these higher interest costs.

81. The Project cost overruns and the higher finance costs due to the delay in delivering the Project, together with the lack of sufficient equity, have prevented the Project from securing permanent financing.

82. The plaintiff and third-party defendants have advised HBL SNF, LLC that they have initiated this lawsuit because they are in default of their current loan agreements.

83. As of this date, plaintiff and third-party defendants have been unable to provide to the Jozefovic Team an accurate Project accounting of Project expenditures and have refused to provide information concerning the Project financing.

84. As of this date, plaintiff and third-party defendants have been unable to procure the HUD insured financing which they represented they could secure and is required by NYSDOH Project approval.

85. As of this date, the Project does not comply with the approval issued by the NYSDOH.

86. As a result of the failure to deliver the Project on the terms approved by NYSDOH, HBL SNF, LLC cannot be reimbursed for the cost of the Facility as intended by the Development Agreement and the Lease and HBL SNF, LLC and its principals have suffered financial harm as a result.

87. Throughout the development process, WPHP, Fensterman, Nicholson and Congress have made false representations to the Jozefovic Team and have taken adverse actions which have adversely affected the business of HBL SNF, LLC.

**AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST WPHP,  
CCCE, CONGRESS, AND FENSTERMAN  
(DEMAND FOR ACCOUNTING)**

88. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “87” with the same force and effect as if fully set forth herein.

89. HBL SNF, LLC, Lizer Jozefovic and Mark Neuman had a trust-based relationship with Fensterman, Nicholson, and WPHP.

90. Given that relationship, HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman advanced monies to WPHP and Fensterman prior to commencement of the Project in order to allow the Project to proceed.

91. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman are entitled to an accounting of the use of the funds advanced for the Project.

**AS AND FOR A SECOND CAUSE OF ACTION AS AGAINST WPHP  
(PAYMENT OF INTEREST)**

92. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “91” with the same force and effect as if fully set forth herein.

93. HBL SNF, LLC is entitled to imputed interest on the \$2,200,000 made to WPHP loan from November 2015 to present.

**AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST WPHP  
(BREACH OF CONTRACT)**

94. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “93” with the same force and effect as if fully set forth herein.

95. WPHP breached the Development Agreement and the Lease.

96. As a result of such breach, HBL SNF, LLC has been damaged by the loss of reimbursable capital expenditures and has incurred other costs due to the nonperformance of WPHP.

97. In addition, HBL SNF, LLC has lost funds and continues to lose revenues as a result of Project delays.

**AS AND FOR A FOURTH CAUSE OF ACTION  
AS AGAINST FENSTERMAN AND NICHOLSON  
(FRAUD IN THE INDUCEMENT)**

98. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “97” with the same force and effect as if fully set forth herein.

99. Third-party defendants Fensterman and Nicholson fraudulently induced HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman to enter into the Development Agreement, the Lease, and the Guaranty.

100. Fensterman and Nicholson misrepresented the Project costs.

101. Fensterman and Nicholson misrepresented their ability to secure permanent HUD financing.

102. Fensterman and Nicholson misrepresented their ability to complete the Project.

103. Fensterman misrepresented the capital contributions made to CCCE to satisfy the equity requirement for the Project.

104. Fensterman and Nicholson failed to disclose the claimant civil proceeding against Nicholson for civil theft.

105. By reason of such fraud in the inducement, Defendants Lizer Jozefovic and Mark Neuman have no obligations under the guarantees.

106. By reason of such fraud in the inducement, HBL SNF, LLC has suffered financial damages.

**AS AND FOR A FIFTH CAUSE OF ACTION  
AS AGAINST ALL THIRD-PARTY DEFENDANTS  
(BAD FAITH)**

107. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “106” with the same force and effect as if fully set forth herein.

108. As alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.

109. As a result of such bad faith dealings, HBL SNF, LLC has suffered damages in an amount not less than \$15,000,000.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(FRAUD)**

110. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “109” with the same force and effect as if fully set forth herein.

111. The misrepresentations and non-disclosures by Fensterman and Nicholson and third-party defendants constitute fraud.

112. WPHP, Fensterman and Nicholson new such statements were false.

113. WPHP, Fensterman and Nicholson made such statements to deceive HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman.

114. HBL SNF, LLC has been damaged by such fraudulent conduct.

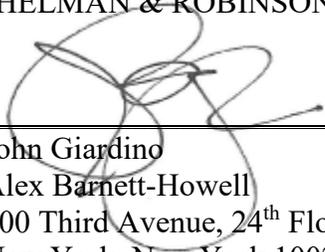
**WHEREFORE**, Defendants and Third-Party Plaintiffs deny generally and specifically that it committed any wrongdoing and demand:

- 1) A determination that the amount of rent payable under the Lease be modified by any sums not reimbursable by the NYSDOH and offset by prior payments and accrued interest;
- 2) The Guaranty Agreements be nullified;
- 3) Monetary damages in an amount to be determined;
- 4) Attorneys' fees, and
- 5) Such other relief as the Court deems appropriate.

Dated: New York, New York

November 5, 2020

MICHELMAN & ROBINSON, LLP

By: 

John Giardino  
Alex Barnett-Howell  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10022  
(212) 730-7700  
[jgiardino@mrlp.com](mailto:jgiardino@mrlp.com)  
[abarnett-howell@mrlp.com](mailto:abarnett-howell@mrlp.com)  
*Attorneys for Defendants*

**VERIFICATION BY ATTORNEY**

JOHN GIARDINO, being an attorney duly admitted to practice in the courts of New York, affirms the following under penalties of perjury:

I am an attorney for Defendants HBL-SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARK NEUMAN, in the above entitled action and have read the foregoing Verified Answer and know the contents thereof; that the same is true upon information and belief, and that as to those matters I believe them to be true.

I further state that the grounds of my belief as to all matters in the Verified Answer are based upon the file maintained by my office and conference and telephone conferences with Defendants. This verification is made pursuant to the provisions of RPAPL 741 because Defendants was not available to sign the same at the time the Verified Answer was prepared.

Dated: New York, New York  
November 5, 2020

  
\_\_\_\_\_  
JOHN GIARDINO, ESQ.

# Exhibit C

## to Donnellan Aff.

**DEVELOPMENT AGREEMENT**

This Development Agreement (the "Agreement") dated as of November 19, 2015 by and between HBL SNF, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (hereinafter referred to as the "Operator/Tenant") and WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 200, Peabody, MA 01960 ("WPHCP") (hereinafter referred to as the "Developer") (collectively the "Parties");

WHEREAS, the Operator/Tenant has requested the Developer to design and construct a 160 Bed Skilled Nursing Facility at 116-120 Church Street, White Plains, New York; and

WHEREAS, the parties have simultaneously herewith entered into that certain operating lease by and between Developer as Landlord and Tenant/Operator, as Tenant dated as of the date hereof for a 160 bed skilled nursing facility at 116-120 Church Street, White Plains, New York (the "Lease"); and

WHEREAS, the Developer desires to design and construct said facility upon the conditions set forth herein;

NOW, THEREFORE, in consideration of one (\$1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, the Operator/Tenant and the Developer hereby mutually covenant and agree as follows:

**ARTICLE I  
DESCRIPTION OF THE DEVELOPMENT**

The Project to be developed, designed and constructed shall consist of a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Project") at 116-120 Church Street, White Plains, New York (the "Church Street Location") bounded and described and more particularly set forth in Exhibit A annexed hereto (the "Land"). Developer reserves the right to change the site, subject only to the prior approval of the DOH should it become impracticable or commercially unfeasible to construct the Project on the Church Street Location.

A. The Developer has caused The Architectural Team, 50 Commandant's Way, at Admirals Hill, Chelsea, MA 02150 (the "Architect") to prepared outline drawings and specifications for the development of the Project (the "Outline Plans and Specifications 3<sup>rd</sup> Edition") which satisfies the design standards of the New York State Department of Health ("DOH"). The Operator/Tenant has reviewed and approved the Outline Plans and Specifications 3<sup>rd</sup> Edition. The Developer has submitted the Outline Plans and Specifications 3<sup>rd</sup> Edition to DOH for approval.

B. The Parties acknowledge and agree the 1<sup>st</sup> and 2<sup>nd</sup> Editions of the Outline Plans and Specifications have been provided by Developer, approved by Operator/Tenant, and



A. The Operator/Tenant shall satisfy each and every requirement contained in the Contingent Approval including without limitation:

- (1) Payment of the DOH fees of at least \$309,760,
- (2) Submission and DOH approval of the Outline Plans and Specifications 3rd Edition,
- (3) Evidence of Operator / Tenant's Working Capital Loan (hereinafter defined),
- (4) Signed agreements for the so-called bed rights (requires payment of at least \$345,000).

The payment for items III A. (1) and (4) shall be included in disbursements to be made to Developer from the proceeds of the Waterville/Salem Financing (defined below).

B. The Operator/Tenant shall at its sole expense do all things necessary to assure and confirm its ownership of the so-called bed rights necessary for the CON and the Project.

C. Upon the satisfaction of all contingencies set forth in Article VII (unless otherwise agreed to by Developer, in writing), the requirements contained in the Contingent Approval and in Section 3(e), the Developer shall promptly initiate development of the Project in accordance with the Plans and Specifications. The quality of the materials and workmanship on the Project shall meet or exceed all applicable governmental and building industry standards, including all DOH standards for occupancy.

D. Developer shall use commercially reasonable efforts to cause the Project to be substantially completed and ready for occupancy within 22 months following the receipt of all Approvals and DOH Approvals and financing necessary for the Project. Developer shall be responsible to start and finish the Project within the guidelines and the dates set forth by DOH in the final approval letter, as may be adjusted in accordance with DOH regulations.

E. Except for the DOH Approvals, the Developer shall be responsible for all for all development costs including, but not limited to, obtaining the site plan approval, sewer and water hookups and approvals, Department of Transportation, Land Acquisition, Demolition, Cleanup, "Land Carry" (Real estate taxes and insurances prior to C of O), Zoning, Legal, Estimating and Construction Management Fees, Architects, Engineers, Designers and other engineering professionals, Testing, Borings, Hazmat Surveys, Site Surveys, Industrial Hygienists, Reproductions, Signs, printing, fences, Building Permits, and Construction Costs.

F. The Developer will maintain at its onsite office, the outline Plans and Specifications, any amendments thereto and any other drawings relating to the development and make the same available to Operator/Tenant for inspection and will furnish them copies thereof, if requested. Upon written request, the Developer will provide Operator/Tenant with copies of all certificates and requisitions (together with appropriate backup documentation) of Developer and of its architects, engineers and subcontractors pertaining to the Project and will also provide Operator/Tenant with copies of all certificates and requisitions of Developer delivered to the construction lender.

G. The Developer shall (i) enter into a construction contract (the "Construction Contract") acceptable to the Construction Lender with Congress Building Corp. ("Congress") or

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an entity controlled by Congress, located at 2 Bourbon Street, Peabody, MA 01960 and (2) require that Congress will provide 100% Performance & Payment bonds from a Surety on the accredited list of the U. S Treasury, (which list is published annually by the Federal Register), to guarantee the undertakings, covenants, terms, conditions and agreements of the Construction Contract, and such bond will include the Developer and the Construction Lender (if required by lender) as obligees. Developer shall provide such guarantees of completion as may be required by the Construction Lender.

H. The Project will be a "turnkey job" as said term is commonly used in the construction trade except that Operator/Tenant shall purchase or lease its own minor movable equipment, expendables, computers, business equipment, maintenance tools and supplies. Operator/Tenant shall purchase the FF&E from Developer for \$1,500,000.00, the payment for which shall be disbursed to Developer from the Waterville/Salem Financing.

I. Except as provided in the Lease, on the Substantial Completion Date the Tenant/Operator shall (i) be deemed to have taken occupancy and accepted possession of the Project, (ii) have agreed that the Project has been completed in accordance with the Plans and Specifications, and (iii) have agreed that the Developer has fulfilled all of its responsibilities hereunder to the satisfaction of Tenant/Operator.

J. Operator/Tenant /Tenant shall grant to Developer a perfected security interest in all assets of Operator/Tenant including the CON, and an executed lease for the Project, personally guaranteed by the principals of the Operator/Tenant. The lease, security and underlying security agreement shall provide that in the event that the Operator/Tenant defaults, Developer may assume control of the CON and/or any licenses owned or controlled by Operator/Tenant ("Licenses"), and or other collateral, and is authorized to proceed with the Project as it deems necessary using the CON and/or Licenses, and/or the other collateral provided.

K. An affiliate of Operator Tenant, owned and controlled by Lizer Jozefovic, is in the process of refinancing a nursing facility located in Westchester County, N.Y. referred to herein as "Waterville/Salem". Operator Tenant and Lizer Jozefovic shall cause Waterville/Salem to deliver the proceeds of the refinancing of Waterville/Salem (the "Waterville/Salem Financing") in the amount of at least \$3,900,000 to Operator/Tenant and Developer.

L. If the Working Capital Loan (defined below) is not already committed by either the Mezzanine Lender or the Construction Lender as a separate loan, at least six months prior to the proposed Substantial Completion Date, the Operator/Tenant shall make diligent, truthful and proper applications to Institutional Lenders as such term is defined in Article 12-D of the NYS Banking Law, for working capital financing for the operation of the project in the amount of not less than reasonably required by Developer and the Construction Lender ("Working Capital Loan") and to furnish, without delay, such verifications of bank accounts and employment, or any other instruments or information as may be required by the Institutional Lenders in the processing of the Operator/Tenant's applications. The Working Capital Loan shall be secured by a lien against Operator/Tenant's accounts receivable and other assets. For the avoidance of

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Page 4



Operator/Tenant ("Operator/Tenant Required Cost") will be the responsibility of Operator/Tenant. At the sole option of Developer, any Operator/Tenant Required Cost will be either (i) paid in full by Operator/Tenant to Developer within 30 days of invoice to Operator/Tenant, or (ii) added to the Fixed Rent (as defined in the Lease) pursuant to Section 3.2(IV) thereof.

**ARTICLE V  
AUTHORIZED REPRESENTATIVES**

A. Operator/Tenant's Representative. Operator/Tenant shall designate an individual to represent it on all matters regarding the Project (the "Operator/Tenant's Representative"). Operator/Tenant's Representative shall be reasonably available at all times during which development activities are taking place. The Operator/Tenant's Representative shall have the authority, on behalf of Operator/Tenant, to approve changes in the scope of this Agreement and the Project, render decisions with respect to the Project and approve all Contract Changes and Change Orders, as provided hereinabove. Any changes in this Agreement and Contract Changes or Change Orders authorized by the Operator/Tenant's Representative shall be binding upon Operator/Tenant. Operator/Tenant hereby designates Lizer Jozefovic as its Operator/Tenant's Representative, and he will remain as such until Operator/Tenant gives Developer forty-eight (48) hours prior written notice that a change in its Developer's Representative.

B. Developer's Representative. Developer hereby designates William Nicholson as its representative on all matters regarding the development of the Project, and he shall remain as such until Developer gives Operator/Tenant forty-eight (48) hours prior written notice of a change in its Developer's representative.

**ARTICLE VI  
DEVELOPER FINANCING**

Developer Financing. The Developer, at its sole cost and expense, shall use commercially reasonable efforts (including providing a sufficient balance sheet and such personal financials as reasonably required by the Construction Lender), and shall be responsible for procuring all development financing for the Project (the "Construction Loan"). The Operator/Tenant shall be responsible for and hereby covenants to cooperate with the Developer in the prompt preparation and delivery of any and all financial projections, business plans, market studies, discharge capture plans, and any other such information, data, or projections concerning the operations, personal financial statements of the Operator/Tenant and its principals, as the Lender or Developer may request from time to time. The Operator/Tenant further covenants and agrees to file and/or apply at the request of the Developer and/or its designated Health Care Consultant or attorney any and all applications, modifications or other requests for a change in the approval or its terms (as defined herein) or an increase in the Approved Project Cost.

**ARTICLE VII  
CONTINGENCIES**

A. The Developer shall have obtained all Approvals for the development of the Project based upon the Outline Plans and Specifications, 3d Edition, 160 Beds. The Parties acknowledge that all necessary land use approvals for the development of the Project have been previously obtained based upon the approved Outline Plans and Specifications, 2<sup>nd</sup> Edition, 179 Beds. The Operator/Tenant agrees to assist and fully cooperate with Developer in connection with obtaining the Approvals.

B. The Developer shall have obtained a Construction Loan or other financing acceptable to the Developer and the DOH which upon completion shall convert to permanent mortgage financing (the "Permanent Financing") in an amount which is at least 75% of the Project Cost.

C. The Operator/Tenant shall have obtained all DOH Approvals.

With regard to each of the foregoing contingencies (the "Contingencies") each Party agrees to exert, vigorously and expeditiously, all necessary efforts on its behalf to initiate or assist in the satisfaction of each of the Contingencies. Each Party agrees to do nothing that would be detrimental to the satisfaction of the Contingencies.

**ARTICLE VIII  
SUBSTANTIAL COMPLETION DATE**

The "Substantial Completion Date" shall mean the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Architect, that the Project was substantially completed and in substantial compliance with the Plans and Specifications for the Project, (ii) the date Developer delivers a Temporary Certificate of Occupancy (the "TCO") for the Project, and (iii) the date the DOH approves the Project as constructed (but not necessarily the Operator/Tenant's operations) to accept patients, provided, however, if the Developer is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Operator/Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (i); Developer will give Operator/Tenant thirty (30) days' notice of the date Developer expects to be the Substantial Completion Date.

**ARTICLE IX  
HOLD HARMLESS**

A. Developer agrees to indemnify and hold harmless Operator/Tenant, and its managers, officers and employees from and against any and all claims, including reasonable legal fees, liability costs and expenses to the extent arising out of Developer's breach of this Agreement or in connection with, the work undertaken in the Project by the Developer.

B. Operator/Tenant agrees to indemnify and hold harmless Developer and its managers, officers and employees from and against any and all claims, including reasonable legal fees, liability costs and expenses, to the extent arising out of Operator/Tenant's breach of this Agreement or the negligence or willful acts of the Operator/Tenant or any of its employees or agents.

**ARTICLE XI  
PUNCH LIST PREPARATION**

On or prior to the Substantial Completion Date, the Operator/Tenant, the Developer and the Architect, whose decision will be final with respect to all construction matters, shall jointly prepare a list of the items for the Project that remain to be completed or corrected, assign a dollar value for the cost to complete the work and estimate a reasonable time for its completion or correction (collectively the "Punch List"). The Developer shall cause the Construction Lender to withhold 125% of such value. Upon approval of the Architect, and Construction Lender, as any items are completed on the Punch List, those monies withheld by the Construction Lender on account of such uncompleted Punch List items shall be released to Developer.

**ARTICLE XII  
REPRESENTATIONS AND WARRANTIES OF OPERATOR/TENANT**

Operator/Tenant represents and warrants to Developer that:

- A. It is a New York limited liability company and in good standing under the laws of New York State.
- B. It has obtained all necessary consents to enter into this Agreement and perform its obligations hereunder.
- C. This Agreement will not violate the terms of any other agreement by which the Operator/Tenant may be bound.

**ARTICLE XIII  
REPRESENTATIONS AND WARRANTIES  
OF DEVELOPER**

Developer represents and warrants to Operator/Tenant that:

- A. It is a Massachusetts limited liability company and in good standing under the laws of the Commonwealth of Massachusetts.
- B. It has obtained all necessary Limited Liability Company consents to enter into this

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Agreement and perform its obligations hereunder.

C. It has obtained all necessary limited liability company authorizations to enter into this Agreement.

**ARTICLE XIV  
PAYMENTS BY DEVELOPER**

Developer shall pay in a commercially reasonable manner all labor, materials and all liabilities incurred in the performance of its obligations under this Agreement.

**ARTICLE XV  
WARRANTY**

All Warranties shall be provided and enforceable solely in the Lease.

**ARTICLE XVI  
MISCELLANEOUS**

A. Applicable Law. This Agreement has been entered into, and shall be governed by, the laws of the State of New York.

B. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. This Agreement is assignable by Developer to any joint venture, partnership or limited liability company in which William Nicholson, or an entity controlled, directly or indirectly by him, is a principal thereof, and to any lender or lenders of Developer. Upon such assignment and assumption by the assignee of all obligations of Developer under this Agreement, the existing Developer shall be relieved of all obligations hereunder.

C. Survival of Representations and Warranties. All representations and warranties in this Agreement shall survive the Substantial Completion Date.

D. Further Action. The Parties agree to execute and deliver all documents, provide all information and take, or refrain from taking, all such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

E. Notices and Addresses. Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be deemed to have been given, served and delivered if delivered by recognized national overnight carrier, or mailed by United States registered or certified mail, addressed to the party entitled to receive the same at his address set forth below, or sent by fax (with a copy sent by first class mail). Each party hereto may change his mailing address by giving to each other party hereto,

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12-2-21  
6-1-21

written notice of such new address in the manner provided above. Except wherever specified in this Agreement, any notice shall be deemed to have been served and delivered on the date on which such notice is faxed (provided a copy is sent by first class mail), hand delivered, or two (2) days following the date it is mailed.

If to Developer:  
White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:  
Pesternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

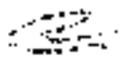
Adrian Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Operator/Tenant  
HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:  
Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafin, Esq.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

-----



Signature Page for Development Agreement

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed the day and year first above written.

OPERATOR/TENANT:  
HBL SNF, LLC

By:   
Marko Lizer Jozefovic  
Manager

DEVELOPER:  
White Plains Healthcare Properties I, LLC

By:   
William Nicholson, Manager



# Exhibit D

## to Donnellan Aff.

**AMENDED AND RESTATED OPERATING LEASE**

**By and Between**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,**  
a Massachusetts limited liability company  
("Landlord")

**and**

**HPI, SM<sup>2</sup>, LLC,**  
a New York limited liability company ("Tenant")

**Dated as of November 19, 2015**



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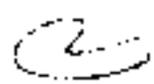
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**EXHIBIT "A"**

**Legal Description**

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of White Plains, County of Westchester and State of New York. Said parcel being more particularly described as follows:

BEGINNING at a point in the easterly line of Church Street where the same is intersected by the southerly line of Barker Avenue;

THENCE from said point North 70 degrees 40 minutes 10 seconds East a distance of 173.57 feet along the southerly line of Barker Avenue to a point where the same is intersected by the division line herein described parcel on the West and lands now or formerly of Koepfel & Mohr Equities on the East;

THENCE from said point and along said division line South 17 degrees 59 minutes 50 seconds East a distance of 200.51 feet to a point in the division line between the herein described parcel on the north and lands now or formerly of Hamilton Plaza Company, Inc. on the south;

THENCE from said point and along said line South 71 degrees 01 minutes 50 seconds West a distance of 173.24 feet to the easterly line of Church Street; and

THENCE from said point and along said line North 18 degrees 05 minutes 04 seconds West a distance of 199.41 feet to the point and place of BEGINNING.

EXHIBIT A

1302449-517057-6

**EXHIBIT 'B'**

**GUARANTY**

See Attached



**SCHEDULE 3.1**

**Definition of Material Default**

Material Default shall mean the occurrence of any of the following:

(a) Any Lease Default except 16.1 (a) (xv) and (xxx), provided that the following Lease Defaults shall not be deemed a Material Default unless they occur two or more times within such period: 16.1 (a) (ix), (xvi), (xx), (xxxi), and the following Lease Defaults shall not be deemed a Material Default unless they occur three or more times within such period: 16.1 (a) (i), (ii), (xvii).

(b) Any Lease Default during such period constitutes an "Event of Default" by Lendlord under any Loan Document between Lendlord and its Mortgagee(s) evidencing or documenting a loan secured by the Facility;

**EXHIBIT 7.1(a)**  
See Attached

**EXHIBIT 7.1(b)**  
See Attached

**EXHIBIT 7.1(c)**  
See Attached

SCHEDULE 7.4

<u>PERIOD</u>	<u>EBITDAR TARGET</u>
Quarter 1 (____, 201__ through ____ 201__)	\$ _____
Quarter 2	\$ _____
Quarter 3	\$ _____
Quarter 4	\$ _____
Quarter 5	\$ _____
Quarter 6 and thereafter	\$ _____

"EBITDAR" means with respect to any quarterly period for the Facility an amount determined on a consolidated basis equal to the sum of the following amounts for the Facility for a trailing twelve month period: (a) earnings/net income or net loss (including, as an expense an actual or theoretical management expense of five percent (5%) of gross receipts) from operations before (b) interest expense, (c) income tax expense, (d) depreciation expense, (e) amortization expense, and (f) Fixed Rent, defined in accordance with GAAP for such quarterly period. EBITDAR is not considered a measure of financial performance under GAAP. In calculating earnings for the trailing twelve months that encompasses any month prior to the Commencement Date, for the months prior to the Commencement Date, revenue shall be calculated using current rates of reimbursement, meaning reimbursement rates in effect as of the start of the applicable quarterly period.

**OPERATING LEASE**

THIS AMENDED AND RESTATED OPERATING LEASE ("Lease") is entered into as of November 19, 2015 (the "Effective Date"), by and between WHITE PLAINS HEALTHCARE PROPERTIES I, LLC a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 203, Peabody, MA 01960 ("WHCP") or (the "Landlord") and HBL SNP, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (the "Tenant"), and amends and restates in its entirety the lease between the Parties dated as of November 19, 2015.

**RECITALS**

A. WHEREAS, Landlord is the owner of the real property, improvements, and personal property constituting the long-term care facility commonly known as 116-120 Church Street, White Plains, New York and more particularly described on Exhibit A, attached herein and made a part hereof, (the "Real Property"), and following execution of this Lease, upon which certain buildings and improvements shall be erected (the "Facility"); and

B. WHEREAS, Landlord desires to lease the entire Leased Premises (defined herein) to Tenant and Tenant desires to lease the Leased Premises from Landlord pursuant to the terms, conditions and covenants set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, promises, representations and warranties set forth herein and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

**ARTICLE I**

**INCORPORATION OF RECITALS; PRINCIPLES OF CONSTRUCTION, DEFINITIONS**

Section 1.1 Incorporation of Recitals. The aforesaid Recitals A through B are hereby incorporated into this Lease as if fully set forth herein. Landlord and Tenant are hereinafter sometimes individually referred to as a "Party" and collectively referred to as "Parties".

Section 1.2 Principles of Construction. All references to articles, sections, schedules and exhibits are to articles, sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Landlord" shall mean

"Landlord and its successors and assigns"; the words "Leased Premises" shall include any portion of the Leased Premises and any interest therein, and the phrases "attorney fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal, legal assistant and law clerk fees and disbursements, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise, and, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Landlord in protecting its interest in the Leased Premises and its rights hereunder. Wherever pursuant to this Lease it is provided that Landlord shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees as defined above. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The words "includes", "including" and similar terms shall be construed as if followed by the words "without limitation". Whenever in this Lease any consent, approval, determination or decision of Landlord is to be made by Landlord, or any matter is to be satisfactory to Landlord, then unless expressly provided to the contrary, such provision shall be deemed to mean that such consent, approval, determination or decision of Landlord or determination whether a matter is satisfactory shall be made by Landlord in its sole and absolute discretion for any or no reason and shall be final and conclusive. Any reference in this Lease shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease shall be deemed to be a reference to this Lease (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease or in the Guaranty shall be deemed to be a reference to the Guaranty (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time.

Section 1.3 Definitions.

- "Additional Rent" as defined in Section 3.2
- "Affiliate" as defined in Section 20.31.
- "Change of Ownership" means
- "Commencement Date" as defined in Section 3.1.
- "Commissioner" means the Federal Housing Commissioner also called the Assistant Secretary for Housing in the United States Department of Housing and Urban Development.
- "DOH" means New York State Department of Health.
- "Effective Date" as defined in introductory paragraph.
- "Eligible Institution" as defined in Section 4.3.
- "Extension Term" as defined in Section 3.1(i).



"Facility" as defined in Recital A.

"First Refinance" means the replacement or refinance of the Original Mortgage and/or original Junior Debt, in whole or part, in an amount not less than \$42,200,000.

"First Refinance Date" means the date of the First Refinance.

"Fixed Rent" as defined in Section 3.2.

"Governmental Authority" as defined in Section 5.2.

"Guarantors" mean Lizer Josefovic and Mark Neuman.

"Hazardous Materials" as defined in Section 10.3

"Hazardous Waste" as defined in Section 10.3.

"Health Care Authority or Authorities" means any Governmental Authority (including HUD) having responsibility for the approval, licensing, certification, payment, issuance of guarantees and insurance for, and/or otherwise setting standards for the operation and occupancy of skilled nursing facilities

"Health Care Licenses" means all Medicare and Medicaid certifications and provider agreements, all public third party payor certifications and provider agreements, and all certifications, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses and certificates of need required by Health Care Authorities for the legal use, occupancy and operation of the Facility.

"HUD" means the United States Department of Housing and Urban Development.

"Junior Debt" means a mortgage on the Premises junior to the first Mortgage, and/or debt relating to the development and construction of the Premises.

"Landlord" as defined in Introductory paragraph, and Section 1.2.

"Landlord's Indemnitees" as defined in Section 9.1.

"Landlord's Work" as defined in Section 5.1.

"Laws" as defined in Section 5.1.

"Lease Default" as defined in Section 16.1.

"Leased Premises" as defined in Section 2.1.

"Lease Year" as defined in Section 3.1.

"Letter of Credit" as defined in Section 7.1.

"Material Default" as defined in Schedule 3.1.

"Mortgages" shall refer to the first and second priority mortgages secured by fee simple interest in the Real Property as amended, restated, extended or replaced from time to time in Landlord's discretion.

"Original Mortgage" means the original Mortgage placed on the Premises by Landlord.

"Overdue Rate" as defined in Section 9.1(h).

"Primary Market of the Facility" means a fifteen mile radius of the Leased Premises.

"Prime Rate" as defined in Section 9.1.

"Prospective Mortgagor" means any Person chosen by Landlord as a Mortgage prior to a closing of a Mortgage to be held by such Person.

"Real Property" as defined in Recital A.

"Refinance" means the replacement or refinancing of the Mortgage, or Junior Debt, or any debt in replacement thereof, in whole or part, including the First Refinance.

"Refinance Date" means the date of any Refinance including the First Refinance.

"Rent" as defined in Section 3.2.

"Security Deposit" as defined in Section 7.1.

"Special Purpose Entity" as defined in Schedule 19.2.

"Substantial Completion Date" means the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Landlord's architect, that the Facility was substantially completed and in substantial compliance with the plans and specifications for the Facility, and (ii) the date Landlord delivers a Temporary Certificate of Occupancy (the "TCO") for the Facility, provided, however, if the Landlord is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (i).

"Tenant's Lease Coverage Ratio" means EBITDAR divided by Fixed Rent.

"Term" as defined by Section 3.1 (including all exercised Extension Terms).

"Total Project Cost or "TPC" is the actual cost of purchasing, developing, constructing, and equipping the Facility, including without limitation, the cost of the Real Property and improvements, development costs, financing costs, and the cost of Landlord's Work and all equipment.

"Utilities" as defined in Section 4.1.

ARTICLE II

LEASED PREMISES

Section 2.1 Leased Premises. Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions set forth in this Lease, the following assets:

- (a) all of Landlord's right, title, and interest in and to the Real Property, including, without limitation, all buildings, structures, erections, improvements, appurtenances, easements and fixtures, including fixed machinery and fixed equipment situated thereon or forming a part thereof; and
- (b) all of Landlord's right, title and interest in and to all machinery, trade equipment, trade fixtures, furniture, furnishings, beds, and accessories of all kinds used in connection with the Facility located on the Real Property.

All of the items described in Sections 2.1(a) and 2.1(b) herein are collectively referred to as the "Leased Premises." Landlord and Tenant acknowledge and understand that all of the items which comprise the Leased Premises, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, shall be transferred back to Landlord in accordance with the terms and conditions set forth herein upon the expiration or earlier termination of this Lease.

Section 2.2 In connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein, and each successor in interest, shall have the right to transfer all amounts deposited pursuant to Section 4.3 with respect to the Facility, less any amount used pursuant to Section 4.3, to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, Landlord or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto. If Landlord's interest in the Leased Premises is sold or conveyed as provided above or otherwise or by operation of law: (i) at the new owner's option, Tenant shall affirm to and recognize the new owner as Tenant's Landlord under this Lease and Tenant shall take such actions to confirm the foregoing within ten (10) days after request.

ARTICLE III

TERM AND RENT

Section 3.1 Term of Lease.

(a) The term (the "Term") of this Lease shall be for a period of thirty (30) years commencing on the later to occur of (i) the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility and (ii) the date that New York State Department of Health (hereinafter sometimes, "DOH") determines that the Landlord's Work is sufficiently complete as constructed (but not necessarily the Tenant's operations) to accept patients, provided, however, if the Landlord is unable to obtain a permanent or temporary Certificate of Occupancy because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of a permanent or temporary Certificate of Occupancy shall not be a condition under clause (i) (the "Commencement Date"), and ending at 11:59:59 P.M. on the day preceding the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date (the "Expiration Date"). Under any and all circumstances, Landlord shall not be liable to Tenant, in damages or otherwise, for any delay in delivering the Leased Premises to Tenant and Tenant shall have no right to terminate or rescind this Lease on account thereof. Notwithstanding the Commencement Date, certain of the rights and obligations of the parties shall commence on the Effective Date, but not including Tenant's obligations to pay Fixed Rent and Impositions prior to the Commencement Date, or to maintain the Leased Premises, insure the Leased Premises or restore the Leased Premises after a casualty or condemnation prior to the Commencement Date, or any other rights and obligations, which by their terms are intended to commence as of the Commencement Date, which rights and obligations shall commence on the Commencement Date.

As used herein with respect to the Term and the periods for payment of Rent (unless the context otherwise requires) the term "Lease Year" shall mean a 365 day period (or 366 day period in the case of a leap year), first commencing on the Commencement Date and thereafter on successive anniversaries thereof, and ending on the day prior to the next succeeding anniversary of the Commencement Date.

Landlord and Tenant hereby acknowledge that the Commencement Date is presently indeterminate and shall occur only as hereinabove provided in this Section. Except for the rights of Tenant expressly stated herein, Tenant hereby waives any right to rescind this Lease under the provisions of Section 223-a of the Real Property Law of the State of New York, and agrees that the provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of said Section 223-a. Landlord and Tenant shall execute a memo specifying the Commencement Date immediately following its occurrence.

(b) Provided a Lease Default has not occurred and is then continuing either at the time of the exercise of the options provided below or at the end of the Term or Extension Term, or there has not been any Lease Default listed in Schedule 3.1 attached hereto (a "Material Default"), whether or not cured, within two years of the end of the Term or Extension Term, Tenant shall have the option to extend the Term of this Lease for three (3) additional periods of ten (10) years each (each an "Extension Term"), by giving written notice to Landlord

not less than five forty-five (45) days nor more than seven hundred (700) days prior to the expiration of the Term (or Extension Term as the case may be) of this Lease, TIME BEING OF THE ESSENCE to these time periods. These options may be exercised by Tenant serving written notice upon Landlord stating that Tenant is exercising the option to extend. If Tenant fails to give such notice in writing to Landlord within the time period specified herein, all rights and privileges granted to Tenant to extend this Lease shall lapse and become null and void. No later option may be exercised if Tenant has failed to exercise a prior option. If Tenant has validly exercised its option(s) to extend the Term, references herein to the "Term" shall be deemed to include an Extension Term.

**Section 3.2 Rent**

(a) Beginning in the first (1st) Lease Year of the Term and for each succeeding Lease Year thereafter, including during any and all Extension Terms, until the First Refinance Date, Tenant shall pay Landlord an annual amount of Six Million Seventy Three Thousand One Hundred Fifty Eight (\$6,073,158) Dollars ("Fixed Rent") in monthly installments of \$506,096.50.

(b) Tenant shall pay the Rent to Landlord during the term without deduction or setoff and without demand.

(c) The terms "Additional Rent" or "additional rent" means all sums, amounts, fees, expenses and costs (including, without limitation, legal fees and disbursements) payable or reimbursable to Landlord under this Lease other than Fixed Rent, and all of same shall be and constitute Additional Rent hereunder. The terms "Fixed Rent" and "Additional Rent" shall be collectively referred to as "Rent." Landlord shall have the same rights and remedies hereunder consequent upon a failure of Tenant to pay any item of Additional Rent as upon a failure of Tenant to pay any item of Fixed Rent.

(d) Rent shall be due and payable in advance in equal monthly installments during each year on the first (1st) day of each calendar month thereof (or in the event the first day of the calendar month is not a business day, on the first business day following the first day of each calendar month) throughout the Term. Rent for any period which is less than a full calendar month or full year, as the case may be, during the Term, shall be prorated on a daily basis. Rent shall not be paid more than one (1) month in advance. Rent shall be paid to Landlord at Landlord's address set forth in Section 12.1 or in such other place as Landlord designates from time to time by written notice to Tenant. Tenant agrees to pay Rent, at Landlord's direction, by electronic transfer or wire, as directed by Mortgage in writing.

(e) TENANT HEREBY ACKNOWLEDGES THAT LATE PAYMENT BY TENANT TO LANDLORD OF RENT WILL CAUSE LANDLORD TO INCUR COSTS NOT CONTEMPLATED HEREUNDER, THE EXACT AMOUNT OF WHICH IS PRESENTLY ANTICIPATED TO BE EXTREMELY DIFFICULT TO ASCERTAIN. SUCH COSTS MAY INCLUDE PROCESSING AND ACCOUNTING CHARGES AND LATE CHARGES WHICH MAY BE IMPOSED ON LANDLORD BY THE TERMS OF ANY LOAN AGREEMENT AND OTHER EXPENSES OF A SIMILAR OR DISSIMILAR NATURE. ACCORDINGLY, IF ANY INSTALLMENT OF RENT THAT IS PAYABLE TO LANDLORD

OR ITS DESIGNEE SHALL NOT BE PAID WITHIN FIVE (5) DAYS OF THE DATE WHEN DUE. TENANT WILL PAY LANDLORD ON DEMAND A LATE CHARGE EQUAL TO FIVE PERCENT (5%) OF THE UNPAID PORTION OF THE AMOUNT OF SUCH INSTALLMENT. THE PARTIES AGREE THAT THIS LATE CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE COSTS THAT LANDLORD WILL INCUR BY REASON OF LATE PAYMENT BY TENANT. THE PARTIES FURTHER AGREE THAT SUCH LATE CHARGE IS RENT AND NOT INTEREST AND SUCH ASSESSMENT DOES NOT CONSTITUTE A LENDER OR BORROWER/CREDITOR RELATIONSHIP BETWEEN LANDLORD AND TENANT. IN ADDITION, THE AMOUNT UNPAID, INCLUDING ANY LATE CHARGES, SHALL BEAR INTEREST AT THE OVERDUE RATE FROM THE DUE DATE OF SUCH INSTALLMENT TO THE DATE OF PAYMENT THEREOF, AND TENANT SHALL PAY SUCH INTEREST TO LANDLORD ON DEMAND. THE PAYMENT OF SUCH LATE CHARGE AND/OR SUCH INTEREST SHALL NOT CONSTITUTE A WAIVER OF, NOR EXCUSE OR CURE, ANY DEFAULT UNDER THIS LEASE, NOR PREVENT LANDLORD FROM EXERCISING ANY OTHER RIGHTS AND/OR REMEDIES AVAILABLE TO LANDLORD.

(f) If a default is declared by the Commissioner under the provisions of the Regulatory Agreement, provided a copy of Notice of Default is given to Tenant, Tenant shall thereafter make all future payments under this Lease to the Commissioner.

**Section 3.3 Net Lease Provisions.** Landlord and Tenant intend that the Rent herein specified shall be net to Landlord in each year during the Term, and that all costs, expenses and obligations of every kind and nature, (known or unknown, general or special, ordinary or extraordinary, foreseen or unforeseen, direct or indirect, contingent or otherwise) relating to the operation, repair and maintenance of the Leased Premises (except Landlord's income taxes) which may arise or become due during the Term shall be timely paid by Tenant; and that Landlord shall be indemnified by Tenant against such costs, expenses and obligations. Tenant's obligation to pay Rent is independent of all, and is in no manner conditioned upon any, other covenants, conditions and obligations of Landlord or Tenant under this Lease. There shall be no abatement of Rent payments for any reason nor shall Tenant be entitled to any offsets or deductions from Rent payments due hereunder.

**Section 3.4 Rent Tax.** If any governmental taxing authority levies, assesses, or imposes any tax, sales or use tax, privilege tax, excise or assessment (other than income or franchise taxes) upon or against the Rent payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise or assessment, or, if Landlord pays same, Tenant shall reimburse Landlord for the amount thereof within ten (10) days after written demand by Landlord.

It is the intent of this **Section 3.4** and all other provisions of this Lease to insure that the Rent (including Additional Rent) paid to Landlord by Tenant will be received by Landlord without diminution by any tax, assessment, charge or levy of any nature whatsoever, except United States, State of New York and local net income taxes, and the terms and conditions of this Lease shall be liberally construed to effect such purpose. Without limiting the generality of the foregoing, if any tax is assessed or based on gross income actually or



constructively received by Landlord pursuant to this Lease, Tenant shall pay such amount which, when added to said gross income, shall yield to Landlord, after deduction of all such tax payable by Landlord with respect thereto, a net amount equal to that which Landlord would have realized therefrom had no such tax been imposed.

Section 3.5. Assignment of Lease to Mortgagee. Tenant acknowledges that all of the interest of Landlord in and to this Lease has been or will be assigned to Mortgagee pursuant to the Loan Documents.

Tenant agrees to promptly execute and deliver to Landlord from time to time any and all documents required by a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender, or any successor, commercial, agency or private lender, including, without limitation, a lease addendum, regulatory agreement, subordination agreement, non-disturbance and attornment agreement, and/or escrow certificate, in order to finance or refinance the Facility or otherwise.

Tenant will on request at any time or from time to time by Landlord or any Mortgagee or Prospective Mortgagee subordinate this lease and all of Tenant's rights and estate hereunder to such Person's Mortgage and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, or declare such Mortgage to be prior to this lease and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, and agree with such holder that Tenant will assent thereto in the event of foreclosure. Landlord agrees to use reasonable efforts (except that Landlord shall not be obligated to expend money for any such agreement) to obtain a written agreement from any such holder in the form typically used by such holder which consents to this lease and provides that, notwithstanding such mortgage or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting said Mortgage, Tenant shall not be disturbed in peaceful enjoyment of the Leased Premises or this lease terminated or canceled at any time, except in the event Landlord shall have the right to terminate this lease under the terms and provisions set forth herein.

Section 3.6 True Lease. It is the intent of Landlord and Tenant and the parties agree that this Lease is a true lease and that this Lease does not represent a financing agreement. Each party shall reflect the transaction represented hereby in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

Section 3.7 Right of First Refusal; Buyout. (a) Landlord shall not sell, transfer or convey the Leased Premises to a third person or entity unless Tenant first is given the opportunity to purchase the Leased Premises pursuant to the terms and conditions set forth in this Section 3.7(a). If at any time during the first eleven years of Term Landlord receives from any third person or entity an Offer (as hereinafter defined) to purchase the Leased Premises which Landlord desires to accept, Landlord shall notify Tenant of such Offer by delivering written notice to Tenant, which notification (the "Offer Notice") shall contain a copy of the written Offer or, at Landlord's election, a written summary of the terms of the Offer. For purposes of this Lease, an "Offer" shall mean any bona fide written instrument or verbal communication setting forth the terms pursuant to which Landlord will convey the Leased Premises. Tenant shall have ten (10) Business Days after receipt of the Offer Notice in which to elect by written



notice delivered to Landlord (the "Acceptance Notice") to enter into a formal agreement on the same terms and conditions as those contained in the Offer ("Tenant's Purchase Right"). Such election shall be effective only if within ten (10) Business Days after delivery of the Acceptance Notice the parties enter into a written purchase agreement on terms reasonably acceptable to Landlord in good faith for the sale of the Leased Premises to Tenant containing all terms of the Offer. If Tenant fails to timely deliver the Acceptance Notice, or if Tenant fails to timely enter into said purchase agreement as provided herein, Landlord shall have the right to accept the Offer or any modification thereof on terms substantially similar as those set forth in the Offer. Tenant's right to purchase the Leased Premises identified in the Offer Notice shall not apply to (i) transfers of less than one hundred percent of the ownership interests in Landlord, (ii) a public offering of ownership interests in Landlord, (iii) a recapitalization transaction of any kind involving Landlord, (iv) condemnation, eminent domain or similar proceedings, or (v), rights exercised by Mortgagees in foreclosure or in lieu thereof pursuant to Mortgagee or other documents executed by Landlord in connection therewith, including the subsequent disposition of the Premises by Mortgagee or its affiliate or designee that acquires the Leased Premises in connection therewith.

(b) Notwithstanding anything to the contrary, if Landlord's Offer Notice states that it is purchasing from Tenant Tenant's Purchase Right, then (i) Tenant shall have no further rights under Section 3.7(a), and Section 3.7(a) shall be null and void without further effect, and (ii) upon the closing of the purchase and sale of the Leased Premises pursuant to the Offer, Landlord shall pay Tenant ten percent (10%) of the excess of the sales price agreed to pursuant to the Offer (less costs and fees, including broker's fees) over the TPC, the "Offer Fee", and (iii) the Rent shall be the greater of the amount as determined by Section 3.2(a) or fair market value, as shall be determined by an independent third party appraiser jointly appointed by Landlord or and Tenant, and absent their agreement appointed by the then chairman or similar officer of the Westchester County Society of Real Estate Appraisers. For purposes of clarification, Tenant shall not be entitled to the receipt of the Offer Fee if Tenant exercises Tenant's Purchase Right as set forth in Section 3.7(a) above.

(c) Upon expiration of the eleventh Lease Year, Tenant's Right of First Refusal as set forth in in Section 3.7(a) shall lapse and become null and void.

Section 3.8. Option to Purchase. Commencing on the latter of (i) the first day after the Commencement Date and (ii) 24 months from the date of the closing of the Original Mortgage, and ending on the last day of the fifteenth Lease Year of the Lease, Tenant shall have the option to purchase the Leased Premises from Landlord for a purchase price of \$65,055,000 by giving written notice of its exercise of the Option to Purchase including a proposed closing date, provided if Tenant does not exercise the Option to Purchase prior to receiving an Offer Notice pursuant to Section 3.7, Tenant's Option to Purchase under this Section 3.8 shall lapse unless and until the conveyance of the Leased Premises contemplated under Section 3.7 does not occur. Upon expiration of the fifteenth Lease Year, Tenant's the right to purchase the Leased Premises from Landlord, all as set forth above, shall lapse, become null and void, and Tenant shall have deemed to waived all such rights hereunder.

ARTICLE IV

## UTILITIES AND TAXES

**Section 4.1 Utilities.** From and after the Commencement Date, Tenant shall pay or cause to be paid all charges next coming due and payable for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Leased Premises (the "Utilities") during the Term. Tenant covenants to place all Utilities in Tenant's name as of the Commencement Date. Adjustment shall be made for Utilities applicable to any period prior to the Commencement Date. In the event Landlord is billed directly by any service provider or utility company for any Utilities or services supplied to Tenant during the Term, Landlord shall send Tenant the bill and Tenant shall promptly pay the same. Landlord shall have no obligation or liability with respect to any interruption or failure in the supply of any such Utilities. If Landlord elects to or shall be required to pay for any Utilities to preserve and/or protect the Leased Premises, Tenant shall reimburse Landlord for the cost and expense thereof plus interest at the Prime Rate.

**Section 4.2 Taxes.** Tenant shall be solely responsible for the payment, prior to the date when penalties would attach, of all general and special real estate taxes and assessments (together with any excise taxes on such real estate taxes and assessments levied or imposed by any governmental taxing authority), fire district taxes, liens, impositions, including capital stock, franchise, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes; personal property taxes, assessments including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; ground rents; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Premises, and all interest and penalties thereon attributable to any failure in payment by Lessee which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon the Leased Premises (collectively, the "Impositions") that accrue from the Commencement Date through the Term. Adjustment shall be made for Impositions applicable to any period prior to the Commencement Date. Tenant shall pay all of the Impositions directly to the applicable taxing authorities and Tenant shall promptly forward proof of payment to Landlord in such form as shall be reasonably acceptable to Landlord unless Landlord elects to require escrow deposits in accordance with Section 4.3 hereof. Landlord shall promptly forward any tax bills which it may receive to Tenant. Landlord shall only bill Tenant for any of the Impositions if Tenant does not pay any of the Impositions before delinquency and Landlord is obligated or elects (in Landlord's sole and absolute discretion) to pay any of the Impositions directly to remain current with all taxing authorities. Tenant shall pay the full amount of any increases in any of the Impositions resulting from alterations or improvements made by or for the benefit of Tenant. After the expiration or termination of this Lease, Tenant shall pay all bills for any of the Impositions which become due and payable after the expiration or termination of the Lease covering any period through the expiration or earlier termination of the Lease. If any governmental taxing authority acting under any present or future ordinance or regulation, shall levy, assess or impose a tax, excise and/or assessment (other than any net income or franchise tax) upon Landlord or Tenant for rental payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise and/or assessment

or shall reimburse Landlord for the cost and expense thereof, as the case may be. Provided that Tenant shall have deposited a sufficient amount of funds to pay the Impositions pursuant to Section 4.3 and Tenant has done nothing to prevent payment by Landlord or its lender of the Impositions, then Tenant shall not be responsible for any and all late payment fees and/or penalties, including interest, imposed by any applicable taxing authorities with respect to the untimely payment of Impositions.

Section 4.3 Escrow Deposits.

(a) Escrow. At the option of Landlord, which may be exercised at any time by Landlord in its sole and absolute discretion Tenant shall, on the first day of the first calendar month commencing after notice from Landlord, and on the first day of each calendar month thereafter during the Term (each of which dates is referred to as a "Monthly Deposit Date"), pay to and deposit with Landlord a sum equal to one-twelfth (1/12th) of the Impositions to be levied, charged, filed, assessed or imposed upon or against the Leased Premises within one (1) year after said Monthly Deposit Date and a sum equal to one-twelfth (1/12th) of the premiums for the property insurance policies required pursuant to Article VI which are payable within one (1) year after said Monthly Deposit Date. If the amount of the Impositions to be levied, charged, assessed or imposed or insurance premiums to be paid within the ensuing one (1) year period shall not be fixed upon any Monthly Deposit Date, such amount for the purpose of computing the deposit to be made by Tenant hereunder shall be reasonably estimated by Landlord with an appropriate adjustment to be promptly made between Landlord and Tenant as soon as such amount becomes determinable. In addition, Landlord may, at its option, from time to time require that any particular deposit be greater than one-twelfth (1/12th) of the estimated amount payable within one (1) year after said Monthly Deposit Date, if such additional deposit is required in order to provide to Landlord sufficient funds from which to make payment of all Impositions on or before the next due date of any installment thereof, or to make payment of any required insurance premiums not later than the due date thereof. If any Mortgagee or the Commissioner requires Landlord to impound insurance premiums on a periodic basis during the term, Tenant, on notice from Landlord indicating this requirement, shall pay a sum of money towards its liability under this Lease to Landlord on a periodic basis in accordance with Landlord's requirements. Landlord shall impound the premium payments received from Tenant in accordance with the requirements of Mortgagee and shall utilize such funds to timely pay insurance premiums.

(b) Use of Deposits. The sums deposited by Tenant under this Section 4.3 shall be held by Landlord or Mortgagee and shall be applied in payment of the Impositions or insurance premiums, as the case may be, when due. Any such deposits may be commingled with other assets of Landlord or such Mortgagee, and shall be deposited by Landlord or such Mortgagee in an Eligible Institution in such account or accounts as Landlord or the Mortgagee may, from time to time select, and Landlord shall not be liable to Tenant or any other person (i) based on Landlord's or the Mortgagee's (or any bank's) choice of investment vehicles, (ii) for any consequent loss of principal or interest or (iii) for any unavailability of funds based on such choice of investment. Furthermore, subject to the foregoing regarding the use of depositories and accounts, Landlord and its Mortgagee shall bear no responsibility for the financial condition of, nor any act or omission by the depository bank. No income, if any, from such investment or interest on such deposits shall be paid to Tenant. To the extent that Landlord does not have an

invoice or bill specifying the due date for payment, Tenant shall give not less than thirty (30) days prior written notice to Landlord in each instance when an Imposition or insurance premium is due, specifying the Imposition or premium to be paid and the amount thereof, the place of payment, and the last day on which the same may be paid in order to comply with the requirements of this Lease. If Landlord, in violation of its obligations under this Lease, does not pay any Imposition or insurance premium when due, for which a sufficient deposit exists, Tenant shall not be in default hereunder by virtue of the failure to pay such Imposition or such insurance premium and Tenant shall not be liable for any late payment fees and/or penalties, including interest imposed as a result of such failure to pay. The term "Eligible Institution" shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least "A-1+" by S&P, "P-1" by Moody's and "P-1+" by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's).

(c) Deficits. If for any reason any deposit made by Tenant or held by Landlord under this Section 4.3 shall not be sufficient to pay any Imposition or insurance premium within the time specified therefor in this Lease, then, within ten (10) days after demand by Landlord, Tenant shall deposit an additional amount with Landlord, increasing the deposit held by Landlord so that Landlord holds sufficient funds to pay such Imposition or premium in full (or in installments as otherwise provided for herein), together with any penalty or interest thereon. Landlord may change its estimate of any Imposition or insurance premium for any period on the basis of a change in an assessment or tax rate or on the basis of a prior miscalculation or for any other good faith reason; in which event, within ten (10) days after demand by Landlord, Tenant shall deposit with Landlord the amount in excess of the sums previously deposited with Landlord for the applicable period which would theretofore have been payable under the revised estimate.

(d) Transfers. Consistent with Section 2.2, in connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein and each successor in interest shall have the right to transfer all amounts deposited pursuant to the provisions of this Section 4.3 and not used pursuant to this Section 4.3 to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, the original Landlord named herein or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto.

(e) Security. All amounts deposited with Landlord pursuant to the provisions of this Section 4.3 shall be held by Landlord as additional security for the payment and performance of Tenant's obligations under this Lease and, upon the occurrence and during the continuance of any Lease Default, Landlord may, in its sole and absolute discretion, apply such amounts towards payment or performance of such obligations.

(f) Return. Upon the expiration or earlier termination of this Lease, as long as all of the Rent and any and all other obligations due under this Lease have been fully paid and performed, any sums then held by Landlord under this Section 4.3 shall be refunded to Tenant.

and subject to the rights of a Mortgagee, together with all interest, if any, earned thereon and all income, if any, earned therefrom; provided, however, that if a Lease Default has occurred and is continuing, all of such sums may be applied by Landlord towards any amounts owed to Landlord pursuant to this Lease.

(b) Receipts. Tenant shall deliver to Landlord copies of all claims and bills in relation to the Impositions and Insurance premiums promptly upon receipt thereof by Tenant.

This Article and the obligations herein shall survive expiration or earlier termination of this Lease.

ARTICLE V

LANDLORD'S WORK, MAINTENANCE AND REPAIR, IMPROVEMENTS

Section 5.1 Landlord's Work. (a) Landlord shall cause the Facility to be constructed ("Landlord's Work").

(b) Landlord will give Tenant thirty (30) days' notice of the date Landlord expects to be the Substantial Completion Date. On or prior to the Substantial Completion Date, Landlord and Tenant shall jointly prepare a list of the items for the Facility that remain to be completed or corrected, set a dollar value for the cost to complete the work, and fix time for their completion or correction (collectively the "Punchlist").

(c) Notwithstanding anything in this lease to the contrary, on and after the Substantial Completion Date Tenant shall be deemed to have agreed Landlord has completed Landlord's Work to Tenant's complete satisfaction, except for (i) the Punchlist, (ii) such items of decoration or mechanical adjustment of which Tenant gives Landlord written notice within thirty (30) days after the Substantial Completion Date (the "Initial Correction Items") or (iii) any defects in the Facility which were not known or reasonably discoverable by Tenant in the time period specified in the immediately prior clause (ii) ("Latent Defects"); provided that, as to Latent Defects, Landlord will have no responsibility or liability therefor, or for the correction thereof, unless (A) Tenant conducts at least one inspection of the Facility with a qualified engineer or other expert, within one year from the Substantial Completion Date, and (B) Tenant gives Landlord notice of such Latent Defects within thirty (30) days after discovery thereof and in any event not later than one year after the Substantial Completion Date, which notice will be accompanied by the certification of such engineer or other experts, specifying, in detail, such Latent Defects in the Facility.

(d) At its sole expense, Landlord shall complete the Punchlist, and remedy the Initial Correction Items, and the Latent Defects provided with respect to Latent Defects that the conditions set out in clause (iii) of section (c) are satisfied.

(e) To the extent assignable at no cost to Landlord, Landlord assigns to Tenant all manufacturer warranties on materials and equipment. Tenant shall have the benefit and right to enforce such warranties at its sole cost and expense.

**Section 5.2 Maintenance and Repair.** Except as provided in Section 5.1, Tenant, at Tenant's sole cost and expense, shall keep the Leased Premises, including all buildings, fixtures, trade equipment, trade fixtures, furniture, beds and other personal property leased to Tenant pursuant to this Lease, including, without limitation, all structural and non-structural components, the roof, foundation, all outer walls, plumbing, sprinklers, electrical, mechanical, heating, ventilation, utility service, air conditioning, vertical transport, telephone, communications, cable, computer, fire-life safety, nursing call, and all other systems of the Leased Premises in good condition and repair and in compliance with all Laws. Landlord shall not be responsible to make any improvements, repairs, maintenance or replacements whether occasioned by the act, omission, active negligence, or passive negligence of Landlord or Tenant and/or its agents, employees, invitees or licensees or otherwise, and Tenant shall pay for all improvements, repairs, replacements, maintenance and expenditures relating to the Leased Premises, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the commencement of the Lease, by Tenant's use or by a change in applicable Laws. The Leased Premises and its appurtenances shall at all times be kept clean, safe and sanitary and in good order, condition, replacement and repair by Tenant, at Tenant's sole cost and expense, except for ordinary wear and tear (provided, however, that, without limiting the generality of this Section 5.2, Tenant shall be obligated to replace any portion of the Leased Premises upon any obsolescence thereof or if proper repair is impractical). Tenant shall provide (if not currently a part of the Leased Premises) and maintain, repair and replace, as necessary, all furniture, fixtures, equipment and/or other personal property required by any Governmental Authority (other than furniture, fixtures, equipment and/or other personal property owned by contractors providing ancillary services at the Facility) necessary for the operation of the Facility and to comply with all Laws. All such property provided by Tenant shall immediately become the property of Landlord and Tenant shall execute such documentation as Landlord may reasonably require vesting title in such property in Landlord. Landlord shall have no liability or obligation with respect to such property or any of Tenant's operations relating thereto. All replacements made by Tenant hereunder shall be made in a good and workmanlike manner in accordance with Laws using the same, similar or better quality of materials as being replaced and shall immediately become the property of Landlord. Tenant acknowledges that title and ownership of all repaired and replaced furniture, fixtures, equipment and/or other personal property made hereunder shall belong to and is for the benefit of Landlord. Tenant shall not enter into any equipment lease or conditional sales contracts for any furniture, fixtures, equipment and/or other personal property relating to the Facility without Landlord's consent which it may grant or withhold in its sole discretion. The term "Laws" means, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Leased Premises or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Tenant, at any time in force affecting the Leased Premises or any part thereof. The term "Governmental Authority" means any court, board, agency, arbitrator, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

**Section 5.3 Improvements, Renovation, Alterations and Additions.** Tenant shall have the right during the Term to make such non-structural interior alterations, changes and improvements to the Leased Premises as may be proper and necessary for the conduct of Tenant's business, to cause the Leased Premises to conform to all Laws, for patient comfort and safety, or for the full beneficial use of the Leased Premises, so long as such improvements do not (i) exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) in any given calendar year, (ii) interfere with any of the purposes for which the Facility was leased or affect the roof or structure, (iii) decrease the value of the Leased Premises, (iv) affect any building system, including, heating, ventilation, air conditioning, mechanical, electrical, plumbing or vertical transport systems, or (v) affect the exterior appearance of the Leased Premises. Tenant shall not make any other alterations, changes, or improvements without the express written approval in each instance by Landlord, which consent shall not be unreasonably withheld; provided, however, that the granting or withholding of consent shall not result in any liability to Landlord. Furthermore, Tenant may make all repairs or replacements required by a Governmental Authority without obtaining Landlord's consent, provided, however, Tenant shall give Landlord no less than ten (10) days prior written notice of such government mandated repairs or replacements prior to making or implementing same, unless emergency factors necessitate the making of such repairs before Tenant can reasonably give notice to Landlord, in which event Tenant shall give notice to Landlord as soon as reasonably possible. Tenant shall pay for all costs, fees and penalties imposed by the applicable state agencies or the Center for Medicare and Medicaid Services ("CMS") or other Governmental Authority in connection with any survey or the Change of Ownership. Tenant shall notify Landlord of any alterations, changes or improvements required and/or permitted by the applicable state agencies or the CMS or other Governmental Authority prior to the commencement thereof. Tenant shall pay all costs and expenses of any required and/or permitted alterations, changes, and improvements, shall make the same in a good and workmanlike manner, and in accordance with all Laws, having obtained all necessary permits and approvals from Governmental Authorities having jurisdiction over the Facility and work performed thereon or therein, and shall assure Landlord, in form reasonably satisfactory to Landlord, all necessary permits and authorizations have been received and that payment for the work and materials will be made by Tenant. Tenant hereby completely and fully indemnifies Landlord against any mechanic's liens or other liens or claims in connection with the making of any alterations, changes, and/or improvements. Any liens arising out of any required and/or permitted alterations, changes, and/or improvements shall be discharged of record by Tenant within the earlier of thirty (30) days after the same have been filed by payment, bonding or otherwise, as permitted by law, or five (5) days after commencement of a foreclosure or enforcement action. Notwithstanding any provision of this Lease to the contrary, Tenant shall not undertake any alterations, renovations, or improvements to the Facility or otherwise commence any project or activity with respect to the Facility, which may result in any bed being taken out of service for more than seven (7) days without Landlord's and/or Mortgagee's prior written consent, which Landlord's consent shall not be unreasonably withheld. Tenant shall give Landlord written notice ten (10) days prior to commencing repairs, construction, or alterations whose costs exceed One Hundred Thousand Dollars (\$100,000.00).

**Section 5.4 Signs.** All signs installed by Tenant at the Facility shall comply with all Laws, and all necessary permits or licenses shall be obtained by Tenant. Tenant shall maintain all signs in good condition and repair, and/or replace as may be required by applicable law, at all times at Tenant's sole cost and expense. Upon vacating the Leased

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Premises, Tenant shall remove all signs and supporting material or installations so installed by Tenant, but only if Landlord shall request such removal, and Tenant shall repair all damage caused by such removal. Landlord acknowledges and agrees that neither Landlord nor any subsequent tenant of Landlord shall be authorized to use any company or registered trade name of Tenant or any of Tenant's affiliates or subcontractors.

Section 5.5 Surrender (a) Subject to applicable law and to receipt of any necessary DOH approval, Tenant shall deliver up and surrender to Landlord possession of the Leased Premises and all improvements and replacements thereof, including all of Tenant's alterations, improvements work (and all replacements thereof) and all fixtures permanently attached to the Leased Premises by Tenant during the Term, upon the expiration of this Lease or its termination in any manner whatsoever, in as good condition and repair and in substantially similar form, character and manner as the same shall be on the Commencement Date, reasonable wear and tear excepted (without compensation to Tenant), with permitted changes, improvements and additions made during the Term as authorized herein, subject to no liens, encumbrances, charges, restrictions, conditions, limitations or claims whatsoever to the extent not encumbering the Leased Premises as of the Commencement Date, and deliver the keys and/or operational security cards to the Leased Premises to Landlord or Landlord's designated agent.

(b) Licenses and Transfer of Operations. Upon the expiration of the Term or earlier termination of the Lease, Tenant shall and shall cause its subcontractors to, (i) transfer to Landlord or Landlord's nominee a fully operational, licensed and certified, and staffed facility and shall cooperate with Landlord or Landlord's designee or nominee in connection with the processing by Landlord or Landlord's designee or nominee of any applications for all licenses, operating permits and other governmental authorization, all contracts, including contracts with all Governmental Authorities or quasi governmental entities (provided that except following a Lease Default, the reasonable costs and expenses of the processing of any such application shall be paid by Landlord or Landlord's designee or nominee), (ii) transfer to Landlord or Landlord's nominee all tangible personal property of Tenant, including financial and accounting records, business records, data, employee and/or personnel records, patient and resident records, and all records held in electronic form, (all subject to the Laws requiring confidentiality), all equipment and small ware and all inventory used in connection with the Facility, (iii) transfer to Landlord or Landlord's nominee all intangible property except accounts receivable of Tenant, and (iv) transfer to Landlord or Landlord's nominee all residents in the Facility. With respect to resident funds, Tenant shall transfer to Landlord or its designee, all patient and resident trust accounts, and shall cause its subcontractor to prepare and submit to Landlord or its designee a true, correct, and complete accounting and inventory (properly reconciled) of any patient trust funds and resident property to be transferred to Landlord, or its designee. Tenant shall, and shall cause its subcontractor, not to commit any act or be remiss in the undertaking of any act that would jeopardize the licensure or certification of the Facility, and Tenant shall and shall cause its subcontractor to comply with all requests for an orderly transfer of the same upon the expiration or early termination of the Term, including, but not limited to, upon the request of Landlord or its designee, the transitioning of employees in compliance with applicable laws. Without limiting the generality of the foregoing, if requested by Landlord or a proposed replacement operator for the Facility, Tenant hereby agrees to enter into a reasonable operations transfer agreement with such replacement operator. Tenant shall not unreasonably withhold, condition or delay its

consent to entering into any interim subleases or management agreements as may be necessary to effectuate an early transfer of the operations of the Facility prior to the time that such replacement operator holds all licenses and permits from all applicable Governmental Authorities with jurisdiction necessary to operate the Facility for its intended use. In addition, upon request, Tenant shall and shall cause subtenants, to promptly deliver copies to Landlord or Landlord's designee of all books and records relating to the Leased Premises and operations thereon (including inventories, employee lists and personnel records, and policies and procedures manuals). Tenant shall allow Landlord or a proposed replacement operator for the Facility to utilize Tenant's, subtenants' computer hardware and software for a minimum of ninety (90) days to facilitate the transfer of operations, the collection of accounts receivable, the billing of providers, and the provision of patient care. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any loss, damage, cost or expense incurred by Landlord or Landlord's designee or nominee in connection with the correction of any and all deficiencies of a physical nature identified by any Governmental Authority responsible for licensing the Leased Premises in the course of any change of ownership inspection and audit. Tenant shall be responsible for any alterations or renovations necessitated by, or imposed in connection with, a change of ownership inspection survey for the transfer of operation of the Leased Premises to Landlord or its designee. Tenant shall not commence to wind up and terminate the operations of the Facility or relocate the patients or occupants of the Facility to any other health care facility. In addition, Tenant shall not terminate the employees of the Facility except in connection with and upon the transfer of operations of the Facility to Landlord or its designee.

(c) If Landlord notifies Tenant in writing that it intends to transfer the operations of the Facility to a new operator and desires to have Tenant continue to operate the Facility after the Expiration Date or earlier termination of the Lease, then Tenant shall continue to operate the Facility until the earliest to occur of (i) the date on which such successor operator shall assume operation of the Facility, or (ii) the date that is 180 days after the applicable Expiration Date or termination date (the "Reimbursement Period"). During the Reimbursement Period (x) Landlord shall provide Tenant with an operating budget, (y) Landlord shall include in the aforesaid operating budget, and Tenant shall continue to pay during the Reimbursement Period, all Rent that would have been owing under this Lease as to the Leased Premises if this Lease had not expired or terminated as to, and/or Tenant had not been dispossessed from, such Leased Premises, and (z) provided that this Lease was not terminated with respect to, and Tenant was not dispossessed from, such the Lease Premises due to a Lease Default, Landlord shall reimburse Tenant for any operating deficits with respect to the Facility that Tenant may be required to fund out-of-pocket on account of operating losses and expenses incurred by Tenant by reason of, or arising out of compliance with, such budget with respect to the Reimbursement Period. Any such reimbursement shall be due from Landlord to Tenant within 60 days after request by Tenant, provided that Tenant shall furnish such documentation of any operating deficits, losses and expenses as Landlord may reasonably request. The terms of this Section 5.5(c) shall survive the expiration or earlier termination of this Lease and/or any dispossession of Tenant from the Lease Premises.

(d). Use of Legacy Tradename. Without limitation of the other provisions of (b) Section 5.5 and notwithstanding anything to the contrary contained in this Lease, Tenant agrees to allow Landlord or its designee operator, at its option and at no cost to Landlord or any such designee, to continue to use, in its signage, marketing and advertising materials, operations

and otherwise, any or all name(s) (including tradenames) associated with the operation of the Facility as a going concern for up to 180 days following (i) the expiration or termination of this Lease and (ii) the vacation from, and surrender of, the Leased Premises and Facility by Tenant. At the end of such 180 day period, or upon sooner written notice from Landlord to Tenant, Tenant shall, promptly and at its expense, remove its aforesaid name(s) from all signs on the Facility and repair any damage to such signs caused by such removal. Landlord acknowledges and agrees that Tenant, not Landlord, owns the aforesaid names and that neither Landlord nor any designee of Landlord may use the same except as described in this Section 5.3(d) or as otherwise agreed in writing by Tenant.

(c) Management of Terminated/Dispossessed Premises. Commencing on the applicable Termination/Dispossession Date as to any Terminated/Dispossessed Premises, Landlord or its designee, upon notice to Tenant, may elect to assume the responsibilities and obligations for the management and operation of the Business at such Terminated/Dispossessed Premises, and Tenant agrees to cooperate fully to accomplish the transfer of such management and operation without interrupting the operation of such Business to the extent allowable by Law. Tenant shall permit Landlord or its designee to operate the Facility under Tenant's license, certifications and other authorizations pending the issuance of new licenses, certifications and other authorizations Landlord or its designee. Tenant shall not commit any act or be remiss in the undertaking of any act that would jeopardize any licenses, certifications and other authorizations related to the Facility, and Tenant shall comply with all requests for an orderly transfer of all licenses, certifications and other authorizations related to the Facility and any payor's certifications.

(f) In addition, upon any expiration or termination of this Lease, Tenant covenants and agrees to do such things and to take such action as may, from time to time, be necessary or appropriate to permanently surrender and withdraw from possession and operation (including but not limited to licensure and certification) of the Leased Premises, and shall thereafter be fully and permanently relieved of all powers, duties, responsibilities and obligations that are conferred or imposed upon Tenant under this Lease (except those continuing obligations, including but not limited to the obligation to pay all Rent due and owing under this Lease, and the obligation to pay all amounts owed by Tenant to the Medicare, Medicaid, third party payor programs and residents for the period of the Term, which survive the termination hereof as provided herein) and to restore and place Landlord or its designee in possession and operation of the Leased Premises, or any portion thereof, and Tenant covenants and agrees to execute and deliver to Landlord or Landlord's designee (each subject to the approval of DOH) all assignments, operation transfer agreements, consents, consents to assignments (including Medicare and Medicaid provider agreements, if requested by Landlord) documents and other instruments, to the reasonable satisfaction of Landlord in order to effectuate the provisions hereof.

Section 5.6 Condition of Leased Premises. (a) Subject to Section 5.1, Tenant shall accept and take possession of the Leased Premises in its "AS IS," "WHERE IS" "WITH ALL FAULTS" condition, and acceptance of possession of the Leased Premises on the Commencement Date shall be deemed an acknowledgment by Tenant of Tenant's acceptance of the condition of the Leased Premises. Tenant acknowledges and agrees that Landlord is not making any representation, warranty or covenant whatsoever with respect to the condition of the

Leased Premises, or any portion thereof, or its suitability for any particular purpose, and Tenant shall be relying solely on its inspection of the Leased Premises and due diligence investigations with respect thereto.

(b) LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND FOR COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. EFFECTIVE AS OF THE DATE OF THIS LEASE, TENANT SHALL RELEASE LANDLORD FROM ALL CLAIMS WHICH TENANT OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MANAGER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTING ON TENANT'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH TENANT ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES, INCLUDING THE INFORMATION AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS, AND TENANT SHALL NOT LOOK TO LANDLORD IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION, EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS LEASE; (A) TENANT WILL ACQUIRE THE LEASED PREMISES SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS, AND (B) WITHOUT LIMITING THE FOREGOING, WAIVES ANY RIGHT IT OTHERWISE MAY HAVE AT LAW OR IN EQUITY AGAINST LANDLORD WITH RESPECT TO ANY ASPECT OF LEASED PREMISES.

ARTICLE VI

INSURANCE

Section 6.1 ~~INSURANCE~~ (A) Tenant shall obtain and maintain, or cause to be maintained, insurance for Tenant and the Facility providing at least the following coverages or as required from time to time by any Mortgagee:

(i) comprehensive "all risk" insurance on the Facility and the Personal Property, including Building Ordinance Coverage from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation (except with respect to the insurance pursuant to clauses (D), (x), (y) and (z) below); (B) containing an agreed amount

endorsement with respect to the Facility and Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Ten Thousand Dollars (\$10,000.00) for all such insurance coverage (except as stated in the penultimate sentence of this subsection); and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if the Facility or the use of the Facility shall at any time constitute legal non-conforming structures or uses and covering the increased cost of reconstruction, demolition cost, value of the undamaged portion of the structure and any increased expenses to rebuild due to the enforcement of building or zoning laws or requirements following a covered loss of the Leased Premises. In addition, Tenant shall obtain: (x) if any portion of any of the Leased Premises is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of any loan encumbering the Leased Premises or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or successor legislation, or such greater amount as Landlord and/or Mortgagee shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in an area with a high degree of seismic activity and (z) coastal windstorm insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in a coastal region; provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive insurance policy required under this Subsection (i); and further provided that the earthquake insurance pursuant to clause (y) may provide for a deductible of up to the greater of One Hundred Thousand Dollars (\$100,000.00) and two percent (2%) of the amount of such coverage, (iii) the flood insurance pursuant to clause (x) may provide for a deductible of up to One Hundred Thousand Dollars (\$100,000.00), and (IV) the ordinance and law coverage pursuant to clause (D) may have a sub-limit of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Facility, such insurance (A) with a combined limit of not less than Five Million Dollars (\$5,000,000.00) in the aggregate and Two Million Dollars (\$2,000,000.00) per claim, (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) to continue at not less than the aforesaid limit until required to be changed by Landlord and Mortgagee in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability; and (5) contractual liability covering the indemnities contained in Section 9.1 of the Lease to the extent the same is available;

(iii) business income with extra expense insurance (A) with loss payable to Landlord and Mortgagee; (B) covering all risks required to be covered by the insurance provided for in Subsection (i) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Facility and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Facility is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred

percent (100%) of the projected net profit and extra expense with respect to the Facility for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire at the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Tenant's reasonable estimate of the gross income from the Facility for the succeeding twelve (12) month period. Nothing herein contained shall be deemed to relieve Tenant of its obligations to pay the Rent when due except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Facility, and only if the Facility coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above and (3) with an agreed amount endorsement waiving co-insurance provisions.

(v) worker's compensation insurance with respect to any employees of Tenant, as required by any Governmental Authority, Health Care Authority, Legal Requirement or Health Care Requirement;

(vi) boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Landlord and Mortgagee on terms consistent with the commercial property insurance policy required under Subsection (i) above;

(vii) intentionally omitted;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million Dollars (\$1,000,000.00);

(ix) if the Facility is or becomes a legal "non-conforming" use, ordinance or law coverage and insurance coverage to compensate for the cost of (upon a Casualty) demolition or rebuilding of the undamaged portion of the Facility along with any reduced value and the increased cost of construction in amounts as requested by Landlord and Mortgagee;

(x) the commercial property and business income insurance required under Sections 6.1(a)(i) and (iii) above shall cover perils of terrorism and acts of terrorism and Tenant shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i) and (iii) above at all times during the Term;

(xi) professional liability and malpractice insurance with limits of at least Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate. Tenant shall also require each medical director for the Facility and the associated nurse practitioner at the Facility to carry professional liability and malpractice insurance with

limits of not less than Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate; and

(iii) notwithstanding anything to the contrary in the foregoing, all insurance coverage required by any mortgagee of Landlord shall be met by Tenant, from time to time as necessary;

(xii) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Landlord and/or Mortgagee from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Facility located in or around the region in which the Facility is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or, in the singular, the "Policy"), and shall be subject to the approval of Landlord and Mortgagee as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State of New York and having a claims paying ability rating of "A" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the companies (one of which shall be S&P if they are rating the securities and one of which will be Moody's if they are rating the companies), or if only one Rating Agency is rating the companies, then only by such Rating Agency and shall specifically name Landlord and Mortgagee as loss payees and additional insureds, as applicable. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Landlord and Mortgagee, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Landlord and Mortgagee of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Tenant to Landlord and Mortgagee.

(c) Any blanket insurance Policy shall specifically allocate to the Facility the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Facility in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Tenant as the insured and Landlord and Mortgagee as the additional insured, as their interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called lender's loss payee endorsement in favor of Mortgagee providing that the loss thereunder shall be payable to Mortgagee.

(e) All Policies provided for in Section 6.1 shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Tenant, or anyone acting for Tenant, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Landlord and Mortgagee are concerned;

(ii) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' written notice to Landlord and Mortgagee and any other party named therein as an additional insured;

(iii) the issuers thereof shall give notice to Landlord and Mortgagee if the Policies have not been renewed fifteen (15) days prior to its expiration; and

(iv) Neither Landlord nor Mortgagee shall be liable for any insurance premiums thereon or subject to any assessments due thereunder.

(f) If at any time Landlord and Mortgagee is not in receipt of written evidence that all Policies are in full force and effect, either shall have the right, without notice to Tenant, to take such action as either deems necessary to protect its interest in the Leased Premises, including, without limitation, the obtaining of such insurance coverage as either in its sole discretion deems appropriate. All premiums incurred by Landlord and/or Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Tenant to Landlord and/or Mortgagee, as the case may be, upon demand and, until paid, shall be secured by the Mortgagee and shall bear interest at the Overdue Rate.

(g) Tail Insurance. If Tenant has claims made insurance coverage of any type, upon expiration or earlier termination of this Lease, Tenant shall purchase so-called "tail" insurance for a period of three years in an amount not less than its existing coverages in order to assure Tenant is covered by insurance after the expiration or earlier termination of this Lease for all claims arising or relating to the period prior to the expiration or earlier termination of this Lease, and Landlord and Mortgagee shall be named as additional insured thereunder.

Section 6.2 Certificates of Insurance. Upon the Commencement Date of this Lease, Tenant shall furnish Landlord, Mortgagee and other third parties which Landlord shall designate with appropriate certificates of insurance on acceptable Accord forms, together with an additional insurance endorsement showing that each type of insurance required under this Article VI is in full force and effect and not cancelable or modifiable without thirty (30) days prior written notice to Landlord, and upon request of Landlord or one or more of such additional insureds, deliver copies of such insurance policies. Tenant will provide Landlord with acceptable certificates of insurance pursuant to this Section 6.2 evidencing the renewal of such Policies ten (10) Business Days prior to the Policies' expiration date. Tenant acknowledges that all such certificates shall name Landlord, its successors and assigns, and Mortgagee, its successors and assigns, as additional insureds on the general liability and umbrella policies and as a loss payee/mortgagee, as their interests may appear, on the property and boiler and machinery policies.

Section 6.3 Waiver of Subrogation. Landlord and Tenant hereby waive all rights of recovery for causes of action which either has or may have or which may arise hereafter against the other for any damage to the Leased Premises or the property or business of either of them or of anyone claiming through either of them, by way of subrogation or otherwise, caused by any of the perils covered by a special form policy of property insurance or contents insurance or by any other insurance for damage to property carried by the party whose property was damaged; provided, however, that the foregoing waiver shall apply only if and to the extent that

a waiver of subrogation for property damage is not prohibited in the State of New York, has been consented to by the applicable insurance carrier, and only to the extent of such insurance coverage.

ARTICLE VII

SECURITY, ACCESS AND REPORTING OBLIGATIONS, WORKING CAPITAL

Section 7.1 Security Deposit/Guaranty.

(a) Contemporaneously with the execution of this Lease, Tenant shall deliver a guarantor of this Lease (the "Guaranty") from Liza Josefovic and Mark Naumen (collectively, the "Guarantors") in the form of Exhibit "B" attached hereto, or in form and amount as may be otherwise required by the Landlord and Landlord's first and second Mortgages. The Guaranty shall set forth that the Guarantors will be required to cooperate in turning the license over to the Landlord's designee or be personally liable for all costs, expenses and damages or deficiencies. The Guarantors shall ensure that the Tenant shall deliver all of the documents required to transfer the license in escrow to Posternak, Blackstein & Lund, or such other party as Landlord designates. As further security for the Tenant's performance under the Lease, the Tenant hereby agrees as follows:

(i) Tenant agrees that it shall deliver to Landlord 60 days prior to the Commencement Date, an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached hereto as Exhibit 7.1(a) or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months.

(ii) Tenant agrees that it shall deliver 60 days prior to the anticipated Commencement Date either (i) an unconditional Letter of Credit, in accordance with the Letter of Credit Agreement attached hereto as Exhibit 7.1(b) (which shall be executed simultaneously herewith), in the amount of \$3,700,000, or (ii) \$3,700,000 in cash ("Security Deposit") to secure the full and timely payment and performance of Tenant's obligations under this Lease. Tenant's failure to deliver the Letter of Credit or timely pay to Landlord the Security Deposit shall be deemed a Lease Default by Tenant. Landlord may retain the Security Deposit in such accounts as Landlord elects in its sole discretion and Landlord may commingle the Security Deposit with other funds of Landlord or its affiliates. Tenant shall have no right to any interest on the funds comprising the Security Deposit that it delivers to Landlord.

(iii) Sixty days prior to the anticipated Commencement Date, the funds in the controlled account number [REDACTED] at JPMorgan Chase Bank, N.A. (the "Bank") in the amount not less than \$1,000,000 shall be delivered by Tenant to Landlord and retained by Tenant to Landlord to be held as an additional Security



Deposit by Landlord. The letter to Bank implementing the Tenant's obligations pursuant to the preceding sentence, attached hereto as Exhibit 7.1(c), which shall be held in escrow by Posternak, Blankstein & Land, shall be delivered by it to the Bank sixty days prior to the anticipated Commencement Date upon notice from Landlord.

(b) The term "Letter of Credit" shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit in favor of Landlord in form and content reasonably satisfactory to Landlord and entitling Landlord to draw thereon without the payment of any fees or charges in New York, New York, issued by a domestic banking institution or the U.S. agency or branch of a foreign banking institution; provided, that such banking institution has a long term senior unsecured debt obligation rating of at least "AA" by S&P. The Letter of Credit shall have an expiration date of the date that is the first anniversary of the date hereof. The Letter of Credit shall provide that it shall be deemed automatically renewed (without amendment) for consecutive periods of one year each thereafter during the Term unless the issuing bank sends written notice to Landlord and Tenant by certified mail, return receipt requested, not less than thirty (30) days preceding the then expiration date of the Letter of Credit that it elects not to have such Letter of Credit renewed. If such notice is sent, then at least twenty (20) days prior to the expiration of the Letter of Credit (and each subsequent or replacement Letter of Credit), Tenant shall deliver to Landlord a new Letter of Credit in the same amount and a failure to do so shall entitle Landlord to draw upon the existing Letter of Credit and to receive the proceeds therefrom and hold such proceeds as a cash Security Deposit pursuant to this Section 7.1 pending delivery of a new Letter of Credit.

(c) Upon a Lease Default, Landlord shall have the right, but not the obligation, in Landlord's sole and absolute discretion, to draw upon the Security Deposit and/or Letter of Credit and apply some or all of the funds to remedy such default or occurrence and to compensate Landlord for any loss or damage resulting therefrom, without prejudice to any other rights or remedies of Landlord under this Lease or at law or in equity. Upon any such application by Landlord, Tenant shall promptly deposit with Landlord an amount in cash equal to the amount from the Security Deposit so utilized by Landlord. Landlord shall at all times have, as security hereunder, Letter of Credit and cash Security Deposit in the amounts stated in Section 7.1(a). Upon the termination or expiration of this Lease, as long as Tenant has performed all of its obligations pursuant to this Lease and no Lease Default has occurred which is continuing, the remaining amount of the Security Deposit shall be returned or refunded to Tenant, without interest, subject in all events to Landlord's right to apply the Security Deposit as provided herein.

(d) Upon the occurrence of a Lease Default, Landlord may use, apply or retain the whole or any part of the Security Deposit or draw under a Letter of Credit to the extent required for the payment of any Rent or any other sums due to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the reletting of all or any portion of the Leased Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the Security Deposit, Tenant shall upon demand immediately deposit with Landlord a sum equal to the amount so used, applied or retained. In the event of any sale or financing of Landlord's interest in the Leased Premises, Landlord shall have the right to assign its interests in the

Security Deposit to the transferee, assignee or mortgagee, as the case may be, and if Landlord has given notice to Tenant of the assignment of Landlord's interest in the Security Deposit and if assignee or transferee of the Security Deposit has accepted liability for the Security Deposit, Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof; and Tenant shall look solely to the new landlord or mortgagee for the return or payment of the same. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit and neither Landlord, nor its successors or assigns, shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Section 7.2 Access to Leased Premises. Tenant shall permit Landlord, Mortgagee and their agents to enter upon the Leased Premises at all reasonable times during ordinary business hours and upon at least twenty-four (24) hours advance oral notice (except that in the case of emergency, Landlord may enter at any time and without prior notice) to inspect and examine the Leased Premises, to perform repairs as to Landlord's Work pursuant to Section 5.1, and to inspect and copy any operating manuals, procedures manuals, training manuals, and other books and records concerning unemployment, workers' compensation, insurance, tax, and any other business issues pertaining to the Leased Premises (subject to applicable laws and regulations governing patient confidentiality and privacy and the confidentiality of medical records) and any information necessary for audit relating to cost reimbursement, collections, general financial matters, litigation, inquiries and related activities (as may be necessary in connection with the Lease or the Leased Premises or any matters relating to periods prior to the Commencement Date). Any access by Landlord to patient records or medical records shall be strictly governed by Laws governing patient confidentiality and privacy and the confidentiality of medical records and all appropriate consents and/or waivers from residents or their guardians or representatives shall have been obtained before access to such records shall be granted. Landlord shall make reasonable efforts not to materially interfere with or materially disrupt Tenant's business and use and enjoyment of the Leased Premises during any such inspection or examination. Landlord shall also have the right but not the obligation to conduct a physical inspection of the Facility and from time to time and within ninety (90) days prior to the expiration of the Term or earlier termination of the Lease, upon twenty-four (24) hours advance oral notice. If Landlord reasonably determines based on this inspection that the Facility, or any portion of the Facility, requires repairs or maintenance so that the condition of the Facility is in compliance with this Lease and all Laws, then within thirty (30) days of notification by Landlord, Tenant shall commence making said repairs and diligently pursue such repairs to completion. Should Tenant fail to do so, within seven (7) days of notification by Landlord, Tenant shall pay to Landlord a deposit of funds in an amount equal to Landlord's reasonable estimate of the costs of such repairs or maintenance, which funds shall be released to Tenant from time to time during the progress of such repairs and maintenance based on submission by Tenant of evidence reasonably satisfactory to Landlord that such work is complete and all costs and expenses incurred to date have been paid in full. Tenant and Landlord acknowledge that the operations of the Facility and its maintenance are the sole and absolute responsibility of Tenant. Landlord shall have no liabilities or obligations with respect to the Facility, including no liabilities or obligations with respect to inspections of the Facility or the failure by Landlord to inspect the Facility.

Notwithstanding anything to the contrary in this in this Lease, Landlord and Tenant agree that all information, records and data collected or maintained regarding Facility

residents shall be confidential. Landlord, Tenant, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable New York and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) and the regulations issued in connection therewith (collectively, "HIPAA"). No employee or agent of Landlord or Tenant shall discuss, transmit or narrate in any manner the Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility's assets, or otherwise fulfilling its obligations under this Lease or under law. The obligations under this Section 7.2 shall survive the termination of this Lease, whether by rescission or otherwise.

**Section 7.3 Changes in Licensure and Certification Status.** As of the Commencement Date, Tenant represents and warrants that the number of beds licensed or certified for the Facility is one hundred sixty (160). Tenant shall not increase or decrease the licensed or certified number of beds, or change the license or certification thereof, without the consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; Tenant may increase the number of licensed or certified beds of the Facility upon thirty (30) days prior written notice to Landlord, but without the prior written consent of Landlord. If required, Tenant shall not increase the number of beds without the consent of the Commissioner and/or the DOH and Tenant agrees to return to Landlord upon the expiration of the Lease, the Leased Premises. Should Tenant increase the number of licensed beds at the Facility, the Fixed Rent payable for the Facility shall be increased proportionately for such additional beds. In no event shall the Fixed Rent be reduced in the event the number of Licensed Beds at the Facility is reduced. Landlord and Tenant acknowledge that the Leased Premises are, and at all times under the Term of this Lease are, the sole and absolute property of Landlord. Upon any termination of this Lease or any Lease Default by Tenant hereunder (which breach or default is not cured within any applicable grace period), and subject to the approval of the DOH, Landlord shall have the right to cause the Facility's licenses to be reissued in Landlord's name or in the name of Landlord's designee upon application therefor to, and the receipt of approval from, the DOH and to further have the right to have any and all Medicare, Medicaid and any other provider and/or third party payer agreements issued in Landlord's name or in the name of Landlord's designee. In the event Landlord exercises its rights pursuant to this Section 7.3, Tenant and Guarantors shall cooperate with Landlord in transferring the aforementioned issues to Landlord's name or for the benefit of Landlord or as Landlord may direct pursuant to the terms of this Lease.

**Section 7.4 Reporting and Other Obligations.**

(a) During the Term, Tenant shall and shall cause all Subtenants, sub-subtenants and any operators of the Facility to provide (without duplication) Landlord and Mortgagee with the following reports, statements, and inspections:

(i) **Annual Budget.** Within 60 days prior to the projected Substantial Completion Date, and no later than thirty (30) days prior to the end of each calendar year thereafter, Tenant shall submit to Landlord an annual budget (each an "Annual Budget") covering the operations of and proposed capital expenditures to be made with respect to the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Annual Budget).

(A) Capital Expenditures. The Annual Budget shall include a capital budget (the "Capital Budget") outlining a program of capital expenditures as may be required by Laws, any order to Landlord, or Tenant's reasonable business judgment during the next calendar year (or the remainder of the current calendar year, in the case of the initial Capital Budget), in which each proposed capital expenditure will be designated as either mandatory, highly recommended or desirable. Tenant shall be responsible for designating as a "mandatory capital expenditure" any expenditure which, if not made would, in Tenant's reasonable judgment: (a) cause the Facility to lose or put at risk its License; (b) place at risk the safety of a patient or resident or employee of the Facility; (c) cause the ineligibility of the Facility under any third party payor program applicable to the Facility; (d) cause the issuance of a formal notice that any of the operating licenses for the Facility or any substantial portion of the Facility will be revoked or suspended or qualified in any material adverse respect; or (e) subject Landlord or Tenant to criminal prosecution. Tenant shall make during the calendar year, or calendar quarter for which they are budgeted, all capital expenditures approved by Landlord. On and after the Commencement Date, Tenant shall expend at least Five Hundred Twenty-Three Dollars (\$523.00) per bed per month for capital expenditures at the Facility, including amounts expended to comply with the licensure and other expenditures required by any Governmental Authority or such other amounts as may be required by Mortgagee from time to time. If Mortgagee requires Landlord to deposit sums for capital expenditures, replacements and/or refurbishments relating to furniture, fixtures, equipment and/or improvements to the Facility, then Tenant shall pay to Landlord, as Additional Rent hereunder, all reserve or escrow amounts, sums and/or deposits which Landlord is required to pay to such Mortgagee with respect to such capital expenditures, replacements and/or refurbishments. Tenant shall pay any and all of such amounts and sums to or as directed by Landlord as Additional Rent hereunder together with each payment of Fixed Rent hereunder. Tenant acknowledges that as of the date hereof, Mortgagee requires a monthly deposit of Five Hundred Twenty-Three Dollars (\$523.00) per bed with respect to the Facility. In the event that such deposits are made by Tenant hereunder, Landlord shall use its reasonable efforts, subject to the terms and conditions of the loan agreements with Mortgagee, to obtain disbursements of such funds to be used for the payment of or reimbursement for the costs of such capital expenditures, replacements and/or refurbishments.

(B) Operating Budget. The Annual Budget shall include an operating budget (the "Operating Budget") setting forth an estimate of operating revenues and expenses for the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Operating Budget), together with an explanation of anticipated changes in the Facility. Tenant shall provide to Landlord upon written request such other reports, including a cost comparison report, and all appropriate Medicare and Medicaid reports, as may be required under these programs, as are normally provided by Tenant to the owners of other similar rehabilitation hospitals, psychiatric hospitals, and skilled nursing facilities leased by Tenant.

(ii) Financial Reporting. Tenant will keep and maintain or will cause to be kept and maintained on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Tenant and all items of income and expense in connection with the operation on an individual basis of the Facility. Notwithstanding the foregoing, Tenant's interim unaudited financial statements shall be prepared in accordance GAAP for interim financial information, but may not include all information or notes required by GAAP for a complete set of financial statements; such financial statements

shall include all adjustments and reclassifications of a normal recurring nature considered necessary for a fair and comparable presentation; all such interim financial statements shall be read in conjunction with most recent audited financial statements. Landlord and Mortgagee shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Tenant or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Landlord and/or Mortgagee shall desire. After the occurrence of a Lease Default, Tenant shall pay any costs and expenses incurred by Landlord and/or Mortgagee to examine Tenant's accounting records with respect to the Facility, as Landlord and/or Mortgagee shall reasonably determine to be necessary or appropriate in the protection of Landlord and/or Mortgagee's interest.

(ii) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, as soon as available, and in any event (A) within thirty (30) days after each calendar month's end, unaudited monthly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the month then-ended and year to date, prepared on a basis consistent with the annual statements; monthly census and revenue information of the Facility as of the end of such month and year to date in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average monthly census of the Facility and year to date; an aged accounts receivable report from the Facility in sufficient detail to show amounts due from each class of patient-mix by the account age classifications of 30 days, 60 days, 90 days, 120 days, and over 120 days; (B) within forty-five (45) days after the end of each calendar quarter, unaudited quarterly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the quarter then-ended, prepared on a basis consistent with the annual statements; quarterly census and revenue information of the Facility as of the end of such quarter in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average quarterly census of the Facility; (C) no later than 120 days after the end of each calendar year of Tenant, audited annual financial statements of Tenant, prepared by an independent certified public accounting firm reasonably acceptable to Landlord, prepared in accordance with generally accepted accounting principles, with an unqualified opinion, and including a balance sheet, a statement of income and expenses for the year then ended, a statements of cash flow, and a schedule audited by such independent certified public accountant reconciling Tenant's net operating income to net cash flow, which shall itemize all adjustments made to net operating income in arrive at net cash flow deemed material by such independent certified public accountant.

(iv) Each financial report provided by Tenant shall reconcile and show variances between the actual experience incurred during each such reporting period with respect to each metric to the metric shown on the Operating Budget and Capital Budget for such period.

(v) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, any other reports and certificates reasonably requested by Landlord or Mortgagee from time to time.

(vi) In addition, Tenant shall prepare and deliver to Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, a written report providing an operational overview of significant events and circumstances at the Facility during the prior month, during the first six months of the Term and then quarterly thereafter, including, but not limited to, clinical events, employee relations and staffing matters and provide such other information as Mortgagee may require from time to time. Tenant shall provide Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, with a copy of all federal income tax returns of Tenant and its Subtenants within fifteen (15) days after filing thereof. Whenever practicable, all reports shall be delivered to Landlord electronically in a format usable by Landlord.

(b) All unaudited financial reports from Tenant shall include an Officer's Certificate certifying that such financial statements present fairly the financial condition and the results of the operations of Tenant and the properties being reported upon and that such financial statements have been prepared in accordance with the Tenant's customary accounting procedures. The Officer's Certificate accompanying the annual audited financial statements of Tenant shall also include a statement that they have been prepared in accordance with GAAP and whether there exists an event or circumstance which constitutes a default or an event of default under the Lease, the nature thereof, the period of time it has existed, and the action then being taken to remedy the same.

(c) Tenant shall furnish Landlord and Mortgagee, within five (5) days of the receipt by Tenant, any and all notices (regardless of form) from any Health Care Authority that Tenant's license, Medicare or Medicaid certification, or VA or other governmental program participation is being, or could be revoked or suspended, that action is pending, being considered or being taken to revoke or suspend the Tenant's license or certification or to fine or penalize the Tenant, or that action is pending, being considered, or being taken, to discontinue, suspend, deny, decrease or reduce any payments due, made or coming due to Tenant or related to the operation of the Facility other than in the ordinary course of business related to billing adjustments.

(d) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the receipt by Tenant, any and all notices (regardless of form) from any Governmental Authority or third party payor (i) alleging that the Facility has three or more deficiency(ies) of a scope and severity of "G" or hire, or one or more deficiency(ies) of a scope and severity of "J" or higher, (ii) alleging that the residents of the Facility are in jeopardy, (iii) freezing admissions to the Facility or (iv) denying reimbursement for any class of residents by any third party payor.

(e) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the sending or receipt by Tenant of any communication copies thereof, including a plan of correction, with respect to the matters referenced to Section 7.4(d).

(f) Tenant shall file all required reports, including without limitation, Medicare or Medicaid cost reports, on or prior to the date such reports are due (such due date to include approved regulatory extensions allowed by the applicable Governmental Authority for the filing of such reports) and shall furnish Landlord and Mortgagee, within thirty (30) days of the date of filing, a complete and accurate copy of the annual Medicare or Medicaid cost report

for Tenant, which will be prepared by Tenant and accompanied by an Officer's Certificate of Tenant certifying as of the date thereof that such report is accurate, complete and not misleading, and promptly furnish Landlord and Mortgagee any amendments filed with respect to such reports and all notices, responses, audit reports or inquiries with respect to such reports.

(g) Tenant shall furnish Landlord and Mortgagee, within thirty (30) days of the receipt by Tenant, the annual Medicaid and Medicare provider agreement(s) and the annual Medicaid and Medicare reimbursement rate sheets for the Facility.

(h) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt but at least five (5) days prior to the earliest date on which Tenant is required to take any action with respect thereto or would suffer any adverse consequence, a copy of any Medicare, Medicaid or other licensing or accreditation or rating agency or entity survey, report, warning letter, or notice, and any statement of deficiencies, and within the time period required by the particular agency for furnishing a plan of correction also furnish or cause to be furnished to Landlord and Mortgagee a copy of the plan of correction generated from such survey, report, warning letter, or notice to Tenant and any subsequent correspondence related thereto, and correct or cause to be corrected any deficiency, the curing of which is a condition of continued licensure or of full participation in Medicare or Medicaid or a care program offered by an insurance company, managed care company, or other third-party payor by the date required for cure by such agency or entity (plus extensions granted by such agency or entity).

(i) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any other notices or charges issued relating to the non-compliance by Tenant with any Governmental Authority, insurance company, managed care company, or other third-party payor laws, regulations, requirements, licenses, permits, certificates, authorizations or approvals, but only such matters which could reasonably be expected to have a material adverse effect on the financial condition of such Person or the operation of the Facility.

(j) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any new, revised or amended Medicare or Medicaid reimbursement rate sheets which may be issued subsequent to the annual reimbursement rate sheets.

(k) Tenant shall notify Landlord within five (5) days of any condition or event that constitutes a breach of any term, condition, warranty, representation or provision of this Lease or any other agreement between Landlord or its Affiliates and any Tenant, any Guarantor or any of their Affiliates, and of any adverse change in the financial condition of any Tenant, any Guarantor or any Affiliate of any Tenant or any Guarantor and of any Event of Default. Additionally, Tenant shall notify Landlord within seven (7) days after receipt of any formal or informal written notice or advice from its insurance carrier, reinsurance provider, accountants, actuary, any Governmental Authority, or any third party payor program provider of any actual, pending, threatened or contemplated increase in Tenant's reserves for expenses relating to malpractice or professional liability claims or any material increase in the premium costs for malpractice or professional liability insurance.

(l) To the extent performed, Tenant shall furnish Landlord and Mortgagee, a copy of written external consultant reports (including environmental, operations,



quality assurance, physical plant, property inspection, etc.) (which shall be delivered promptly upon receipt from the consultant).

(m) Tenant shall furnish Landlord and Mortgagee, a copy of cost reports as filed by Tenant.

(n) Any supporting documents or data requested by Landlord in connection with the items in this Section 7.4.

(o) Within 10 days of event of any of the following, Tenant shall deliver to Landlord, notice of:

(i) any rate appeal brought before any Governmental Authority or any administrator of any third party payor program or referral source;

(ii) any reimbursement appeals or recoupment claims made or contests pending or threatened as a result of any audits by any third party payor, and

(iii) any claim, requirement or demand (excluding all claims, requirements, and demands, if any, that have been waived) of any Governmental Authority, third party payor or insurance body or carrier having or claiming any licensing, certifying, supervising, evaluating or accrediting authority over the Leased Premises to rework or redesign the Leased Premises, its professional staff or its professional services, procedures or practices in any material respect or to make any of the Leased Premises conform to or comply with a legal requirement.

(p) The receipt by Landlord of any reports, statements, financial information, surveys or otherwise from Tenant or its Affiliates shall not in any way impose any obligation or liability upon Landlord to act or take any action upon any information, facts or circumstances which may be disclosed or shown therein and Landlord shall have no liability for its failure to act thereon or as a result thereof.

(q) Financial Covenants. Tenant covenants and agrees to the following, as may be amended time to time as required by Landlord's 1st or 2nd Mortgagee:

(i) Commencing the third full quarter of the Term Tenant's Current Ratio shall not be less than 1.1 to 1.0. The term "Current Ratio" means the current assets of Tenant divided by the current liabilities of Tenant determined in accordance with GAAP.

(ii) For each quarter of the Lease Term commencing the third full quarter following the Commencement Date, Tenant's Lease Coverage Ratio shall be not less than 1.25 to 1.0.

(iii) For each quarter of the Lease Term commencing the second full quarter following the Commencement Date, the Facility shall have achieved the EBITDAR benchmarks as described on Schedule 7.4, attached hereto. The term "EBITDAR" is defined in Schedule 7.4.

Section 7.5 Payment in the Ordinary Course. Tenant shall pay in full: (a) prior in each case to the date when penalties would attach, all Impositions (except only those so long as and to the extent that the same shall be contested in good faith by appropriate and timely proceedings and for which adequate reserves have been established in accordance with GAAP), provided that (i) Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) for which Tenant may be or become liable; (ii) no Lease Default has occurred and remains uncured, (iii) such proceeding shall suspend the collection of such Impositions or the Impositions shall have been paid, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Tenant is subject and shall not constitute a default thereunder, (v) no part of or interest in the Leased Premises will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Tenant shall have furnished such security as may be required in the proceeding, or as may be requested by Landlord or Mortgagee, to insure the payment of any such Impositions, together with all interest and penalties thereon, which shall not be less than 125% of the unpaid Impositions being contested and (vii) Tenant shall promptly upon final determination thereof pay the amount of such Impositions, together with all costs, interest and penalties; (b) all of Tenant's wage obligations to Tenant's employees in compliance with the Fair Labor Standards Act (29 U.S.C. §§ 206-207) or any comparable provisions under federal, state or local law; (c) all obligations owed in connection with any claim, demand or notice of any overpayment received from Medicare, Medicaid or other third party payor; and (d) all of Tenant's obligations calling for the payment of money (except only those so long as and to the extent that the same shall be contested in good faith and for which adequate reserves have been established in accordance with GAAP, provided that Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) before such payment becomes overdue.

Section 7.6 Security Agreement. In order to secure the payment and performance of all of Tenant's obligations under this Lease and all of Tenant's obligations to Landlord, and all and all other documents contemplated thereby, Tenant hereby grants to Landlord a first priority security interest in and lien upon, all of the assets of Tenant including, without limitation, (i) all trade fixtures, equipment, furniture, merchandise, inventory and other personal property located from time to time in or upon the Leased Premises (including the proceeds thereof), and (ii) to the fullest extent permitted by applicable law, all accounts, accounts receivable, licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, certificates of need, and other authorizations issued to or held by Tenant with respect to the operation of the Facility skilled nursing facility and Tenant's interest in and rights under all third party payor provider agreements with respect to the Facility (the items listed in clauses (i) and (ii), together with the proceeds of same, are collectively, "Collateral"). The security interest granted to Landlord with respect to Tenant's tangible personal property is intended to be subordinate to any purchase money security interest or capital lease on any of Tenant's tangible personal property provided that Tenant has notified Landlord of the creation of such security interest or capital lease prior to the creation thereof and Landlord has approved same. Landlord agrees to subordinate its lien on Tenant's accounts receivable in favor of Tenant's accounts receivable lender, which shall be a nationally recognized nursing home accounts receivable lender with experience acceptable to HUD or Mortgagee on at least 20 nursing homes, securing up to a \$2,000,000.00 accounts receivable loan, provided such lender enters into an Intercreditor agreement reasonably acceptable to Mortgagee and Landlord. Should

Mortgagee require a subordination of the priority of Landlord's security interest in the Collateral, Landlord and Tenant shall execute such documents as Mortgagee may request to subordinate Landlord's lien to the Mortgagee's security interest in the collateral. In addition, Tenant's members shall grant to Landlord a first lien pledge (subject to the following sentence) of the membership interests of Tenant. To the extent required by Tenant's accounts receivable lender, Landlord agrees to subordinate its lien on Tenant's membership interests to a lien in favor of such lender securing up to a \$2,000,000.00 accounts receivable loan; provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. On or before the Commencement Date, Tenant shall provide Landlord with a detailed list and description of all the Collateral. Upon a Lease Default by Tenant, Landlord shall have all the rights and remedies of a secured party under the laws of the State of New York. Tenant, as debtor, shall cause to be executed (if appropriate or necessary) and delivered to Landlord, as the secured party, upon execution of this Lease by Tenant, UCC-1 Financing Statements in proper form, and thereafter, from time to time, deliver to Landlord such extensions and/or updates of such financing statements as are required for the purpose of perfecting and maintaining the priority of the security interest granted to Landlord herein, and to perform any other acts reasonably necessary to the perfection of such security interest. Tenant and Tenant's members consent to Landlord's preparation of and the filing of such financing statements by Landlord and agrees that the provisions of this Section 7.6 shall constitute a security agreement for the purposes contemplated hereby. The security interest granted by this Section 7.6 shall be in addition to any lien of Landlord that may now or at any time hereafter be provided by law. In the event Landlord exercises its remedies to foreclose the security interest created under this Section 7.6, or elsewhere in this Lease, Tenant shall cooperate with Landlord in transferring all of the aforementioned items promptly as requested by Landlord in Landlord's or its designee's name or for the benefit of Landlord. Tenant covenants and agrees that it shall not sell, move, surrender, cancel, modify, transfer, assign, relocate, pledge, grant a security interest in, convey or in any other manner encumber any assets of Tenant including, without limitation, the personal property, the certificate of need approval or any of the licensed or Medicare- and/or Medicaid-certified beds at the Facility, or any licenses for the Facility, or attempt at any time to do so, except as expressly provided hereunder and with the written consent of Landlord. This Section 7.6 and Landlord's rights and remedies hereunder shall survive the termination of the Lease.

Section 7.7 Working Capital. As of the Effective Date, Tenant shall have and maintain until the Commencement Date in accounts, acceptable to Landlord in its sole and complete discretion, an amount of funds equal to the greater of ("Working Capital") (i) any debt service reserve required by Mortgagee, (ii) the aggregate negative net operating income of Tenant for the period of months from the Commencement Date to the first day of the first two month period in which aggregate net income from operations exceeds zero, all as reflected in the projections attached hereto as Schedule 2.2 ("Cash Requirement"); for the purpose of this calculation net operating income shall be determined on a cash basis, and (iii) 4.5 million dollars. Working Capital shall not include any accounts or reserves established to satisfy the requirements of Section 7.1(a) (i) and (k). From and after the Commencement Date, the Working Capital, subject to any requirement of the Mortgagee, may be used by Tenant only to fund the Cash Requirement.

7.8 Refinance. Tenant shall fully cooperate with Landlord in its efforts to Refinance from time to time, including without limitation, providing all information and executing all

documents required by Landlord or its lender(s). On and after each Refinance Date the Fixed Rent for each twelve month period shall equal the sum of the amounts provided for in clauses (a) through (e): (a) the annual debt service payments (principal, interest, and mortgage insurance premiums, if any) that Landlord is required to pay to Lender pursuant to the first Mortgage (the "Mortgage Debt"), plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations; (b) the annual aggregate debt service payments or preferred equity payments that the Landlord is required to pay pursuant to the Junior Debt (or replacement thereof) (with the Mortgage Debt, the "New Debt Service"); plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations under the Junior Debt (or replacement thereof); (c) an annual amount equal to \$1,390,115; (d) an additional amount of \$250,000 per year prior to the fourth year of the Term; \$350,000 per year during Lease Years 4 and 5; and \$400,000.00 per Lease Year thereafter until the end of the Term, including all Extension Terms; and (e) an additional amount equal to one-half of the amount that (i) a sum equal to the last 12 months interest payment on the original Mortgage and Junior Debt exceeds (ii) New Debt Service.

ARTICLE VIII

PERSONAL PROPERTY

Section 8.1 Landlord's Personal Property. Upon the expiration or termination of this Lease, Tenant shall leave all personal property leased to Tenant hereunder, as required, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, in or on the Leased Premises, except for ordinary wear and tear. Any and all restorations, alterations or replacements of, or repairs, reconstructions or additions to, the personal property at the Facility made by Tenant shall become part of Landlord's personal property, and any and all security interests (except in favor of Landlord) in Tenant's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Tenant shall pay off in full the remaining payments due on all personal property leased by Tenant and such personal property shall become part of Landlord's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Any of Tenant's software, software licenses, proprietary information, and policies, and procedures of Tenant ("Retained Assets") shall not become part of Landlord's personal property except in the event of the termination of this Lease as a result of a Lease Default, in which case the Retained Assets shall become the personal property of Landlord; provided, however, upon request of Landlord, in consideration of a payment by Landlord or its designee of Ten Dollars (\$10.00) and any applicable lease, rent, or license fees owed to any third parties during the Transition Period (hereinafter defined), Tenant shall license Landlord or its designee(s) (at Tenant's cost with no mark-up) to utilize the Retained Assets for a period of one hundred twenty (120) days (the "Transition Period") in connection with the transition of operations from Tenant and Landlord's new operator(s). To the extent Tenant or any Subtenants are obligated under license agreements with third party vendors supplying software (and/or computer hardware which Tenant does not own or lease) to such Tenant, Tenant shall use its best

efforts to arrange for Landlord or Landlord to enter into licensing agreements with such third party vendors to allow Landlord or its designee to utilize such software and computer hardware supplied by such third party vendors for the duration of the Transition Period.

**Section 8.2 Tenant's Retained Assets.** At the termination of the Lease, Landlord shall have the right to purchase all or a portion of Tenant's Retained Assets located at the Facility at the lower of its fair market value or book value. To the extent any of Tenant's Retained Assets is subject to a license, Landlord shall have the right but not the obligation to assume some or all of such license Landlord's sole cost and expense and at no additional liability to Tenant.

## ARTICLE IX

### INDEMNIFICATION

**Section 9.1 Tenant's Indemnification** (a) During the Term of this Lease and after the surrender of the Leased Premises in accordance with Section 5.5 of this Lease, Tenant shall protect, defend (at Landlord's request), indemnify and hold harmless Landlord, Landlord's members, managers, officers, owners, directors, employees, agents, representatives, and Mortgagee and their respective agents, executors, heirs, representatives and assigns, and any entity providing financing which is secured by the Leased Premises (collectively the "Landlord's Indemnitees"), from and against any claims, losses, costs, penalties, damages, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) imposed or resulting from, arising out of or attributable in whole or in part to any of the following: (i) any violation of any Law, order of Governmental Authority, whether occasioned by the intentional act, omission, or negligence of Tenant or those holding under Tenant, (ii) any accident or other occurrence on or about the Leased Premises on or after the Commencement Date causing injury to any person or property whatsoever or whatsoever, including but not limited to patient care claims or elder abuse, (iii) any failure of Tenant in any respect to comply with or perform any term, condition, covenant, requirement and/or provision of this Lease, or a breach of this Lease by Tenant, including, but not limited to, a breach of any of Tenant's representations and warranties under Section 19.1 of this Lease, (iv) in any way relating to Tenant's use, operation and/or maintenance of the Facility (including, without limitation, third-party claims, whether by the State of New York, the United States, private insurer, private parties, for recoupment, false claims, or any other claims, assumption of and use by Tenant of Landlord's permits, variances, waivers, and certificate of need approval or its possession of the Leased Premises and/or (v) any liability under Section 20.14. The indemnity provided for herein shall survive the expiration of this Lease or the surrender of the Leased Premises for the period of the relevant statute of limitations.

(b) Any amounts which become payable by Tenant under this Article IX shall be paid within ten (10) days after liability therefor is determined by litigation or otherwise, and if not timely paid shall bear interest at the Prime Rate plus 5% (the "Overdue Rate") from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or may compromise or otherwise dispose of the same as Tenant sees fit provided that Landlord receives a full and complete release with respect to such claim, action or proceeding. Any legal

counsel selected by Tenant to defend Landlord shall be reasonably satisfactory to Landlord. All indemnification covenants are intended to apply to losses, damages, injuries, claims, costs, penalties, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) incurred directly or indirectly by the indemnified parties and their property, as well as by the indemnifying party or third party, and their property. For purposes of this Article IX, any acts or omissions of Tenant, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant. It is understood and agreed that payment shall not be a condition precedent to enforcement of the foregoing indemnification obligations. The "Prime Rate" shall mean on any date, a rate equal to the annual rate on such date publicly announced by Citibank, N.A. as its prime, base or reference rate. Such rate need not be the lowest rate charged by Citibank, N.A. If Citibank, N.A. discontinues its use of such prime, base or reference rate or ceases to exist, Landlord shall designate the prime, base or reference rate of another state or federally chartered bank with offices in New York, N.Y. to be used for the purpose of calculating the Prime Rate hereunder.

ARTICLE X

USE OF LEASED PREMISES

Section 10.1 Compliance with Laws and Regulations. Tenant shall use the Leased Premises solely as a licensed Medicare- and Medicaid-certified skilled nursing facility with at least the number of licensed and verified beds existing at the Facility on the Commencement Date, and for no other purpose (the "Intended Use"). On or before the Commencement Date, Tenant shall have acquired, and thereafter Tenant shall maintain all licenses, certificates, accreditations, approvals, permits, variances, waivers, provider agreements and other authorizations needed to operate the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility. Tenant hereby covenants, warrants and represents to Landlord that as of the Commencement Date and throughout the Term: (a) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be validly licensed and Medicare and Medicaid certified to operate a skilled nursing facility in accordance with the applicable rules and regulations of the DOH, federal governmental authorities and accrediting bodies, including, but not limited to, the United States Department of Health and Human Services ("DHHS"), CMS, and the DOH; (b) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be, certified by and the holder of valid provider agreements with Medicare and Medicaid issued by DHHS, DOH and/or CMS and shall remain so certified and shall remain such a holder in connection with its operation of the Leased Premises as a licensed and Medicare and Medicaid certified skilled nursing facility; (c) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be in compliance with and shall remain in compliance with all applicable Laws with regard to the operation of the Facility, including, without limitation, compliance under Laws governing patient confidentiality and privacy and the confidentiality of medical records; (d) Tenant (and any subtenant, operator or manager of Tenant) shall operate the Facility in a manner consistent with high quality skilled nursing services and sound reimbursement principles under the Medicare and Medicaid programs and as required under Laws; and (e) Tenant (and any subtenant, operator or manager of Tenant) shall not abandon, terminate, vacate or fail to renew any licenses,

certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or any other authorization which relates to the operation of the skilled nursing facility business or other permitted operations on the Leased Premises or in any way commit any act which will or may cause any such licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or other authorization to be revoked by any Governmental Authority or accrediting body having jurisdiction thereof.

Section 10.2 No Waste. Tenant shall not commit or suffer to be committed any waste on the Leased Premises nor shall Tenant cause or permit any nuisance thereon.

Section 10.3 Hazardous Materials and Hazardous Waste. (a) Tenant shall not place or hold any Hazardous Materials on or at the Leased Premises, except as is necessary for the ordinary course of its business as a skilled nursing facility in compliance with Section 10.1. If Tenant's business requires the use of any Hazardous Materials, other than such cleaning materials as are typically found in skilled nursing facilities in compliance with Section 10.1, Tenant shall notify Landlord in writing and shall comply with hazard communication and notification requirements of the Occupational Safety and Health Act ("OSHA") and all Laws which require notification of employees, the community or any governmental agency of the hazardous properties of such Hazardous Materials. For purposes of this Lease, "Hazardous Materials" means and includes any hazardous substance defined as such in OSHA, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous substance or material, as now or at any time hereafter in effect.

(c) Tenant shall not cause or allow any asbestos or any asbestos containing materials to be incorporated into any improvements or alterations which it makes or causes to be made on or to the Leased Premises. Tenant shall obtain and maintain O&M Programs for the Facility if the Facility is determined to contain asbestos or asbestos containing materials and upon Landlord's request, shall furnish copies of same to Landlord, Mortgagee or their designee(s).

(d) Tenant shall not place, hold or dispose of any Hazardous Waste on, under or at the Leased Premises except as specifically allowed in this Section 10.3. Tenant further agrees that it shall not use the Leased Premises as a treatment, storage, or disposal (whether permanent or temporary) facility for Hazardous Waste. If Tenant, in the ordinary course of its business as a skilled nursing facility generates Hazardous Waste, then Tenant shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to the appropriate use, storage, transportation and disposal of Hazardous Waste. For the purposes of this Lease, "Hazardous Waste" means and includes any hazardous material that has entered the waste stream or any contaminant or pollutant as defined as such in the Resource Conservation and Recovery Act, CERCLA, as amended, any so-called "Superfund" or "Superfund" law, the TSCA, or any other Law, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste. Tenant further agrees that it shall properly dispose in accordance with Laws of all "infectious waste" such as laboratory waste, pathological waste, blood specimens or products, patient or resident waste including, without

limitation, bandages and disposable gowns, sharp waste and any material generated by the production or testing of biological agents. Immediately upon receipt of any Environmental Notice (as hereinafter defined) from any Person, Tenant shall deliver to Landlord a true, correct and complete copy of same. "Environmental Notice" shall mean any note, notice, or report of any suit, proceeding, investigation, order, consent order, injunction, writ, award, or action related to or affecting or indicating the treatment, storage, handling, disposal, generation, spill, release or discharge of any Hazardous Waste or Hazardous Materials in, upon, under, from or affecting the Leased Premises. All of the terms, covenants, warranties and indemnifications contained in this Section 10.3 shall survive the expiration or termination of this Lease.

(e) Without in any way limiting Tenant's obligation to indemnify Landlord and Landlord's Indemnitees under Section 9.1 of this Lease, Tenant shall indemnify, defend (at Landlord's request) and hold harmless Landlord and Landlord's Indemnitees from and against any claims, losses, costs, damages or expenses of any and every kind whatsoever (including reasonable attorney's fees and expenses and consultant's and expert's fees and expenses) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord and/or Landlord's Indemnitees for, with respect to, or as a direct or indirect result of: (a) a breach by Tenant of the covenants set forth in Section 10.3 or, (b) caused, permitted or allowed by Tenant or any agent, employee, business, or licensee of Tenant, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, onto, or into the Leased Premises, the atmosphere, or any watercourse, body of water, or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, as amended, any so-called "Superfund" or "Superfund" law, or any other Law, relating to or imposing liability or standards of conduct concerning, any Hazardous Material) occurring from and after the Commencement Date; and the provisions of and undertakings and indemnification set out in this Section 10.3(d) shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever. If required by Mortgagee, Tenant shall enter into an agreement to indemnify, defend and hold harmless Mortgagee with respect to matters contained in this Section 10.3 and other similar matters pursuant to a form of agreement reasonably acceptable to Mortgagee. In no event however shall Tenant have any liability to Landlord or Landlord's Indemnitees for Hazardous Materials located at or under the Leased Premises prior to the Commencement Date or for the remediation of same.

(f) If Tenant or its employees, agents, or contractors violate the provisions of this Section 10.3, then, in addition to any other duty or obligation of Tenant hereunder, at law or in equity, Tenant shall be obligated to clean up, remove, and dispose of the material causing the violation, in compliance with all applicable environmental laws and repair any damage to and remediate the Leased Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord; provided that such work shall commence no later than thirty (30) days from the date of such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time and procedure for any clean-up, remediation or removal of material causing the violation under this provision, and Landlord shall have the right to require reasonable changes in such method, time or procedure.

(k) Landlord reserves the right from time to time, but not more than once a year, except in the event of an emergency or during the occurrence and continuation of an uncured Lease Default during the Term hereof, at Landlord's cost and expense (except that, in the event of a continuing and uncured Lease Default, at Tenant's sole cost and expense), to have the Leased Premises inspected by environmental engineers and/or specialists for the purpose of determining compliance by Tenant with any environmental laws, rules and regulations applicable to Tenant's operations in or about the Leased Premises and with the terms and conditions of this Lease dealing with environmental matters, including without limitation, the provisions of this Section 10.3. If the environmental assessment or report resulting from such inspection discloses any non-compliance with Laws, Tenant shall immediately, following receipt of the environmental assessment, take all such steps as are necessary to put the Leased Premises into compliance, including without limitation, cleaning up any spills or other emissions of Hazardous Wastes or Hazardous Materials, and reimburse Landlord for the costs of its inspection.

(l) Upon the expiration of the Term, or the earlier termination thereof, subject to the last sentence of Section 10.3(d) above, Tenant shall forthwith remove all Hazardous Materials and Hazardous Waste from the Leased Premises or any portion thereof in accordance with applicable Law. Landlord shall have the right to inspect the Leased Premises with regard to the management and disposal of Hazardous Materials and Hazardous Waste at all reasonable times during the Term.

ARTICLE XI

DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction. Tenant shall immediately notify Landlord of any casualty, fire, damage, destruction or injury ("Casualty") affecting the Facility, including a description of the Casualty, and whether the Casualty is such as to cause the Leased Premises to be unusable, in whole or in part, for the intended Use. Tenant shall proceed with reasonable diligence to repair or reconstruct the Leased Premises and Tenant shall be liable for any costs of repair or replacement to the Leased Premises, whether or not such Casualty, or the costs of repairing such Casualty, are fully covered by the proceeds of Tenant's insurance required to be carried hereunder. If such Casualty renders the Facility unusable for the purpose of this Lease and if Landlord's Mortgagee so requires, Landlord, upon notice to Tenant, Landlord may terminate this Lease and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance to the extent such difference results from Tenant's breach of Article VI. Notwithstanding the foregoing, if Landlord's obligations to its Mortgagee have been satisfied in full and the DOH approves and agrees to reimburse the costs of rebuilding the Facility, Landlord shall not so terminate this Lease with respect to the Facility, and Tenant shall repair or reconstruct the Leased Premises in substantially the same condition as just prior to the incident with the proceeds of the property casualty insurance carried by Tenant, as required hereunder (if not otherwise paid to the Mortgagee), and/or with funds of Tenant. Regardless of any Casualty, except as provided above, this Lease shall continue in full force and effect without any abatement of Rent, and Tenant shall

not be entitled to surrender possession of the Leased Premises as a result of such casualty. Landlord's receipt of Rent from Tenant's rental interruption insurance shall be credited against Rent payments due from Tenant hereunder. If Tenant fails to commence such repair or reconstruction within thirty (30) days of the Casualty, Landlord shall have the option, subject to the approval of the DOH if required by Laws, to either terminate this Lease upon written notice to Tenant or repair and reconstruct the Leased Premises in substantially the same condition just prior to the incident and costs and expenses incurred as a result thereof shall be deemed Additional Rent hereunder and shall be payable to Landlord by Tenant, upon demand. Upon payment of all such sums demanded by Landlord, Tenant may re-enter and resume possession of the Leased Premises pursuant to the terms of this Lease. All insurance proceeds collected under the Policies shall be paid to Landlord, and made available to Tenant to pay for or reimburse Tenant for the costs and expenses for such repairs and reconstruction subject to the terms, conditions and provisions of any mortgage or other loan documents encumbering the Leased Premises. If Mortgagee does not make the insurance proceeds available to Landlord, then Landlord may terminate this Lease upon thirty (30) days' notice to Tenant, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance.

Section 11.2 Precedence of Rights of Mortgagee. All provisions contained in the loan documents between Landlord and Mortgagee, or any other document in connection therewith which concern or pertain to the restoration of the Leased Premises, the application of insurance proceeds and any and all matters concerning a casualty, shall take precedence over and be in lieu of any contrary provision provided for in this Lease, and in all respects are binding upon Tenant who agrees to and acknowledges the same.

Section 11.3 Tenant hereby waives the provisions of Section 227 of the Real Property Law of the State of New York and acknowledges that the terms of this Article XI shall govern in lieu thereof.

**ARTICLE XII**

**EMINENT DOMAIN**

Section 12.1 Eminent Domain. (a) In the event that all or substantially all of the Leased Premises, or such portion of the Real Property which renders the balance of the Facility unsuitable for the purpose of this Lease, shall be taken by condemnation or right of eminent domain, this Lease shall terminate as of the day the taking authority takes possession of the Leased Premises, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except as otherwise expressly provided in this Lease. In the event only a portion (and less than substantially all) of the Leased Premises is taken by condemnation or right of eminent domain and the portion so taken does not render the balance of the Leased Premises unsuitable for the purposes of this Lease, as determined by Landlord, this Lease shall not terminate. In such an event, Tenant shall restore the Leased Premises with reasonable diligence with its own funds and with the proceeds of any award from the applicable public or quasi-public authority, or private corporation or individual having the

power of condemnation ("Award") to an architectural unit as nearly like its condition prior to such taking as shall be practicable. Notwithstanding anything to the contrary herein, this Section 12.1(a) is subject to the terms, conditions and provisions of any mortgage and other loan documents encumbering the Leased Premises.

(i) Notwithstanding anything to the contrary contained in Section 12.1(a), Landlord may cancel this Lease with no further liability to Tenant, in the event that following a taking by condemnation or right of eminent domain, Mortgagee elects to require Landlord to repay the mortgage on the Leased Premises.

(j) Tenant shall not be entitled to any part of any award or settlement of damages representing the value of land and buildings appropriated, the value of this Lease or any estate therein, or damage to the residue of the Leased Premises or other property of Landlord; it being agreed as between Landlord and Tenant any such award shall be the sole property of Landlord. No appropriation of part or all of the Leased Premises or cancellation of this Lease pursuant to this Article XII shall be deemed an eviction of Tenant or a breach of any covenants of Landlord hereunder.

ARTICLE XIII

NOTICES

Section 13.1 Notice. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if (a) hand delivered or sent by (b) certified or registered United States mail, postage prepaid, return receipt requested or (c) Federal Express or other nationally recognized overnight next business day courier service at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 13.1):

If to Tenant:

HBL SNP, LLC  
1280 Albany Post Road  
Crown-on-Hudson, New York 10520

with a copy to:

Michelman & Robinson  
800 Third Avenue, 24th Floor  
New York, NY 10022  
Attn: Mark Zafrit, Esq.  
Telephone: 212.730.7700

If to Landlord:

White Plains Healthcare Properties I, LLC,



2 Bourbon Street, Suite 200  
 Peabody, Ma 01960

with a copy to:  
 Gerald Y. Billow, Esq.  
 Posternak Blankstein & Lund LLP  
 800 Boylston Street, Suite 3200  
 Boston, Massachusetts 02199

-and-

Howard Fensterman, Esq.  
 Abrams Fensterman  
 111 Marcus Avenue  
 Lake Success, New York 11042

The effective date of such notices shall be as follows: (a) upon delivery or refusal of delivery if sent by personal delivery, (b) two (2) Business Days after mailing (or upon actual receipt, if earlier), if sent by certified or registered mail, (c) one (1) Business Day after deposit with the courier for next business day delivery, if sent by overnight courier. The term "Business Day" means any day other than (i) a Saturday or a Sunday, and (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

Section 13.2 Notices to Mortgagee. (a) Tenant hereby agrees, upon request of Mortgagee, to give to Mortgagee copies of all notices given by Tenant of default by Landlord under this Lease at the same time and in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord. Such Mortgagee shall have the right to remedy any default under this Lease, or to cause any default of Landlord under this Lease to be remedied, and for such purpose Tenant hereby grants such Mortgagee such period of time as may be reasonable to enable such Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default which is a default. Tenant shall accept performance by such Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No default by Landlord under the Lease shall exist or shall be deemed to exist: (i) as long as such Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (ii) if possession of the Leased Premises is required in order to cure such default, or if such default is not susceptible of being cured by such Mortgagee, as long as such Mortgagee, in good faith, shall have notified Tenant that such Mortgagee intends to institute proceedings under the mortgage and, thereafter, as long as such proceedings shall have been instituted and shall prosecute the same with reasonable diligence and, after having obtained possession, prosecutes the cure to completion with reasonable diligence. This Lease shall not be assigned by Tenant or modified, amended or terminated without Mortgagee's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed. In the event of the termination of this Lease by reason of any default thereunder or for any other reason whatsoever except the expiration thereof, upon such Mortgagee's written request, given

within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Mortgagee or its designee or nominee a new lease of the Leased Premises for the remainder of the Term of the Lease upon, at a minimum, all of the terms, covenants and conditions of this Lease. Neither such Mortgagee or its designee or nominee shall become liable under this Lease unless and until such Mortgagee or its designee or nominee becomes, and then only for so long as such Mortgagee or its designee or nominee remains, the fee owner of the Leased Premises or the owner of the leasehold interest of Landlord under this Lease. Such Mortgagee shall have the right, without Tenant's consent, to, as the case may be, foreclose its mortgage or to accept a deed in lieu of foreclosure of such mortgage.

(b) In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Mortgagee, and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such Mortgagee within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Mortgagee shall have become entitled under its loan documents with Landlord in connection therewith, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy).

ARTICLE XIV

QUIET ENJOYMENT

Section 14.1 Quiet Enjoyment. Landlord covenants, warrants and represents to Tenant that, provided no Lease Default exists under this Lease, Tenant shall at all times during the Term peacefully and quietly have, hold, occupy and enjoy the Leased Premises, subject to the terms and conditions of this Lease, without any hindrance, interference or molestation by Landlord or by, under or through Landlord.

ARTICLE XV

SUBLETTING AND ASSIGNMENT

Section 15.1 Subletting and Assignment (a) Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in the Landlord's sole and absolute discretion (and, if required by law, without the prior written consent of the Commissioner, which consent may be withheld in the Commissioner's sole and absolute discretion), transfer or assign this Lease or Tenant's interest in the Leased Premises or any part thereof or sublease all or any part of the Leased Premises. In all events of assignment, transfer or subletting, the prior approval of the DOH shall be required. Tenant shall not at any time, without the prior written consent of Landlord, which consent may be withheld or given in the sole and absolute discretion



of Landlord, pledge, mortgage, or hypothecate the leasehold estate hereby created or any interest of Tenant therein. The issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant aggregating to forty-nine percent (49%) or more of the stock, membership or ownership interest in Tenant or any subtenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; notwithstanding anything to the contrary, any change in the management or control of Tenant such that Lizer Josefovich does not control all of the decisions of Tenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof. Notwithstanding anything to the contrary, the issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant resulting in the aggregate interest of Lizer Josefovich, Marc Neuman, and their spouse or issue, or a trust for their benefit, equaling less than seventy-five percent (75%) of the stock, membership or ownership interest in Tenant or any subtenant to any person or entity shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; provided that any assignment by Lizer Josefovich to Joseph Josefovich made after five years after the Commencement date shall not be unreasonably denied by Landlord taking into account, among other things, the experience, performance record, and financial strength of Joseph Josefovich. The consent by Landlord to any transfer shall not constitute consent to any subsequent transfer or to any successive transfer. Further, subject to the provisions of Section 2.2, and without in any way limiting or otherwise affecting the provisions of this Lease, Landlord shall be permitted to assign this Lease and all agreements, duties, obligations and rights incidental thereto to any entity related to, or affiliated with Landlord, without any consent from Tenant. The term "transfer" shall mean any direct or indirect sale, conveyance, transfer, lease (including any amendment, extension, modification, waiver or renewal thereof), sublease, sub-sublease, assignment, mortgage, pledge, grant of a security interest or hypothecation, whether by operation of law or otherwise, whether voluntary or not, of or in (i) all or part of the Leased Premises (including any legal or beneficial direct or indirect interest therein) or (ii) any direct or indirect interest in Tenant. Notwithstanding anything to the contrary contained herein, Tenant may assign this Lease to, or enter into a sublease with, or transfer interests in an entity comprising Tenant to, an affiliate under common control with Tenant, or owned by Lizer Josefovich, Marc Neuman, or their spouse or issue, or a Trust for their benefit, without Landlord's consent, provided (x) Landlord is given thirty (30) days prior written notice of such intended transfer, assignment or sublease with copies of the organizational documents of the assignee, transferee or sublessee, (y) after such transfer, assignment or sublease, Lizer Josefovich controls all of the decisions of the assignee, transferee or sublessee, and (z) all required consents from, the Mortgagee, the DOH and/or the Commissioner (if required), have been obtained by Tenant. Notwithstanding the foregoing and any other provision contained herein to the contrary, no transfer or series of transfers of legal, economic, beneficial or equitable (direct or indirect) interest in the Lease or in Tenant's membership interest that requires DOH's consent shall occur without the prior written consent of Landlord and DOH. Tenant shall enter into such subordination agreements or subordination, non-disturbance agreements ("SNDAs") as Mortgagee may request from time to time.

Section 15.2 ~~Assignment and Related Matters~~. Any sublease shall be expressly subject and subordinate to all applicable terms and conditions of this Lease and provide that upon the expiration or earlier termination of this Lease, Landlord, at its option and without any

obligation to do so, may require any subtenant to ~~attorn~~ to Landlord, its successors and assigns, in which event Landlord shall undertake the obligations of Tenant, under such sublease from the time of the exercise of such option to the termination of such sublease; provided, however, that in such case Landlord shall not be liable for any prepaid rents, fees or other charges or for any prepaid security deposits paid by such subtenant to Tenant or for any other prior defaults of Tenant under such sublease. In the event that Landlord shall not require such attornment with respect to any sublease, then such sublease shall automatically terminate upon the expiration or earlier termination of this Lease, including any early termination by mutual agreement of Landlord and Tenant. In addition, any such sublease shall provide that in the event that the subtenant or other transferee receives a written notice from Landlord stating that a Lease Default has occurred or that an event or circumstance has occurred which with notice and/or passage of time would constitute a Lease Default, such subtenant or other transferee thereafter shall without further consent or instruction of Tenant pay all rentals accruing under such sublease directly to Landlord or as Landlord may direct; provided, however, that (a) as and to the extent that the amounts so paid to Landlord, together with other amounts paid to or received by Landlord on account of this Lease, exceed the amounts then due Landlord from Tenant under this Lease, the excess shall be promptly remitted to Tenant, and (b) at such time as the Lease Default has been cured and this Lease reinstated (if ever), Landlord shall notify and direct the subtenant(s) in writing to resume making payments of rentals under their sublease(s) directly to Tenant, or as Tenant may direct. Any such rentals collected from such subtenant or other transferee by Landlord shall be credited against the amounts owing by Tenant under this Lease in such order of priority as Landlord shall reasonably determine. Furthermore, any sublease or other agreement regarding a transfer shall expressly provide that the subtenant, assignee, manager or other transferee shall furnish Landlord, its lender, the Mortgagee, if applicable, the HUD Mortgagee, and/or the Commissioner, and for DOH, if applicable, with such financial, operational and other information about the Facility and subtenant, etc., as Landlord may request from time to time.

Section 15.3 Assignment of Subleases. To secure the prompt and full payment by Tenant of the Rent and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to the conditions hereinafter set forth and any required consent(s) from DOH, all of Tenant's right, title and interest in and to all permitted subleases, assignments, licenses and occupancy agreements, to the extent permitted by law, involving the Facility, as set forth on Schedule 15.3 attached hereto (the "Sublease", and the subtenant under a Sublease herein referred to as a "Subtenant") and hereby confers upon Landlord, its agents and representatives, a right of entry (subject to prior notice) in, and sufficient possession of, the Leased Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Sublease, and further agrees that the exercise of said right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Leased Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever; provided, however, that such assignment shall become operative and effective only if (a) a Lease Default shall occur and be continuing or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof or (c) there occurs a repossession under a dispossessionary warrant

or other re-entry or repossession by Landlord under the provisions hereof or (d) a receiver for all or a portion of the Leased Premises is appointed, and then only as to such of the subleases that Landlord may elect to take over and assume. At any time and from time to time within ten (10) days after Landlord's written demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants, with a photostatic copy of each of the Subleases. Upon request of Landlord, Tenant shall permit Landlord and its agents and representatives, and Mortgagee, its agents and representatives, to inspect all Subleases affecting the Leased Premises. Tenant covenants that each Sublease shall provide that the Subtenant thereunder shall be required from time to time, upon request of Landlord or Tenant, to execute, acknowledge and deliver, to and for the benefit of Landlord, an estoppel certificate confirming with respect to such Sublease the information set forth in Section 20.11 hereof.

Section 15.4 Additional Sublease Requirements. Tenant covenants and agrees that all Subleases hereafter entered into affecting the Leased Premises shall provide that (a) they are subject to this Lease and that the principals of the Subtenant acknowledge that they have read this Lease and accept the terms hereof, (b) the term thereof shall not end less than one (1) day prior to the Expiration Date hereof, unless Landlord shall consent otherwise, which consent may be withheld in Landlord's sole and absolute discretion, (c) the Subtenants will not do, authorize or execute any act, deed or thing whatsoever or fail to take any such action which will or may cause Tenant to be in violation of any of its obligations under this Lease, (d) the Subtenants will not pay rent or other sums under the Subleases with Tenant for more than one (1) month in advance, (e) the Subtenants shall give to Landlord at the address and otherwise in the manner specified in Section 13.1 hereof, a copy of any notice of default by Tenant as the landlord under the Subleases at the same time as, and whenever, any such notice of default shall be given by the Subtenants to Tenant; and (f) all of the representations, warranties and covenants given by Tenant to Landlord in this Lease, including but not limited to all reporting requirements and covenants set forth in Section 7.4 above, shall be made and given by each Subtenant for the benefit of Landlord, Mortgagee, and their respective successors and assigns.

Section 15.5 Transfers in Bankruptcy. (a) In the event of a transfer pursuant to the provisions of Title 11 of the United States Code or any statute of similar purpose or nature (the "Bankruptcy Code"), all consideration payable or otherwise to be delivered in connection with such transfer shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any consideration constituting Landlord's property pursuant to the immediately preceding sentence and not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. For purposes of this Section 15.5, the term "consideration" shall mean and include money, services, property and any other thing of value such as payment of costs, cancellation or forgiveness of indebtedness, discounts, rebates, barter and the like. If any such consideration is in a form other than cash (such as in kind, equity interests, indebtedness earn-outs, or other deferred payments, consulting or management fees, etc.), Landlord shall be entitled to receive in cash the then present fair market value of such consideration. If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment shall be given to Landlord by Tenant no later than fifteen (15) days after receipt of such offer by Tenant, but in any event no

later than ten (10) days prior to the date that Tenant shall file any application or motion with a court of competent jurisdiction for authority and approval to enter into such assumption and assignment. Such notice shall set forth (a) the name and address of the assignee, (b) all of the terms and conditions of such offer, and (c) the proposal for providing adequate assurance of future performance by such person under the Lease, including, without limitation, the assurance referred to in Section 365 of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease from and after the date of such assignment. Any such assignee shall execute and deliver to Landlord upon demand an instrument confirming such assumption.

(b) The term "adequate assurance of future performance" as used in this Lease shall mean (in addition to the assurances called for in Bankruptcy Code Section 365(1)) that any proposed assignee shall, among other things, (i) deposit with Landlord on the assumption of this Lease an amount equal to the greater of (x) two (2) times the then monthly Fixed Rent and Additional Rent or (y) such other amount deemed by the Bankruptcy Court to be reasonably necessary for the adequate protection of Landlord under the circumstances, as security for the faithful performance and observance by such assignee of the terms and obligations of this Lease, (ii) furnish Landlord with financial statements of such assignee for the prior three (3) calendar years, as finally determined after an audit and certified as correct by a certified public accountant, which financial statements shall show a net worth at least equal to the amount of the deposit referenced in (i) above, (iii) if determined by the Bankruptcy Court to be appropriate under the circumstances, grant to Landlord a security interest in such property of the proposed assignee as Landlord shall deem necessary to secure such assignee's future performance under this Lease, and (iv) provide such other information or take such action as Landlord, in its reasonable judgment, shall determine is necessary to provide adequate assurance of the performance by such assignee of its obligations under this Lease.

(c) If, at any time after Tenant may have assigned Tenant's interest in this Lease in a proceeding of the type described in Section 16.1 (iv) through (vii), this Lease shall be disaffirmed or rejected in any proceeding of the types described in Section 16.1 (iv) through (vii) hereof, or in any similar proceeding, or in the event of termination of this Lease by reason of any such proceeding or by reason of lapse of time following notice of termination given pursuant to Article XVI based upon any of the Lease Defaults set forth in said Section 16.1 (iv) through (vii) Tenant, upon request of Landlord given within thirty (30) days next following any such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord); shall (a) pay to Landlord all Rent due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant", enter into a new lease with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the expiration date of the term, unless sooner terminated as in such lease provided, at the same Fixed Rent and Additional Rent upon the then executory terms, covenants and conditions as are contained in this Lease, except that (i) Tenant's rights under the new lease shall be subject to the possessory rights, if any, of the assignee under this Lease and the possessory rights of any person claiming through or under such assignee or by virtue of any applicable Law, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant with due diligence, and (iii) such new lease shall require Tenant to

pay all Rent reserved in this Lease which, had this Lease not been so disaffirmed, rejected or terminated, would have accrued under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant shall default in its obligation to enter into said new lease for a period of ten (10) days next following Landlord's request therefor, then in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant as if Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 15.6 Management Agreement. Tenant agrees and acknowledges that it will not enter into any management agreements during the Term with regard to the Facility except with an entity (i) owned wholly by a an individual principal of Tenant which entity has been received establishment approval from the New York State Department of Health Public Health and Health Planning Council in compliance with 10 NYCRR 600.9(d)(1) and (ii) approved by HUD if the Facility is, or is about to be financed by a HUD program, and/or Mortgagee. Any such management agreement shall be subordinate to Landlord's rights hereunder, to the rights of Mortgagee and to the rights of the Commissioner. Tenant shall cause such manager to execute such documents as are required by Landlord or Mortgagee or by the Commissioner to effect such subordination.

Section 15.7 Memorandum of Lease. This Lease shall not be recorded, but either party may record a memorandum of lease in which shall describe the parties to this Lease, a description of the Leased Premises and a recitation of the Term. The party requesting that the memorandum of lease be recorded shall prepare and pay all costs of recording the memorandum of lease, and the other party agrees to execute at any and all times such instruments as may be reasonably required for such recording. Upon the expiration or earlier termination of this Lease, Landlord may release the memorandum of lease. For this purpose Tenant constitutes and appoints Landlord its true and lawful attorney in fact with full power of substitution to execute a release of such memoranda in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. To the extent any transfer tax, conveyance tax, excise tax, or similar tax is imposed by any Governmental Authority as a result of the recording of such Memorandum of Lease, or is otherwise due and payable as to Tenant's leasehold interest granted pursuant to this Lease, Tenant shall pay same to the applicable Governmental Authority.

ARTICLE XVI  
DEFAULT

Section 16.1 Default by Tenant and Remedies of Landlord. (a) Tenant shall be in default under this Lease upon the occurrence of any of the following events referred to herein individually or collectively as a "Lease Default" (any reference to such event occurring or involving Tenant shall be deemed to include any such event occurring or involving any of Tenant's Subtenants):

- (i) if Tenant fails to pay any installment of Rent within five (5) days after the date when due;
- (ii) if Tenant defaults in the prompt and full performance of any other of Tenant's covenants, obligations or agreements hereunder which are not specifically enumerated herein as a Lease Default and fails to correct such failure within thirty (30) days of receipt of written notice from Landlord of such default (unless such default cannot reasonably be cured within thirty (30) days, in which event such period shall be extended, provided Tenant shall have commenced in good faith to cure such default within the first such thirty (30) day period and shall proceed with all due diligence to correct such default thereafter but in no event more than ninety (90) days of receipt of such written notice);
- (iii) if the leasehold interest of Tenant shall be levied upon under execution or be liened or attached and such levy, lien or attachment is not removed within sixty (60) days of the date Tenant receives notice of it;
- (iv) in the event of a filing by or against Tenant of a petition under federal or state law pertaining to bankruptcy or insolvency or for a reorganization or other relief;
- (v) if Tenant shall admit in writing its inability to pay its debts generally as they become due;
- (vi) if Tenant is adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, with or without the consent of Tenant, a receiver or trustee of Tenant or of the whole or substantially all of its property;
- (vii) if Tenant makes any general assignment for the benefit of creditors;
  - (A) if Tenant abandons the Leased Premises or if, except as a result of damage, destruction or a partial or complete condemnation, Tenant ceases operations of the Facility, or Tenant closes any portion of the Facility;
- (viii) if Tenant receives a state or federal notice of termination of license or de-certification and such notice has not been suspended, extended, withdrawn or terminated prior to 30 days before the effective date of such termination or decertification by any Governmental Authority;
- (ix) if Tenant fails to maintain its qualifications for licensure as required by this Lease if failure to do so would result in an inability to operate the Facility or would result in the appointment of a receiver with respect to the Facility;
- (x) if any transfer or assignment of this Lease or Tenant's direct or indirect interest therein or a transfer of Tenant's direct or indirect equity ownership interests occurs in violation of this Lease;
- (xi) if any malpractice award or judgment exceeding any applicable malpractice insurance coverage and any applicable umbrella coverage by more than One Million

Dollars (\$1,000,000.00) shall be rendered against Tenant or any subtenant, and either (A) enforcement proceedings shall have been commenced by any creditor upon such award or judgment or (B) such award or judgment shall continue unsatisfied and in effect for a period of sixty (60) consecutive days without an insurance company reasonably satisfactory to Landlord having agreed to fund such award or judgment in a manner reasonably satisfactory to Landlord, or (C) such award or judgment has been appealed and without a bond having been posted to cover such amount that exceeds any insurance coverage, and in any case such award or judgment shall, in the reasonable opinion of Landlord, have a material adverse effect on the ability of Tenant or any subtenant to operate the Facility;

(xii) upon the denial, refusal to issue, or loss of any licenses, certifications, certificates, approvals, permits, variances, waivers, provider agreements and other authorizations necessary or required for Tenant to operate the Facility in accordance with the requirements of this Lease;

(xiii) if any of the representations or warranties made by Tenant under this Lease or any subtenant under its Sublease or otherwise proves to be untrue when made in any material respect;

(xiv) if any Governmental Authority having jurisdiction over the operation of the Facility removes ten percent (10%) or more of the patients or residents who reside in the Facility for violations of standards of care;

(xv) Tenant fails to give Landlord and Mortgagee timely notice or timely deliver copies of documents within the times required under Section 7.4 (c) through (o);

(xvi) Tenant's receipt of notice of an allegation or determination of "immediate jeopardy" (as such term is customarily used) or equivalent notice from any Governmental Authority or officer, acting on behalf thereof relating to the Facility;

(xvii) Tenant's receipt of notice of the freeze on admissions or the imposition of a denial of payment for new admissions or equivalent notice from any Governmental Authority or officer acting on behalf thereof relating to the Facility;

(xviii) Tenant's breach of its obligations under Section 3.5 including Tenant's failure to execute and deliver to Landlord within seven days of its request therefore any and all documents, certificates or agreement required or reasonably requested by Landlord, a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender or the Commissioner, including confirming the subordination required hereunder;

(xix) Tenant's breach of its obligations under Section 15.6 Management Agreement;

(xx) Tenant's breach of its obligations under Section 7.6 Security Agreement;



(xxi) Tenant fails to notify Landlord within twenty-four (24) hours after receipt of any notice from any Governmental Authority, terminating or suspending or threatening termination or suspension of any material license or certification relating to the Facility;

(xxii) a default beyond any applicable notice and cure periods under any Sublease, operating agreement, management agreement or any other material agreement relating to the Leased Premises or to which Landlord and Tenant are a party;

(xxiii) the creation of any indebtedness relating to the Leased Premises (other than trade payables which are not more than 30 days past due, not evidenced by a note and not in excess of One Million Dollars \$1,000,000.00);

(xxiv) the amendment, modification, restatement, termination or cancellation of any material contract relating to the Leased Premises, including but not limited to any Sublease, without Landlord's prior written consent, which consent shall not be unreasonably withheld;

(xxv) default or breach by Guarantor under the Guaranty beyond the expiration of any applicable cure period contained therein;

(xxvi) failure by Tenant to deposit all or any portion of the Security Deposit or Letter of Credit or to replace any portion of the Security Deposit or Letter of Credit utilized by Landlord;

(xxvii) a default or breach of any of the provisions set forth in Article XIX;

(xxviii) Tenant violates any term, covenant or condition of Tenant's Regulatory Agreement (with respect to a HUD financing) which violation is not cured within thirty (30) days of written notice to Tenant;

(xxix) a default or breach of the provisions set forth in Section 7.4(b) or a report required by Section 7.4 proves to be untrue in any material respect;

(xxx) any act or omission by Tenant or any Subtenant referenced in Section 7.4 that constitutes a default by Landlord under its loan documents with Mortgagee;

(xxxi) Tenant's failure to meet the covenants provided in Section 7.4 (g)

(xxxii) the sale or transfer or attempted sale or transfer of all or any portion of any certificate of need, bid or vote right or other similar authorization relating to any portion of the Facility or the Leased Premises, assignment or subletting in violation of the provisions of Section 15.1;

(xxxiii) the use of any portion of the Premises other than for the intended Use;

(xxxiv) the Facility appears on the Special Focus Facility List, or similar list established by CMS;

(xxxv) Tenant fails to procure the insurance coverage, or less of the insurance coverage, required by this Lease;

(xxxvi) Tenant enters into any corporate integrity agreement, settlement or consent decree, or deferred prosecution agreement with any Governmental Authority;

(xxxvii) Any Governmental Authority assesses a fine or penalty against, or with, Tenant that imposes a payment or fine upon Tenant in excess of \$75,000;

(xxxviii) The conviction of, or plea of no contest or nolo contendere by, Tenant or any member or beneficial owner of Tenant with respect to (1) any felony or (3) any misdemeanor that involves any act of fraud, embezzlement, theft or misappropriation;

(xxxx) Tenant fails to comply with its obligations in Section 18.1(n) within 10 days after written notice from Landlord; or

(xxxxi) Tenant or any Subtenant fails or refuses to execute escrow certificate required pursuant to Section 20.11, or otherwise complying with the requirements of Section 2.1 within ten (10) days after Tenant's receipt thereof.

Upon the occurrence of a Lease Default, Landlord, may, if Landlord so elects, upon five (5) days written notice of such election, forthwith terminate this Lease and Tenant's right to possession of the Leased Premises and, at Landlord's sole and absolute discretion, accelerate the payment of all Rent for the balance of the Term and declare the same presently due and payable in full provided, however, that with respect to a Lease Default under Section 16.1(a)(iv), this Lease shall automatically terminate. In the event of such Lease termination, Tenant shall immediately pay Landlord the then present value of all such accelerated Rent. Landlord, in addition to all other remedies given to Landlord at law or in equity, may by written notice to Tenant, without terminating this Lease, cause Tenant to apply to the DOH to install a manager and/or management consultant and/or a receiver having the necessary approvals from Governmental Authorities, of Landlord's choice, at Tenant's sole cost and expense or to the extent permitted by applicable law, reenter the Leased Premises by summary proceedings or otherwise. In any event, upon a Lease Default, Landlord may require Tenant to consent to a so-called "Change of Ownership" and Landlord may dispossess Tenant upon approval of the Change of Ownership or Certificate of Need by DOH, it being the understanding that under no circumstances is this Lease to be an asset for Tenant's creditors by operation of law or otherwise. In the event of such reentry, Landlord may relet the Leased Premises without being obligated so to do, and in the event of a reletting may apply the Rent therefrom first to the payment of Landlord's cost and expenses, including consultant and/or expert and attorneys' fees and expenses incurred by reason of such Lease Default, and the cost and expense of reletting including, but not limited to, repairs, renovation, or alteration of the Leased Premises and then to the amount of Rent and all other sums due from or payable by Tenant hereunder, Tenant remaining liable for all other sums due from or payable by Tenant hereunder and for any deficiency. Tenant shall also be liable for and indemnify Landlord against all amounts owed to



Medicare, Medicaid, all applicable third-party payor programs, third party payors, or residents, including, but not limited to, any overpayments received by Tenant, relating to the Term. Any and all such deficiencies shall constitute Additional Rent hereunder and shall be payable by Tenant monthly on the date herein provided for the payment of Rent. In addition to the foregoing remedies, Landlord shall immediately be entitled to retain the Security Deposit and draw on and retain proceeds of the Letter of Credit, and thereafter Tenant shall have no further claim, right, title or interest therein to the extent of Landlord's claims only.

Landlord acknowledges that its rights of reentry onto the Leased Premises set forth in this Lease do not confer on Landlord the authority to operate a nursing facility as defined in Article 28 of the Public Health Law on the Leased Premises and agrees that except in the event of a Lease Default Landlord will give the DOH, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of its intent to reenter the Leased Premises or to initiate dispossession proceedings or that the Lease is due to expire at least thirty (30) days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least sixty (60) days before expiration of the Lease.

Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossession proceedings and sixty (60) days prior to the expiration of the Lease, Tenant shall immediately notify by certified mail the DOH, Tower Building, Empire State Plaza, Albany, NY 12237 (or its then current address), of the receipt of such notice or service of such process or that the Lease is about to expire.

(b) Except as provided in this Lease to the contrary, Rent and other sums not paid when due (unless paid within any applicable grace period) shall bear interest from the date when the same are first payable under the terms of this Lease until the same shall be paid at an annual rate of interest equal to the Overdue Rate.

(c) Upon the filing of a petition by or against Tenant pursuant to the Bankruptcy Code, Tenant, as debtor and as debtor-in-possession, and any trustee who may be appointed shall: (i) timely perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (ii) pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Leased Premises an amount equal to the Rent and other charges otherwise due pursuant to this Lease; and (iii) reject or assume this Lease within one hundred twenty (120) days after the filing of such petition under the Bankruptcy Code or within such time period as the Bankruptcy Code may allow. Tenant, as debtor and as debtor-in-possession, and any trustee shall be deemed to have rejected this Lease in the event of the failure to comply with any of the above. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor, in the event of assumption and/or assignment is the prior written consent of any mortgagee in which this Lease has been assigned as collateral security.

(d) In the event of termination of this Lease by reason of any Lease Default by Tenant, or upon the expiration of the Term, then, and in any of such events, Tenant, upon Landlord's written request, shall to the greatest extent permitted by law, transfer to Landlord or its designees or assigns, or cause its Subsidiaries and/or Affiliates, to transfer to Landlord or its designees or assigns, the following: (i) all federal, state or municipal licenses,

certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements (including non-governmental) and other authorizations which relate to the operation of the Facility; and (ii) the name of the Facility as then commonly known to the general public. Tenant shall also prepare and file all notices required by applicable law in connection with such termination and shall also prepare and timely file all final Medicare and Medicaid cost reports. In the event Tenant fails or refuses to transfer any such licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, other authorization or trade name, then this provision shall constitute an act of assignment by Tenant to Landlord or its assigns without the necessity of any further written instrument. For this purpose, Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to complete or undertake such replacements in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

(e) Landlord shall have the option of taking over the operation of the Facility, or having the operation of the Facility taken over by a designee, in the event of a termination of this Lease for any reason, without Landlord or designee assuming any of Tenant's liabilities or obligations, including Tenant's liabilities and obligations with respect to employees, such as vacation, sick leave, health insurance and pension liabilities and Tenant's obligations under applicable law to offer and provide group health continuation coverage. Landlord shall give Tenant written notice of Landlord's intent to exercise the right set forth above, in which event, upon the approval of the DOH of the Change of Ownership, Tenant shall and shall cause the Subtenant to immediately turn over possession and control of the Facility without any further action having to be taken on the part of Landlord. At the request of Landlord, Tenant shall and shall cause the Subtenant to turn over any or all of inventories, personal property (including computer and telecommunications equipment but excluding any leased equipment) vehicles, and material contracts (including hospital, transfer, vendor, and managed care contracts).

(f) No failure of Landlord to enforce any rights or remedies upon default of Tenant shall prejudice or affect the rights of Landlord upon any subsequent or similar default.

(g) In the event of a Lease Default by Tenant of any of the terms, covenants, conditions or provisions of this Lease, which Lease Default is not cured within any applicable grace or cure period, Landlord shall have the right to invoke any remedy permitted to Landlord at law, in equity or otherwise. All remedies available to Landlord are declared to be cumulative and concurrent and the exercise of one shall not preclude or waive the right to exercise any other. No termination of this Lease and no taking or recovering of possession of the Leased Premises shall deprive Landlord of any of its remedies or actions against Tenant and Tenant shall remain liable for all past or future Rent, including all taxes, insurance premiums and all other charges and Rent payable by Tenant under this Lease, during and for the balance of the Term hereof. The bringing of any action for Rent or other default shall not be construed as a waiver of the right to obtain possession of the Premises.

(h) If suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent, or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and breach shall be established, Tenant shall pay to Landlord all expenses,

including reasonable attorney fees, incurred therefor. This subsection shall survive termination of this Lease.

**Section 16.2 Facility Operating Deficiencies.** On written notice of a request therefor by Landlord to Tenant, upon a Lease Default and for a period of time necessary to fully remedy the Lease Default, Tenant shall engage the services of a consultant, unaffiliated with Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to review the management of the facility for the purpose of making recommendations to remedy the Lease Default. Subject to applicable legal requirements governing confidentiality of patient records, the consultant shall have complete access to the Facility, its records, offices and facilities, in order that it may carry out its duties. Tenant shall cause such consultant to prepare and deliver to Landlord and Tenant a written report of its recommendations within ten (10) days after its engagement. If Tenant shall fail to designate a consultant approved by Landlord as provided above within five (5) days after Tenant's receipt of Landlord's notice, Landlord may designate such consultant by further notice to Tenant. Tenant shall be responsible for payment of all fees and expenses reasonably charged and incurred by the consultant in carrying out its duties. Tenant shall promptly implement any and all reasonable recommendations made by such consultant in order to promptly correct or cure the Lease Default; provided, however, that in no event shall Tenant implement any such recommendations if the same would constitute a violation of applicable legal requirements, violate any rule or regulation of the DOH, or would otherwise cause a Lease Default hereunder (e.g., a transfer or change in use of the Leased Premises), unless Landlord consents in writing to such Lease Default, which consent may be given or withheld in Landlord's sole and absolute discretion. Nothing herein shall impose any liability or obligation on Landlord to (a) request the appointment of a consultant or (b) otherwise remedy the Facility Operating Deficiency(ies) nor shall it deem Landlord an operator of the Facility.

**Section 16.3 Receivership.**

Tenant acknowledges that one of the rights and remedies available under applicable law for nursing facilities which fail to comply with the conditions of participation for Medicare or Medicaid is to apply to a court of competent jurisdiction for the appointment of a receiver to take possession of the Facility, to collect the rents, issues, profits and income of the Facility and to manage the operation of the Facility. Tenant further acknowledges that the revocation, suspension or material limitation of the certification of the Facility for provider status under Medicare or Medicaid (or successor programs) and/or the revocation, suspension or material limitation of a license relating to the operation of the Facility for its intended use under the laws of the State of New York will materially and irreparably impair the value of Landlord's investment in the Facility. Therefore, in the event of a Lease Default, and in addition to any other right or remedy of Landlord under this Lease, at the request of Landlord, Tenant shall request DOH to, or to the extent permissible under law, Tenant shall, petition any appropriate court, for the appointment of a receiver to take possession of the Facility, to manage the operation of the Facility under Tenant's licenses and certifications, to collect and disburse all rents, issues, profits and income generated thereby and to preserve or replace to the extent possible any such license and provider certification for the Facility or to otherwise substitute the licensee or provider thereof. The receiver shall be entitled to a reasonable fee for its services as a receiver. All such fees and other expenses of the receivership estate shall be added to the

monthly Rent due to Landlord under this Lease as Additional Rent. Tenant hereby irrevocably stipulates to the voluntary appointment of a receiver under such circumstances and for such purposes and agrees not to contest such appointment.

Section 16.4 Tenant's Waiver, Mitigation. In connection with the exercise by Landlord of any of its remedies under this Section 16, including the termination of this Lease, in whole or in part, Tenant waives, to the maximum extent permitted by applicable Laws, (1) any right of redemption, re-entry or repossession, (2) the benefit of any moratorium laws or any laws now or hereafter in force exempting property from liability for rent or for debt, (3) any duty on the part of Landlord to mitigate the damages recoverable from Tenant on account of any Lease Default by Tenant, except that notwithstanding the foregoing or anything in this Lease to the contrary, Landlord agrees to comply with any duty to mitigate damages where applicable Laws do not allow Tenant to waive such right, (4) the right to interpose any counterclaim (other than compulsory counterclaims) in any summary proceeding instituted by Landlord against Tenant in any court or in any action instituted by Landlord in any court for unpaid Rent under this Lease, and (5) any other right provided to Tenant under applicable Laws relating to a breach of or Lease Default under this Lease, including any rights to cure such breach or Lease Default.

ARTICLE XVII

ENTRY AND REIMBURSEMENT RIGHTS OF LANDLORD

Section 17.1 Entry and Reimbursement Rights of Landlord. In addition to those rights set forth in Section 7.2 of this Lease, Landlord reserves the right at all reasonable times during business hours and upon at least twenty-four (24) hours' advance oral notice to go upon and inspect the Facility and every part thereof (subject to applicable Laws pertaining to patient confidentiality and privacy and the confidentiality of medical records). If Landlord shall make any payments or perform any repairs on behalf of Tenant which are Tenant's obligation and which Tenant has failed to make after applicable notice from Landlord, then any reasonable amounts so paid by Landlord are agreed and declared to be Additional Rent, and shall be due and payable to Landlord by Tenant upon submission to Tenant of an invoice, bill, or statement therefor, together with interest charged at the Overdue Rate commencing on the date of such invoice, bill, or statement. Nothing in this Section 17.1 shall impose any liability or obligation upon Landlord.

ARTICLE XVIII

REPRESENTATIONS AND WARRANTIES

Section 18.1 Tenant's Representations, Warranties and Additional Covenants. Tenant represents, warrants and covenants to Landlord and agrees (all of which shall survive the delivery and execution of this Lease) as follows (all of Tenant's representations, warranties, and covenants shall be deemed to include, in addition to that specified herein, the identical warranties, representations, and covenants of all Subtenants, which Tenant agrees to set forth in any Sublease and which are hereby incorporated herein by reference as if set forth in full herein):

(a) Corporate. Tenant is a limited liability company duly formed and validly existing and in good standing under the laws of the State of New York, and has the limited liability company power and authority to own its property and assets and to carry on its business as now being conducted or as will be conducted on and after the Commencement Date.

(b) No Breach of Statute or Contract. The execution, delivery and performance of this Lease by Tenant and any Sublease by a subtenant will not breach any statute or regulation of any Governmental Authority, and will not as of the Commencement Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of Tenant's articles of organization, operating agreement, other material agreements, or any order, writ, injunction, decree, agreement or instrument to which Tenant is a party, or by which it or its property, may be bound.

(c) Authorization of Lease. The execution, delivery and performance of this Lease, and all Subleases, has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Tenant and this Lease constitutes the valid and binding obligation of Tenant, fully enforceable in accordance with its terms.

(d) No Litigation or Adverse Events. Except as set forth on Schedule 1B, (d) attached hereto and incorporated herein, there is no suit, claim, action or legal, administrative, arbitration, or other proceeding or governmental investigation pending or threatened, by or against Tenant, and there exists no event or condition of any character, which could prevent the consummation of the transactions contemplated by this Lease or materially adversely affect Tenant's performance of the terms and conditions hereunder.

(e) Conduct of Business. Subject to the express provisions herein, at all times after the Effective Date, Tenant shall, and cause its subtenants to (i) operate the Leased Premises (after the Commencement Date) and otherwise conduct its/their business in the ordinary course, and in compliance with all statutory and regulatory requirements of any federal, state or local authority, (ii) continue to operate the Leased Premises after the Commencement Date and maintain it in substantially its condition as of the Commencement Date, reasonable wear and tear excepted, including but not limited to repairs and replacements permitted or required under this Lease, and in a lawful manner, (iii) not encumber all or any portion of its assets or properties or the Leased Premises, including without limitation, certificates of need, bed rights, or provider agreements, (iv) preserve the goodwill of the Facility, (v) not take any action from an accounting perspective which would materially adversely affect the reimbursement formula or tax benefits with respect to the Leased Premises or any portion thereof, (vi) utilize the Leased Facility only for the Intended Purpose, (vii) not relinquish or attempt to transfer the location of or sell the skilled nursing facility license, certificate of need approval, Medicare or Medicaid certification or any other licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements or other authorizations, (viii) not refuse to admit patients without 30 days' written notice of intent to, and prior written consent of, Landlord, (ix) not dissolve, merge or consolidate with or into any other person or entity, or otherwise change its identity or company or capital structure, or (x) not change its name or its business address.

(f) Continued Existence. At all times on and after the Effective Date, Tenant shall cause to be done all things needed to preserve its rights and franchises and comply with all Laws applicable to it, and to continue to conduct its business in the ordinary course.

(g) Payment of Obligations. At all times on and after the Effective Date, Tenant shall timely pay, and cause its subtenants to timely pay, all of its/their obligations, indebtedness, taxes, charges and impositions, whether or not relating to the Leased Premises or this Lease, as they become due unless contested in good faith and diligently pursued only if permitted under and subject to the terms and conditions of this Lease.

(h) Notice of Default. At all times on and after the Effective Date, Tenant shall promptly notify Landlord of (i) any material default by Tenant relating to any indebtedness or obligation of Tenant, whether or not relating to the Leased Premises or this Lease, and (ii) any material violations by the Facility of any applicable Law.

(i) Compliance with Law. At all times on and after the Effective Date, Tenant shall comply in all respects, and cause its subtenants to comply in all respects, with all applicable Laws, including Medicare and Medicaid conditions of participation, to which it is subject or which are applicable to the Leased Premises and to Tenant's operation of the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility.

(j) Beds and CON. Tenant has been awarded a CON for construction and operation of 160 skilled nursing facility beds for use at the Lease Premises by DOH and such CON may be used in connection with this Lease.

(k) Tenant, on behalf of itself and its Subtenants, makes the Health Care warranties and representations set forth in Schedule 18(k) attached hereto and incorporated herein, to Landlord, its successors and assigns, which warranties and representations shall be true and correct as of Commencement Date and at all times during the Term.

(l) Except for the Subleases of the Leased Premises to the Operators, there are no subleases or sub-subleases or occupancy agreements (other than residence agreements with patients or residents) for any portion of the Leased Premises.

(m) Tenant shall maintain and comply at all times with all O&M Plans (Operation and Maintenance Plans covering the handling, treatment or maintenance of asbestos or Hazardous Materials) relating to the Leased Premises, or that shall be required in the future by Mortgagee or any HUD mortgagee or, where applicable, the Commissioner.

(n) Obligations prior to Commencement Date. In addition to all of Tenant's obligations provided in this Lease, Tenant shall:

(i) as soon as practical after the Effective Date, apply for all and rigorously pursue until obtained all Health Care Licenses;

(ii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain from DOH the maximize total project cost for the Facility approvable by DOH;



(iii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain the highest possible reimbursement rate with respect to the Medicare and Medicaid programs;

(iv) as soon as practical after the Effective Date, apply for and vigorously pursue until obtained provider agreements with third party payors providing reimbursement for skilled nursing facility services in the geographic area of the Facility;

(v) after the Effective Date take all actions requested by Landlord in order for Landlord to finance and complete Landlord's Work.

(vi) as soon as practical prior to the Commencement Date, hire, employ and train a staff adequate to provide services to the residents of the Facility immediately after the Commencement Date;

(vii) as soon as practical prior to the Commencement Date, purchase a sufficient inventory of food, medicines and other perishable items necessary to provide services to the residents of the Facility immediately after the Commencement Date;

(ix) as soon as practical prior to the Commencement Date, purchase and deliver to the Facility all small wares necessary provide services to the residents of the Facility immediately after the Commencement Date;

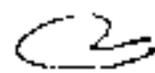
(x) six months after the Effective Date and thereafter every six months until the Commencement Date, deliver to Landlord a detailed projected statement of income and expenses and cash flow for a three year period.

Section 18.2 Representation and Warranties. Landlord hereby represents and warrants to Tenant, all of which shall survive the delivery and execution of this Lease, and agrees, as follows:

(a) No Breach of Statute or Contract. The execution, delivery, and performance of this Lease will not violate any provision of law, any order of any court or other agency of federal or state government or any provision of any indenture, agreement, or other instrument to which Landlord is a party or by which it or any of its properties or assets are bound; conflict with, result in a breach of, or constitute (with passage of time or delivery of notice, or both), a default under any such indenture, agreements or other instrument; or result in the creation or imposition of any lien or other encumbrance of any nature whatsoever upon any of the properties or assets of Landlord.

(b) Authorization of Lease. This Lease has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Landlord and this Lease constitutes the valid and binding obligation of Landlord, fully enforceable in accordance with its terms.

(c) No Litigation or Adverse Events. There is no action, suit, examination, review, or proceeding by or before any governmental instrumentality or agency now pending or, to the knowledge of Landlord, threatened against Landlord, which, if adversely determined,



would materially impact the right of Landlord to carry on the business as contemplated under this Lease.

(d) No Default. Landlord is not in default in the performance, observation, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which it is a party relating to the Leased Premises and which default would have a material adverse effect on the Leased Premises; and

(e) Corporality. Landlord is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of New York and is qualified to do business in the State of New York, and has the limited liability company power and authority to own its properties and assets and to carry on its business as now being conducted.

ARTICLE XIV

OPERATION, MERGER AND CONSOLIDATION RESTRICTIONS

Section 19.1 Intentionally Omitted

Section 19.2 SPE Provisions. At all times during the term of this Lease, Tenant represents, warrants and covenants that Tenant and each Subtenant, and all successors and assigns of Tenant and Subtenants, is, shall be and shall continue to be a "Special Purpose Entity" as defined in Schedule 19.2. The Operating Agreement of Tenant and each subtenant shall include the Special Purpose Entity provisions set forth in Schedule 19.2.

Section 19.3 Injunctive Relief. Notwithstanding anything to the contrary set forth in this Lease, the Parties hereto understand and agree that: (a) each term of Article XIX of this Lease is fully required to protect Landlord's interests, and that no such term confers a benefit on Landlord that is disproportionate to the detriment imposed on Tenant, if any; (b) the remedy at law for any breach by Tenant of Article XIX would be inadequate; (c) the damages flowing from such breach are not readily susceptible to measurement in monetary terms; and (d) Landlord shall be entitled to immediate injunctive relief restraining any breach thereof. Nothing in this Agreement shall be deemed to limit Landlord's remedies at law or in equity for any such breach by Tenant of any term or provision of Article XIX of this Lease.

Section 19.4 Equity Interests. In the event that Tenant or any constituent entity under this Lease is ever a form of entity other than a limited liability company, the term "membership interest" as used in Articles XIX and XX hereof shall be deemed to mean the analogous form of equity ownership interest in such other type of entity, such as capital stock, partnership interest, beneficial interest or the like.

Section 19.5 No Merger or Consolidation. Except as expressly provided elsewhere in this Lease, Tenant shall not sell, or offer for sale, its assets or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity other than selling non-material assets in the ordinary course of business, to any other entity, business or activity involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and

representatives. Except as expressly provided elsewhere in this Lease, Tenant, Subtenants, Guarantor(s) and their Affiliates, shall not sell or offer to sell, assign, transfer, convey, pledge, or encumber its/their membership interests to, or otherwise attempt to merge with or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity, business or activity, whether involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and representatives, or otherwise.

ARTICLE XX

MISCELLANEOUS

Section 20.1 GOVERNING LAW. (a) ALL MATTERS PERTAINING TO THIS LEASE OR THE LEASED PREMISES SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS LEASE, AND THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LANDLORD OR TENANT ARISING OUT OF OR RELATING TO THIS LEASE MAY AT LANDLORD'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF WHITE PLAINS, COUNTY OF WESTCHESTER, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND TENANT WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TENANT HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. TENANT DOES HEREBY DESIGNATE AND APPOINT:

Lizer Joscfovic  
HBL SNE, LLC  
1200 Albany Post Road  
Croton-on-Hudson, New York 10520

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO TENANT IN THE MANNER PROVIDED IN ARTICLE XIII OF THIS LEASE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON TENANT IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE

STATE OF NEW YORK, TENANT (A) SHALL GIVE PROMPT WRITTEN NOTICE TO LANDLORD OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREINAFTER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE, IN THE FORM OF A WRITTEN NOTICE TO LANDLORD, A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN WHITE PLAINS, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR AND NOTIFY LANDLORD IN WRITING OF SUCH SUBSTITUTION.

Section 20.2 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Lease shall not operate as, or be construed to be a waiver of, any subsequent breach of the same or other provision hereof. No waiver shall be effective unless set forth in writing and signed by the party against whom such waiver is asserted.

Section 20.3 Delay Not a Waiver. Neither any failure nor any delay on the part of any party hereto in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or any other document or instrument entered into or delivered in connection herewith or pursuant hereto, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. A waiver of one default with respect to any Person shall not be construed to be a waiver of any subsequent default with respect to such Person or any other Person or to impair any remedy, right or power consequent thereon.

Section 20.4 Force Majeure. Neither party shall be liable nor deemed to be in default (other than monetary defaults) for any delay or failure in performance under this Lease or other interruption of service or employment deemed resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Parties' employees, or any similar or dissimilar cause beyond the reasonable control of either party ("Force Majeure").

Section 20.5 Severability. In the event any provision of this Lease is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Lease so long as the intent of the parties under this Lease can still be effected, which shall remain in full force and effect and enforceable in accordance with its terms.

Section 20.6 Entire Agreement; Amendments. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such Parties are merged into and expressed in this instrument, and any and all prior agreements between such Parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Landlord and Tenant.

Section 20.7 Counterpart Execution; Electronic Execution. This Lease may be executed in any number of counterparts with the same effect as if the Parties hereto had signed the same document. All counterparts will be construed together and shall constitute one lease. Signatures transmitted by email as PDFs shall have the same effect as original signatures.

Section 20.8 Survival of Representations and Warranties. Except as specifically provided otherwise in this Lease, all representations and warranties of Landlord and Tenant shall survive the Term of this Lease.

Section 20.9 Use of Brokers. Landlord and Tenant each represent and warrant to the other that no broker, finder or other person has been involved in regard to this Lease. Landlord and Tenant hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind (including the injured party's reasonable attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of a party to this Lease in connection with the transactions contemplated herein. The provisions of this Section 20.9 shall survive the expiration and termination of this Lease.

Section 20.10 Owner for Federal Tax Purposes. It is hereby agreed between Landlord and Tenant that for federal, state and local income tax purposes Landlord will be the owner of the Leased Premises and Tenant will be the lessee thereof, and each party hereto agrees to characterize this Lease as a lease for federal, state and local income tax purposes and to file all tax returns consistent therewith.

Section 20.11 Extended Certificates. Tenant shall, without charge, at any time and from time to time, within ten (10) days after written request by Landlord or Mortgagee, deliver a written instrument to Landlord or any other person specified by Landlord, duly executed and acknowledged, certifying the following and such other matters as may be reasonably required by Landlord, including, without limitation, current financial information relating to Tenant:

- (a) That Tenant has accepted and is in possession of the Leased Premises;
- (b) That this Lease is unmodified and in full force and effect or, if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (c) Whether or not there are then existing any setoffs or defenses in favor of Tenant against the enforcement of any of the terms, covenants, and conditions of this Lease by Landlord and, if so, specifying the same, and also whether or not Landlord has observed and performed all of the terms, covenants, and conditions on the part of Landlord to be observed and performed and, if not, specifying same;
- (d) That no Lease Defaults exist or are continuing; and
- (e) The dates to which Rent and all other charges hereunder have been paid.



**Section 20.12 Confidentiality.** (a) Landlord and Tenant agree to keep all aspects of (but not the existence of) this Lease confidential, and shall not disclose to any person other than the members, managers, owners, directors, officers, employees, agents, advisors, affiliates, brokers, lenders, attorneys or accountants (collectively the "Representatives") of the Parties hereto on a need-to-know basis, or to any Governmental Authority pursuant to regulatory authority, any confidential or proprietary information, knowledge or data concerning the business, affairs, operations, secrets, dealings or finances of the other party furnished directly or indirectly by such other party (collectively referred to as the "Confidential Information"). As used in this Lease, the term "Confidential Information" does not include any information which: (i) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by either party or their Representatives); (ii) was available to either party on a non-confidential basis from a source other than a party to this Lease or its Representatives, provided that such source is not and was not bound by a confidentiality agreement with the party hereto; (iii) has been independently acquired or developed by either party or their Representatives without violating any of the obligations hereunder; (iv) is required by law to be disclosed; or (v) relates to the tax structure, tax strategy or tax planning of this transaction.

(f) In the event that either party or any of the Representatives receives notice of a legal request for disclosure of any of the Confidential Information (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), the party receiving such notice ("Receiving Party") shall promptly notify the other party ("Notified Party") so that the Notified Party may seek a protective order or other appropriate remedy if it chooses to do so. Failure by the Notified Party to take action to seek a protective order or other remedy and to notify the Receiving Party of such action prior to the required disclosure date, shall be deemed a waiver of the provisions of this section. In the event that a protective order or other remedy is not obtained or that the Notified Party waives compliance with the provisions hereof, the Receiving Party shall exercise its best efforts to obtain a confidentiality agreement or protective order concerning the Confidential Information, and in the absence thereof, shall disclose only that portion of the Confidential Information which it is advised by written opinion of counsel is legally required to be disclosed, or which is compelled by court order.

(g) In the event of any breach or threatened breach hereof, Landlord or Tenant shall be entitled to equitable relief, including a temporary preliminary and permanent injunction and specific performance, in addition to all other remedies available to them at law or in equity.

(h) Notwithstanding anything herein to the contrary, Landlord (and each employee, agent, or other Representative of Landlord) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of this Lease, related documents and all materials of any kind (including opinions or other tax analyses) that are provided to Landlord relating to such tax treatment and tax structure. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income tax treatment of the transaction and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of the transaction.

**Section 20.13 Holdover.** If, at the expiration of the Term, or earlier termination of the Lease, Tenant continues to occupy the Leased Premises except during a Reimbursement Period, with Landlord's consent, such holding over shall not constitute a renewal of this Lease, but Tenant shall be a Tenant from month-to-month at 300% of the most recent Rent payable by Tenant hereunder, at Landlord's sufferance, and under the same terms and conditions as were in force and effect at the expiration of the Term (except only as to the Term), and except that in the event Tenant shall continue to occupy the Leased Premises after the expiration of the Term, without a duly executed extension agreement in writing having been entered into by and between Landlord and Tenant, then if Landlord shall suffer any damage, loss, cost or expense as a result of such holdover, then Tenant, in addition to such increased Rent, shall pay the amount thereof to Landlord immediately on demand. The provisions of this Section shall be deemed to be "an agreement expressly provided" otherwise as provided in Section 232-C of the Real Property Law of the State of New York, Holding Over. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the Expiration Date or earlier termination of this Lease, nor shall anything contained herein be deemed to limit Landlord's remedies.

**Section 20.14 Tenant's Waiver of Claim for Physical Injury.** Landlord and Landlord's Indemnitees shall not be liable for, and Tenant waives and indemnifies Landlord and Landlord's Indemnitees against all claims for, damage or injury to person or property sustained by Tenant or any person claiming through Tenant, or otherwise, resulting from any accident or occurrence in, about, or upon the Leased Premises, whether occurring as a result of Landlord's active or passive negligence, or otherwise.

(a) Such waiver shall include, but not be limited to, claims for damage resulting from: (i) any equipment or appliances becoming out of repair or any other capital improvement, replacement, repair or maintenance; (ii) injury done or occasioned by wind; (iii) any defect in or failure of plumbing, heating, or air conditioning equipment, electric wiring, gas, water and steam pipes, stairs, rail or walks; (iv) broken glass; (v) the backing up of any sewer pipe or washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Leased Premises; (vi) the escape of steam or hot water; (vii) water, snow or ice being upon, falling from or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Leased Premises; (viii) the falling of any fixture, plaster, drywall or stucco; and (ix) any act, omission or negligence of trespassers.

**Section 20.15 Binding Effect.** This Lease does not constitute an offer to lease and shall not bind Landlord or Tenant unless and until each such party elects to be bound hereby by executing and delivering to the other party an executed original counterpart hereof.

**Section 20.16 Default by Landlord.** Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within sixty (60) days of when they are due to be performed, except in cases when documents are required or consents needed in less than sixty (60) days in which case failure to render timely shall be deemed to be approval or consent of Landlord (or such additional time as is reasonably required to correct any such default) except for Landlord's default in making timely payment of taxes and interest, in which case Landlord shall be in default when such payments are delinquent or past due. Tenant agrees to give to the

holder of record of any mortgage covering the Leased Premises notice simultaneously with any notice given to Landlord to correct any default of Landlord as hereinabove provided and agrees that the holder of record of any mortgage shall have the right, after receipt of notice of such default, within sixty (60) days after the expiration of Tenant's applicable cure period with respect thereto, to correct or remedy such default before Tenant may take any action under this Lease by reason of such default. Landlord shall also give to the holder of any mortgage copies of any notices of default which it may give or send to Tenant.

Section 20.17 Liens. Tenant shall not do or suffer anything to be done whereby the Leased Premises, or any portion thereof, or any interest therein, may be encumbered by any liens of mechanics, laborers, or materialmen, chattel mortgages or any other liens. Tenant shall, whenever and as often as any such liens are filed against the Leased Premises, or any portion thereof, purporting to be for labor or material furnished or to be furnished to Tenant, discharge the same of record within thirty (30) days after the date of filing by payment, bonding or otherwise, as provided by law. In the event of the default of Tenant in procuring this discharge, as aforesaid, of any such lien, Landlord may, with five (5) days prior notice, procure such discharge and the expenses incurred by Landlord in obtaining such discharge shall be paid by Tenant as Additional Rent within ten (10) days after notice from Landlord of the amount thereof.

Section 20.18 Publicity. All news releases, publicity or advertising by Tenant or their Affiliates through any media intended to reach the general public which refers to Landlord, or its Affiliates, this Lease or the purchase of the Real Property shall be subject to the prior written approval of Landlord.

Section 20.19 Trial by Jury. TENANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS LEASE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TENANT.

Section 20.20 Construction and Interpretation. The Parties have each negotiated the terms and conditions hereof and reviewed this Lease carefully. It is the intent of the Parties that each word, phrase, sentence and other part hereof shall be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part hereof against the draftsman, by virtue of being the draftsman, shall not apply.

Section 20.21 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than shall be due hereunder, shall be deemed to be other than a payment on account nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be given any effect or be deemed an accord and

satisfaction, and Landlord may accept such checks without prejudice to any other rights or remedies which Landlord may have.

Section 20.22 Captions and Headings. The captions and headings set forth in this Lease are included for convenience and reference only, and the words obtained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of, or the scope or intent of, this Lease, or any parts hereof or thereof.

Section 20.23 Time is of the Essence. Time is of the essence of each and every term, condition, covenant and warranty set forth herein or in any of the other Lease Documents.

Section 20.24 Successors and Assigns. This Lease and the other Lease Documents shall (a) be binding upon Tenant and Tenant's legal representatives and permitted successors and permitted assigns, and (b) inure to the benefit of Landlord and any other person or entity who may now or hereafter hold the interest of Landlord under this Lease and their respective successors and assigns.

Section 20.25 No Third Party Beneficiaries. This Lease is solely for the benefit of Landlord, its successors and assigns, and Tenant, and nothing contained herein shall confer upon any person other than Tenant or Landlord or their respective successors and assigns, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein, except only as may be otherwise specifically provided for in this Lease. All conditions to the obligations of Landlord to advance or make available proceeds of insurance or condemnation are imposed solely and exclusively for the benefit of Landlord, its successors and assigns. No other person or entity shall have standing to require satisfaction of such conditions in accordance with their terms, and no other person or entity shall, under any circumstances, be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Landlord at any time, if in Landlord's sole and absolute discretion, Landlord deems it advisable or desirable to do so.

Section 20.26 Non-Competition and Non-Solicitation.

Tenant agrees to the following restrictive covenants and agreements which covenants are not severable from this Lease and which are included to protect the value of the Leased Premises. Accordingly, Tenant agrees that it and their Affiliates will not, during the Term of this Lease at any time for a period of two (2) years after the expiration or early termination of this Lease, directly or indirectly, together or alone or in conjunction with any others, engage in the following:

- (i) compete with the business conducted at the Facility, and for those purposes will not own, manage, operate, join, control or participate in, or be connected as an officer, employee, partner, director, trustee or otherwise in any manner with a company which owns or operates (or provides consulting and/or management services to any skilled nursing facility located within the Primary Market of the Facility or (ii) any company providing hospice services in the Commonwealth of Massachusetts, or, otherwise lend credit to a person, firm or entity of a type which they prohibited from owning.

(ii) solicit or hire any then current or former (having provided services during the period commencing one year prior to each date of solicitation or hire) employees of the Facility (except for employment at the Facility).

(iii) solicit or cause any then current resident of the Facility to move to another nursing facility unless, except during the Term of this Lease the Facility can no longer provide adequate care for such resident.

Tenant acknowledges and agrees that the remedy at law for any breach or threat of breach of the foregoing agreements will be inadequate and that Landlord shall be entitled to injunctive relief in addition to any rights or remedies available to it for any breach or threat of breach hereof. The foregoing covenants shall be deemed to be severable and if the same be held invalid by reason of length of time or area covered, or both, the Tenant agrees that such length of time or area covered, or either of them, shall be reduced to the extent necessary to cure such invalidity and the provisions hereof shall be enforceable to the fullest extent permitted by law.

**Section 20.27 Subdivision.** If the Leased Premises are in excess of that which is required to operate the Facility in accordance with the Intended Use, Landlord may subdivide the Leased Premises and amend this Lease to include only so much of the Leased Premises as is necessary to operate the Facility in accordance with the Primary Intended Use. If Landlord subdivides the Leased Premises there shall be no change in the Rent payable hereunder. After any such subdivision, Tenant shall have no rights to any land which is no longer part of the Leased Premises and Landlord may sell, lease or develop any land which is no longer part of the Leased Premises. If Landlord elects to subdivide the Leased Premises Tenant shall cooperate with Landlord and take all actions reasonably requested by Landlord to effect such subdivision.

**Section 20.28 Landlord Not in Control; No Partnership.** None of the covenants or other provisions contained in this Lease shall, or shall be deemed to, give Landlord the right or power to exercise control over the affairs or management of Tenant, the power of Landlord being limited to the rights to exercise the remedies referred to in this Lease. The relationship between Tenant, on the one hand, and Landlord, on the other hand, is, and at all times shall remain, solely that of landlord and tenant. No covenant or provision of this Lease is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand. Landlord undertakes or assumes no responsibility or duty to Tenant or to any other person with respect to the Facility or this Lease, except as expressly provided in this Lease; and notwithstanding any other provision of this Lease (a) Landlord shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Tenant or its stockholders, members, or partners and Landlord never intends to ever assume such status; (b) Landlord shall not in any event be liable for any debts, expenses or losses incurred or sustained by Tenant; and (c) Landlord shall not be deemed responsible for or a participant in any acts, omissions or decisions of Tenant or their stockholders, members, or partners. Landlord, on the one hand, and Tenant, on the other hand, disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand, or any sharing of liabilities, losses, costs or expenses.

**Section 20.29 Tenant Cooperation.** Tenant agrees to cooperate with Landlord in providing, and upon request by Landlord or its lender, Tenant shall provide or cause its subtenants to provide, such documents, information, financial reports, and such other items as may be required by Mortgagee in connection with Landlord's loan or loans to acquire the Leased Premises. Tenant agrees to cause its outside counsel to provide updated healthcare opinions required by Mortgagee in connection with the healthcare operations by Tenant or its subtenants at the facility, and if required by Mortgagee, an opinion of counsel as to the due formation of Tenant and its subtenants and the execution by said parties, and Tenant Affiliates, of the Lease, all subleases, all guaranties of the Lease, and any other documents executed by such parties in connection with the loan(s) from Mortgagee to Landlord. Tenant agrees to execute, and cause the subtenants to execute, SNDAs in form and substance required by Mortgagee and by its prospective lender who will be making HUD-insured loans to Landlord. Tenant further agrees to cooperate with Landlord and with its lenders who are processing and will be making HUD Loans to Landlord.

**Section 20.30 Capitalized Terms.** To the extent capitalized terms used herein are not defined, they shall have the same meaning as capitalized terms in the Loan Documents.

**Section 20.31 Affiliates.** The term "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

**ARTICLE XXI**

**REMEDIES CUMULATIVE**

**Section 21.1** The rights and remedies set forth under this Lease are in addition to all other rights and remedies afforded to Landlord under any of the other documents contemplated under this Lease ("Lease Documents") or at law or in equity, all of which are hereby reserved by Landlord, and this Lease is made and accepted without prejudice to any such rights and remedies. All of the rights and remedies of Landlord under each of the Lease Documents shall be separate and cumulative and may be exercised concurrently or successively in Landlord's sole and absolute discretion.

**ARTICLE XXII**

**LIMITATION OF LIABILITY**

**Section 22.1 Liability.** No member, manager, officer, shareholder, employee or agent of Landlord or its respective affiliates shall be held to any personal liability, jointly, or severally, for any obligation of, or claim against Landlord under this Lease. All persons dealing with Landlord, in any way, shall look only to the assets of Landlord for the payment of any sum or the performance of any obligations.

Section 22.2 Consequential Damages. Under no circumstances shall Landlord be liable to Tenant or any subtenant or Affiliate of Tenant for any consequential, specified, exemplary or permitted damages.

Section 22.3 Liability Limited to Interest in Premises. Tenant shall look solely to Landlord's interest in the Leased Premises owned by Landlord to satisfy any liability arising under this Lease. It is specifically agreed that no constituent partner in Landlord or officer, director, member, manager or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. Except as otherwise expressly provided herein, in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause.

ARTICLE XXIII

REGULATORY ACTIONS

Section 23.1 Notice of Litigation. (a) Promptly after receipt by Tenant or its Affiliates of notice of the commencement thereof, Tenant shall provide Landlord with notice of all actions, suits, and proceedings before any Governmental Authority affecting Tenant, or its Affiliates or its Subtenants, which, if determined adversely to Tenant, its Affiliates or its Subtenants, could result in a judgment equal to or greater than Fifty Thousand Dollars (\$50,000.00).

(b) Notice of Regulatory Actions. Promptly after receipt by Tenant or its Affiliates of the notice of commencement thereof, Tenant shall provide Landlord with notice of (i) any audit, investigation, claim (excluding adjustments, complaints, and corrective activity in the ordinary course of business), proceeding, settlement, judgment, consent order, or corporate integrity agreement by or imposed by any Governmental Authority, (ii) any suspension, debarment or disqualification of Tenant, its officers and members, or its Affiliates from being a health care provider, government contractor, holder of any health care license or recipient of reimbursement from any third party payor, (iii) any suspension, termination, or revocation of any health care license of Tenant or any or any of Tenant's Affiliates or (iv) any self or voluntary disclosure of any overpayment to a third party payor by Tenant or any of Tenant's Affiliates.

(c) Notice of Settlement Negotiations. Tenant shall provide Landlord with reasonable notice of any and all settlement discussions and/or negotiations (excluding adjustments, complaints and corrective activity in the ordinary course of business) between representatives of Tenant and/or its Subtenants and any Governmental Authority, including without limitation negotiations with respect to any claim, settlement agreement, consent order or corporate integrity agreement between Tenant and its Affiliates and any Governmental Authority ("Settlement Discussions"). In connection with Settlement Discussions, (i) Tenant shall timely provide Landlord with copies of any and all documents that Tenant and/or its Subtenants intends to submit, or that Tenant and/or its Subtenants receives, in connection with any Settlement Discussions, and (ii) Tenant shall advise Landlord as to the status of the Settlement Discussions.

No receipt of any such notice under subsections (a), (b) and (c) shall impose any obligation on Landlord to take any action or to enforce its rights hereunder or otherwise remedy the circumstances leading to such notice.

#### ARTICLE XXIV

##### ANTI-TERRORISM AND ANTI-MONEY LAUNDERING COMPLIANCE

Section 24.1 Compliance with Anti-Terrorism Laws Tenant represents and warrants to Landlord that it is not, and, after making due inquiry, that no person who owns a controlling interest in or otherwise controls Tenant is, (i) listed on the Specially Designated Nationals and Blocked persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (ii) a person (a "Designated Person") either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "Anti-Terrorism Laws". Tenant represents and warrants that it requires, and has taken reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Tenant is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section 24.1 shall not apply to any person to the extent that such person's interest in Tenant is through a U.S. Publicly-Traded Entity. As used in this Lease, "U.S. Publicly-Traded Entity" means a person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person.

Section 24.2 Funds Invested in Tenant. Tenant represents and warrants that it has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in Tenant, to assure that funds invested by such holders in Tenant are derived from legal sources ("Anti-Money Laundering Measures"). The Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq. ("BSA"), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, "Anti-Money Laundering Laws").

Section 24.3 No Violation of Anti-Money Laundering Laws. Tenant represents and warrants to Landlord, to its actual knowledge after making due inquiry, that neither Tenant nor any holder of a direct or indirect interest in Tenant (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties

under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

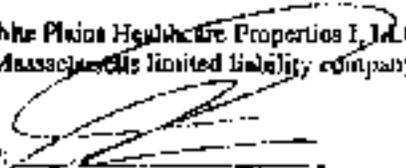
Section 24.4 Tenant Compliance with Anti-Money Laundering Laws. Tenant represents and warrants to Landlord that it has taken reasonable measures appropriate to the circumstances (in any event as required by law), to ensure that Tenant is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking.

[SEE ATTACHED SIGNATURE PAGES]

IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

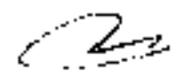
White Plains Healthcare Properties I, LLC,  
a Massachusetts limited liability company

By:   
\_\_\_\_\_  
\_\_\_\_\_, Manager

**TENANT:**

HBL SNF, LLC,  
a New York limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

White Plains Healthcare Properties I, LLC, a  
Massachusetts limited liability company

By: \_\_\_\_\_, Manager

**TENANT:**

HBL SNF, LLC, a  
New York limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

SCHEDULE 1B(k)

Health Care Representations

Health Care Representations. Tenant, for itself, and for the Subtenants, do hereby represent and warrant to Landlord, its successors and assigns, as of the date of the Lease, that:

(a) All Medicare and Medicaid provider agreements, certificates of need, if applicable, certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by Health Care Authorities (as defined in the Lease) for the legal use, occupancy and operation of the Facility (collectively, the "Health Care Licenses") for the Facility have been obtained by the party required to hold such Health Care Licenses and are in full force and effect, including approved provider status in any approved third-party payor program. Each Subtenant (hereinafter "Operator") owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all such Health Care Licenses and will operate or cause the Facility to be operated in such a manner that the Health Care Licenses shall remain in full force and effect;

(b) The Facility is duly licensed as a skilled nursing facility as required under the applicable laws of the State of New York. The licensed bed capacity of the Facility and the actual bed count operated at the Facility is 160. The Tenant has not applied to reduce the number of licensed or certified beds of the Facility or to move or transfer the right to any and all of the licensed or certified beds of the Facility to any other location or to amend or otherwise change the Facility and/or the number of beds approved by the DOH or other applicable state licensing agency, and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility;

(c) The Health Care License with respect to the Facility (i) has not been and will not be (A) transferred to any location other than the Facility or (B) pledged as collateral security (other than any pledge as collateral security to Tenant's accounts receivable lender approved by Landlord which pledge is subject to the interests of (x) Landlord under the Lease and (y) Mortgagee, including the liens and security interests of the Loan Documents), (ii) is and will continue to be held free from restrictions or known conflicts that would materially impair the use or operation of the Facility as intended, and (iii) is not provisional, probationary, or restricted in any way, except in instances where a Governmental Authority or Health Care Authority has issued a provisional, probationary or restricted license, permit or certification in the ordinary course pending issuance of a final license, permit or certification;

(d) Tenant has or will take any action to rescind, withdraw, revoke, amend, modify, supplement or otherwise alter the nature, tenor or scope of any Health Care

License or applicable provider payment program participation other than non-material alterations effected in the ordinary course of business;

(e) Tenant and the operation of the Facility are in material compliance with the applicable provisions of the Laws and all orders, standards, policies, restrictions or rules of any Health Care Authority having jurisdiction over the ownership, use, occupancy or operation of the Facility, including (i) staffing requirements, (ii) health and fire safety codes including quality and safety standards, (iii) accepted professional standards and principles that apply to the Operator's provision of services at the Facility, (iv) federal, state or local laws, rules, regulations or published interpretations or policies relating to the prevention of fraud and abuse, (v) insurance, reimbursement and cost reporting requirements, government payment program requirements and disclosure of ownership and related information requirements, (vi) requirements of applicable Health Care Authorities, including those relating to the Facility's physical structure and environment, licensing, quality and adequacy of nursing facility care, distributions of pharmaceuticals, rate setting, equipment, personnel, operating policies, and additions of Facility and services, and (vii) any other applicable laws, regulations or agreements for reimbursement for the type of care or services provided by Tenant and/ with respect to the Facility. As used herein, "material compliance" means a level of compliance that would keep Tenant and/ (and the operation of the Facility) free from any final orders or sanctions by any Governmental Authority or Health Care Authority having jurisdiction over the operation of the Facility and would not adversely affect Tenant's and/'s operations, including, but not limited to, its right to receive reimbursement or insurance payments;

(f) Tenant and the Facility are each in material compliance with the requirements for participation in the Medicare and Medicaid programs with respect to the Facility that currently participates in such programs and has a current provider agreement under Title XVIII and/or XIX of the Social Security Act which is in full force and effect. Facility has not had any deficiencies on its most recent survey (standard or complaint) that would result in a denial of payment for new admissions with no opportunity to correct prior to termination. The Facility had not any deficiencies at "level G" or above on its most recent survey (standard or complaint), nor has Tenant been cited with any substandard quality of care deficiencies (as that term is defined in Part 488 of 42 C.F.R.) for the past two consecutive surveys. The Facility has not been designated as a Special Focus Facility (as such term is defined by the Centers for Medicare and Medicaid Services Special Focus Facility Program);

(g) Neither Tenant nor the Facility is a target of, participant in, or subject to any action, proceeding, suit, audit, investigation or sanction by any Health Care Authority or any other administrative or investigative body or entity or any other third party payor or any patient or resident (including, without limitation, whistleblower suits, or suits brought pursuant to federal or state False Claims Acts, and Medicaid/Medicare/State fraud/abuse laws, but excluding medical malpractice claims and other civil liability lawsuits for which the Facility is maintaining insurance coverage in the ordinary course of business) which may result, directly or indirectly or with the passage of time, in the imposition of a fine, penalty, alternative, interim or final sanction, a lower rate

certification, recoupment, recovery, suspension or discontinuance of all or part of reimbursement from any Health Care Authority, third-party payor, insurance carrier or private payor, a lower reimbursement rate for services rendered to eligible patients, or any other civil or criminal remedy, or which could reasonably be expected to have a material adverse effect on Landlord, Tenant, or the operation of the Facility, including the Facility's ability to accept or retain residents, or which could result in the appointment of a receiver or manager, or in the modification, limitation, annulment, revocation, transfer, surrender, suspension or other impairment of a Health Care License, or affect Tenant's participation in the Medicare, Medicaid, or third-party payor program, as applicable, or any successor program thereto, or current rate certification, nor has any such action, proceeding, suit, investigation or audit been threatened;

(h) There are no agreements with residents of the Facility or with any other persons or organizations that deviate in any material adverse respect from or that conflict with any statutory or regulatory requirements. All resident records at the Facility, including patient and/or resident accounts records, are true, complete, and correct in all material respects;

(i) Other than the Medicare, Medicaid, and Veteran Administration programs, Tenant is not a participant in any federal, state or local program whereby any federal, state or local government or quasi-governmental body, or any intermediary, agency, board or other authority or entity may have the right to recover funds with respect to any Individual Property by reason of the advance of federal, state or local funds, including, without limitation, those authorized under the Hill-Burton Act (42 U.S.C. 291, et seq.). Tenant has received no notice, and is not aware of any violation of applicable antitrust laws;

(j) Tenant's private payor, Medicaid, Medicare, and/or managed care company, insurance company or other third-party insurance accounts receivable with respect to the Facility are free of any liens and Tenant has not pledged any of its receivables as collateral security for any loan or indebtedness;

(k) Tenant is not a party to any collective bargaining agreement or other labor contract applicable to persons employed by it at the Facility and there are no threatened or pending labor disputes at the Facility;

(l) Tenant has instituted, and the Facility is operated in material compliance with, a compliance plan which follows applicable guidelines established by Health Care Authorities;

(m) Tenant is in compliance with the Health Care Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder;

(n) There is no threatened or pending revocation, suspension, termination, probation, restriction, limitation, or non-renewal affecting Tenant and/or the Facility or provider agreement with any third-party payor, Medicare or Medicaid;

(o) All Medicare, Medicaid, and private insurance cost reports and financial reports submitted by or on behalf of the Facility are and will continue to be materially accurate and complete and have not been and will not be misleading in any material respects;

(p) The Facility and the use thereof complies in all material respects with all applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements and no waivers of such physical plant standards exist at the Facility;

(q) Any existing agreement relating to the management or operation of the Facility is in full force and effect and is not in default by any party. In the event any management or operating agreement is terminated or in the event of foreclosure or other acquisition, the subsequent operator need not obtain a certificate of need prior to applying for and receiving a license to operate the Facility or prior to receiving Medicare or Medicaid payments, as applicable;

(r) There are no actions, suits, or proceedings at law or in equity by any person or entity, including any Governmental Authority or any Health Care Authority or other agency now pending or threatened against or affecting Tenant and/or the Facility, which actions, suits or proceedings, individually or collectively, if determined against Tenant and/or the Facility, might materially adversely affect the condition (financial or otherwise) or business of Tenant and/or the condition, ownership or operation of the Facility.

SCHEDULE 19.2

"Special Purpose Entity" shall mean a corporation, limited partnership or limited liability company (such entity sometimes referred to herein as the "Company") which at all times on and after the date hereof:

(d) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Leased Premises, entering into this Lease with Landlord, subleasing the Leased Premises to affiliated subtenants; and (ii) transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(e) is not engaged and will not engage, directly or indirectly, in any business unrelated to those activities required or permitted to be performed under the Lease, including pursuant to this definition of "Special Purpose Entity" and Subsection (a) above, as applicable;

(f) does not have and will not have any assets other than those (i) related to the Leased Premises or its partnership interest in the limited partnership or the member interest in the limited liability company that operates the Leased Premises or acts as the general partner or managing member thereof, as applicable, and (ii) incidental personal property necessary for the conduct of its business, as applicable;

(g) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendments of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(h) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(i) has not failed and will not fail to correct any known misunderstanding regarding its separate identity;

(j) has maintained and will maintain its accounts, books and records separate from those of any other person, individual or entity (a "Person") and maintain its bank accounts separate from those of any other Person. To the extent required by law to file a tax return, will file its own tax returns, except to the extent it is required to file consolidated tax returns by law;

(k) has maintained and will maintain its own records, books, resolutions and agreements;

(l) has not commingled and will not commingle its funds or assets with those of any other Person and has not participated and will not participate in any cash management system with any other Person other than pursuant to its ~~insert any credit facilities or accounts receivables financings~~;

(m) has held and will hold its assets in its own name;

(n) has conducted and will conduct its business in its name;

(o) has maintained and will maintain its financial statements, accounting records and other entry documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(p) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees, if any, in light of its contemplated business operations and in accordance with all Laws;

(q) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(r) has and will have no indebtedness other than (i) liabilities under this Lease or any Sublease (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Leased Premises and the routine administration of Tenant, and (iii) such other liabilities that are permitted under this Lease;

(s) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Lease;

(t) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(u) has allocated and will allocate fairly, reasonably and in accordance with all Laws, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(v) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Tenant or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity;

(w) has not pledged and will not pledge its assets for the benefit of any other Person;

(x) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(y) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(z) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity;

(aa) has not identified and will not identify its partners, members or shareholders, or any Affiliates of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(ab) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (A) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are in compliance with all Laws and no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party and (B) in connection with this Lease;

(ac) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Rent payable under this Lease and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Rent is insufficient to pay such obligation;

(ad) it shall consider the interests of its creditors in connection with all limited liability company actions;

(ae) does not and will not have any of its obligations guaranteed by any Affiliate except obligations under this Lease;

(af) if such entity is a limited liability company, it shall have its own board of directors or board of managers, and shall cause such board to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other corporate formalities;

(ag) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct;

(ah) has not and will not permit any other Person independent access to its bank accounts;

(ii) has caused and will cause all representatives of Tenant to act at all times with respect to Tenant consistently and in furtherance of the foregoing; and

(iii) has not and will not form, acquire, or hold any subsidiary or own any equity interest in any other entity.

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<< Return to [Search Results](#)

### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
 Case Type: **Commercial Division**  
 Case Status: **Active**  
 eFiling Status: **[Full Participation Recorded](#)**  
 Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

[Display Document List with Motion Folders](#)

Sort By: Doc #

#	Document	Filed By	Status
1	<a href="#">SUMMONS + COMPLAINT</a>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
2	<a href="#">EXHIBIT(S)</a> - 1 <i>Operating Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
3	<a href="#">EXHIBIT(S)</a> - 2 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
4	<a href="#">EXHIBIT(S)</a> - 3 <i>Guaranty of Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
5	<a href="#">EXHIBIT(S)</a> - 4 <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
6	<a href="#">EXHIBIT(S)</a> - 5 <i>Notice of Default</i>	<a href="#">Donnellan, A.</a> Filed: 09/18/2020 Received: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
7	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> <i>Affidavit of service upon defendant HBL SNF Inc</i>	<a href="#">Coleman, W.</a> Filed: 09/18/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>

#	Document	Filed By	Status
8	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> affidavits of service of summons and complaint - all defendants	<a href="#">Coleman, W.</a> Filed: 10/07/2020 Received: 10/07/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
9	<a href="#">NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
10	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #1) Affirmation of Default of Alfred E. Donnellan	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
11	<a href="#">EXHIBIT(S)</a> - 1 (Motion #1) Complaint <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
12	<a href="#">EXHIBIT(S)</a> - 2 (Motion #1) Affidavit of Service	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
13	<a href="#">EXHIBIT(S)</a> - 3 (Motion #1) Confirmation Notices	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
14	<a href="#">EXHIBIT(S)</a> - 4 (Motion #1) Additional Notice	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
15	<a href="#">ORDER ( PROPOSED )</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
16	<a href="#">BILL OF COSTS</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
17	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
18	<a href="#">RJI -RE: NOTICE OF MOTION</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
19	<a href="#">ADDENDUM - COMMERCIAL DIVISION (840C)</a> (Motion #1)	<a href="#">Donnellan, A.</a> Filed: 10/28/2020 Received: 10/28/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
20	<a href="#">COURT NOTICE</a>	Court User Filed: 10/29/2020 Received: 10/29/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
21	<a href="#">ANSWER WITH COUNTER-CLAIM(S)</a>	<a href="#">Giardino, J.</a> Filed: 11/05/2020 Received: 11/05/2020	<b>Processed</b> <a href="#">Confirmation Notice</a>
22	<a href="#">NOTICE OF CROSS-MOTION</a> (Motion #2)	<a href="#">Giardino, J.</a> Filed: 11/05/2020	<b>Processed</b>

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Received: 11/05/2020

[Payment Receipt](#)

- 23 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION](#) (Motion #2)  
[Giardino, J.](#)  
Filed: 11/05/2020  
Received: 11/05/2020  
**Processed**  
[Confirmation Notice](#)
- 24 [EXHIBIT\(S\) - A](#) (Motion #2)  
*Email Correspondence*  
[Giardino, J.](#)  
Filed: 11/05/2020  
Received: 11/05/2020  
**Processed**  
[Confirmation Notice](#)
- 25 [EXHIBIT\(S\) - B](#) (Motion #2)  
*Proof of November Rent Payment*  
[Giardino, J.](#)  
Filed: 11/05/2020  
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**Processed**  
[Confirmation Notice](#)
- 26 [EXHIBIT\(S\) - C](#) (Motion #2)  
*Filed Answer*  
[Giardino, J.](#)  
Filed: 11/05/2020  
Received: 11/05/2020  
**Processed**  
[Confirmation Notice](#)
- 27 [MEMORANDUM IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION](#) (Motion #2)  
[Giardino, J.](#)  
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Received: 11/05/2020  
**Processed**  
[Confirmation Notice](#)
- 28 [ORDER \( PROPOSED \)](#) (Motion #2)  
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[Confirmation Notice](#)
- 29 [STIPULATION - WITHDRAWING MOTION/ORDER TO SHOW CAUSE](#) (Motion #1)  
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Received: 11/09/2020  
**Processed**  
[Confirmation Notice](#)
- 30 [DECISION + ORDER ON MOTION](#) (Motion #1)  
*Motion withdrawn*  
Court User  
Filed: 11/13/2020  
Received: 11/10/2020  
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- 31 [DECISION + ORDER ON MOTION](#) (Motion #2)  
*Motion withdrawn*  
Court User  
Filed: 11/13/2020  
Received: 11/10/2020  
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- 32 [JOINT ONE PAGE STATEMENT OF FACTS & PARTIES CONTENTIONS](#)  
[Donnellan, A.](#)  
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- 33 [EXHIBIT\(S\) - 1](#)  
*Copy of Pleadings*  
**Redacted** per 22 NYCRR §202.5(e)  
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- 34 [PRELIMINARY CONFERENCE ORDER \(PROPOSED\)](#)  
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- 35 [EXHIBIT\(S\) - 1](#)  
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- 36 [ORDER - PRELIMINARY CONFERENCE](#)  
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- 37 [COMPLAINT \(AMENDED\)](#)  
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	Filed: 11/30/2020 Received: 11/30/2020	Processed <a href="#">Confirmation Notice</a>
<i>Amended Verified Complaint</i>		
38 <a href="#">EXHIBIT(S)</a> - 1 <i>Amended and Restated Operating Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	Processed <a href="#">Confirmation Notice</a>
39 <a href="#">EXHIBIT(S)</a> - 2 <i>Jozefovic Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	Processed <a href="#">Confirmation Notice</a>
40 <a href="#">EXHIBIT(S)</a> - 3 <i>Neuman Guaranty of Lease Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	Processed <a href="#">Confirmation Notice</a>
41 <a href="#">EXHIBIT(S)</a> - 4 <i>Jozefovic Security Agreement Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	Processed <a href="#">Confirmation Notice</a>
42 <a href="#">EXHIBIT(S)</a> - 5 <i>Letter of Intent Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	Processed <a href="#">Confirmation Notice</a>
43 <a href="#">EXHIBIT(S)</a> - 6 <i>Notice of Default Redacted per 22 NYCRR §202.5(e)</i>	<a href="#">Donnellan, A.</a> Filed: 11/30/2020 Received: 11/30/2020	Processed <a href="#">Confirmation Notice</a>
44 <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> <i>Letter to Judge Walsh requesting pre motion conference</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	Processed <a href="#">Confirmation Notice</a>
45 <a href="#">EXHIBIT(S)</a> - 1 <i>Amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	Processed <a href="#">Confirmation Notice</a>
46 <a href="#">EXHIBIT(S)</a> - 2 <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	Processed <a href="#">Confirmation Notice</a>
47 <a href="#">EXHIBIT(S)</a> - 3 <i>Compared version of amended complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/04/2020 Received: 12/04/2020	Processed <a href="#">Confirmation Notice</a>
48 <a href="#">ANSWER TO THIRD PARTY COMPLAINT</a> <i>Verified Answer to Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	Processed <a href="#">Confirmation Notice</a>
49 <a href="#">REPLY TO COUNTERCLAIM(S)</a> <i>Verified Reply to Counterclaims</i>	<a href="#">Donnellan, A.</a> Filed: 12/11/2020 Received: 12/11/2020	Processed <a href="#">Confirmation Notice</a>
50 <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 01/11/2021 Received: 01/11/2021	Processed <a href="#">Confirmation Notice</a>
51 <a href="#">NOTICE OF MOTION</a> (Motion #3) <i>to file Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	Processed <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
52 <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF</a>	<a href="#">Donnellan, A.</a>	Processed

	<a href="#">MOTION</a> (Motion #3) <i>Affirmation of Alfred E. Donnellan in Support of Motion to file Amended Complaint</i>	Filed: 01/26/2021 Received: 01/26/2021	<a href="#">Confirmation Notice</a>
53	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>Complaint with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
54	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
55	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Amended Complaint with exhibits</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
56	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Redline version of Amended Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
57	<a href="#">EXHIBIT(S)</a> - E (Motion #3) <i>December 2, 2020 letter</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
58	<a href="#">EXHIBIT(S)</a> - F (Motion #3) <i>Security Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
59	<a href="#">EXHIBIT(S)</a> - G (Motion #3) <i>Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
60	<a href="#">EXHIBIT(S)</a> - H (Motion #3) <i>NY County Action Answer</i>	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
61	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 01/26/2021 Received: 01/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
62	<a href="#">NOTICE OF MOTION</a> (Motion #4) *Corrected*	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
63	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #4) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
64	<a href="#">EXHIBIT(S)</a> - A (Motion #4) <i>Complaint</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
65	<a href="#">EXHIBIT(S)</a> - B (Motion #4) <i>Answer</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
66	<a href="#">EXHIBIT(S)</a> - C (Motion #4) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 02/03/2021 Received: 02/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Document

Filed By

Status

- 67 [EXHIBIT\(S\)](#) - D (Motion #4)  
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**Redacted** per 22 NYCRR §202.5(e)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 68 [EXHIBIT\(S\)](#) - E (Motion #4)  
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[Donnellan, A.](#) **Processed**  
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Received: 02/03/2021
- 69 [EXHIBIT\(S\)](#) - F (Motion #4)  
AJA Form 0704  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
Received: 02/03/2021
- 70 [EXHIBIT\(S\)](#) - G (Motion #4)  
NYSDOH Communication  
[Donnellan, A.](#) **Processed**  
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- 71 [MEMORANDUM OF LAW IN SUPPORT](#) (Motion #4)  
[Donnellan, A.](#) **Processed**  
Filed: 02/03/2021 [Confirmation Notice](#)  
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- 72 [LETTER / CORRESPONDENCE TO JUDGE](#)  
[Donnellan, A.](#) **Processed**  
Filed: 02/04/2021 [Confirmation Notice](#)  
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- 73 [MEMORANDUM OF LAW IN OPPOSITION](#) (Motion #3)  
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- 74 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION](#) (Motion #3)  
[Giardino, J.](#) **Processed**  
Filed: 02/05/2021 [Confirmation Notice](#)  
Received: 02/05/2021
- 75 [EXHIBIT\(S\)](#) - A (Motion #3)  
Collateral Assignment  
[Giardino, J.](#) **Processed**  
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Received: 02/05/2021

# Exhibit E

## to Donnellan Aff.



**TEMPORARY  
CERTIFICATE OF OCCUPANCY**  
**DEPARTMENT OF BUILDING**  
**THE CITY OF WHITE PLAINS, NEW YORK**

Certificate No: 19-15394  
RE: Application No: 2016-0589BLDG Date of Issue: 10/31/2019  
Permit No: 2016-0589BLDG

**THIS CERTIFIES THAT THE BUILDING**(or portion of the building as noted below) located at:  
**120 CHURCH ST**  
City of White Plains, NY 10601  
SBL: 125.67-3-1

May be used subject to the following conditions:

Date of Occupancy: 10/31/2019 through 1/29/2020  
Type of Use Authorized: 438  
Portion of Building to be Occupied:

Land/Use Conditions: All affidavits and final inspections to be conducted and approved prior to issuance of final Certificate of Occupancy.

This T C O is to occupy the building.  
**The C of O is in process of being issued.**

The Owner of these premises by acceptance of this document hereby agrees to proceed expeditiously with all remaining work required to qualify the building for a final Certificate of Occupancy or Compliance and to call for all inspections relating thereto. Said owner is also required to maintain all portions of their premises in a safe condition, and to provide adequate safeguards to prevent all tenants and the public from entering into any active construction areas.

At the end of the time period specified above, this Temporary Certificate of Occupancy or Compliance will automatically expire. In order to continue occupancy of the building, either an extension of this Certificate or a Final Certificate of Occupancy or Compliance must be obtained from the Commissioner of Building.

This Certificate does not in any way relieve the owners, or any other person or person in possession or control of the building or any part thereof, from obtaining such other permits or licenses as may be prescribed by law for the uses or purposes for which the building is designated or intended; nor from complying with any lawful order issued with the object of maintaining the building in a safe condition.

**THIS CERTIFICATE IS ISSUED TO  
WHITE PLAINS HEALTHCARE**

Owner: **WHITE PLAINS HEALTHCARE  
PROPERTIES 1, LLC - JOSH ROCCAPRIORE  
2 BOURBON STREET, SUITE 200  
PEABODY MA 01960**

DAMON A. AMADIO, P.E. - COMMISSIONER OF BUILDING

# Exhibit F

## to Donnellan Aff.

# AIA Document G704™ – 2017

## Certificate of Substantial Completion

<b>PROJECT:</b> <i>(name and address)</i> White Plains Institute for Rehabilitation and Healthcare 120 Church Street White Plains, NY	<b>CONTRACT INFORMATION:</b> Contract For: General Construction  Date: June 12, 2017	<b>CERTIFICATE INFORMATION:</b> Certificate Number: 001  Date: October 4, 2019
<b>OWNER:</b> <i>(name and address)</i> White Plains Health Care Properties I, LLC  West Peabody Executive Center Suite 300 Peabody, MA 01960	<b>ARCHITECT:</b> <i>(name and address)</i> The Architectural Team, Inc. 50 Commandant's Way Chelsea, MA 02150	<b>CONTRACTOR:</b> <i>(name and address)</i> Congress/Consigli Joint Venture C/O The Congress Companies West Peabody Executive Center Suite 200 2 Bourbon Street Peabody, MA

The Work identified below has been reviewed and found, to the Architect's best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate.  
*(Identify the Work, or portion thereof, that is substantially complete.)*  
 This certificate applies to the entire job.

The Architectural Team, Inc.		Gary M. Kane	September 30, 2019
<b>ARCHITECT</b> <i>(Firm Name)</i>	<b>SIGNATURE</b>	<b>PRINTED NAME AND TITLE</b>	<b>DATE OF SUBSTANTIAL COMPLETION</b>

**WARRANTIES**  
 The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:  
*(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)*  
 Not Applicable

**WORK TO BE COMPLETED OR CORRECTED**  
 A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:  
*(Identify the list of Work to be completed or corrected.)*  
 See attached mottized Punch List dated October 4, 2019.

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first. The Contractor will complete or correct the Work on the list of items attached hereto within thirty (30) days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: ~~→~~ **SEE ATTACHED.** 

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:  
*(Note: Owner's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)*  
 Shall be in accordance with the Owner/Contractor agreement.

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion.

Congress/Consigli Join  
Venture C/O The Congress  
Companies

CONTRACTOR (Firm  
Name)

White Plains Health Care  
Properties I, LLC

OWNER (Firm Name)

SIGNATURE

PRINTED NAME AND TITLE

DATE

SIGNATURE

PRINTED NAME AND TITLE

DATE

# Exhibit G

## to Donnellan Aff.



Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

December 2, 2019

Andrew Blatt  
Consultant  
Pinnacle Health Consultants, LLC  
1890 Palmer Avenue  
Suite 204  
Larchmont, NY 10538

**Re: CON #092058**  
**Establish and construct a 160 bed RHCF; HBL SNF, LLC d/b/a The**  
**Rehabilitation and Nursing Center of White Plains**

Dear Mr. Blatt:

Based on the pre-opening survey conducted on September 19, 2019, the facility was found to be in substantial compliance with the applicable provisions of 10 NYCRR.

As a result of this inspection, approval is granted to use the areas that were renovated and/or constructed as part of the above-mentioned CON project. This approval is effective November 14, 2019.

If you have any questions regarding this letter, please contact Chris Chow at (631) 851-3612, [chris.chow@health.ny.gov](mailto:chris.chow@health.ny.gov). Written correspondence should be sent to the New York State Department of Health, Courthouse Corporate Center, 320 Curleton Avenue, Suite 5000, Central Islip, NY 11722.

Sincerely,

Chris Chow  
Principal Sanitarian  
Division of Nursing Homes and  
Intermediate Care Facilities/HO

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Index No. 60278/2020

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS  
COUNTERCLAIMS AND THIRD-PARTY CLAIMS**

DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Tel.: (914) 681-0200

-and-

ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO, FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
81 Main Street, Suite 306  
White Plains, New York 10601  
Tel: (914) 607-7010  
*Attorneys for White Plains Healthcare Properties I, LLC*

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**PRELIMINARY STATEMENT**

Plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”), and third-party defendants, CCC Equities, LLC (“CCCE”), Project Equity Consulting, The Congress Companies (“Congress”), Howard Fensterman and William Nicholson (collectively, “third-party defendants”), by their attorneys, DelBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, respectfully submit this memorandum of law in support of their motion for an order, pursuant to CPLR § 3211(a)(5) and 3211(a)(7) dismissing the counterclaims and third-party complaint (collectively, the “Claims”) asserted by defendants/third-party plaintiffs, HBL SNF, LLC (“HBL”), Lizer Jozefovic (“Jozefovic”) and Mark Neuman (“Neuman”) (collectively, “defendants”).

**SUMMARY OF ARGUMENT**

This action concerns a nursing home facility developed, financed, constructed and owned by WPH Properties located at 116-120 Church Street, White Plains, New York. WPH Properties leased the nursing home to HBL, an entity controlled by Jozefovic, which is the operator of the facility. WPH Properties commenced this action on September 18, 2020 seeking to recover the amounts due from HBL to WPH Properties as a result of HBL’s defaults under the lease, and a related letter of intent. The defendants filed an answer on November 5, 2020 asserting the Claims for an accounting, interest, breach of contract, fraud, fraud in the inducement and bad faith. In essence, the defendants assert that that WPH Properties and the third-party defendants failed to meet their obligations under a development agreement and the lease with respect to development, financing and construction of the nursing home facility.

The Claims should be dismissed, pursuant to CPLR 3211(a)(5) and (a)(7) because they have been released as against WPH Properties and fail to state viable causes of action.

First, WPH Properties and HBL are parties to the development agreement, which, as more fully demonstrated below, expressly provides that WPH Properties has fulfilled all its obligations and responsibilities. Pursuant to the development agreement, the Claims against WPH Properties -- asserted in the first, second and third causes of action -- were released and discharged upon substantial completion of the nursing home, which occurred in September 2019 before HBL took possession. The Claims were released as against WPH Properties pursuant to the lease as well. Under the lease, the defendants waived any claims they may have against WPH Properties in law or equity with respect to any aspect of the nursing home facility. The Claims asserted against WPH Properties in the first, second and third causes of action should therefore be dismissed pursuant to CPLR 3211(a)(5).

The defendants' first, second, fourth, fifth and sixth causes of action should be dismissed as well under CPLR 3211(a)(7) for failure to state a claim.

The first cause of action demanding an accounting should be dismissed because the defendants do not and cannot allege a fiduciary relationship between the parties, which is necessary to obtain an accounting.

The second cause of action seeks "imputed interest" on a purported loan of \$2,200,000 made by HBL to WPH Properties, but that claim is not viable because, even assuming that the \$2,200,000 was in fact a loan, the second cause of action expressly pleads that the parties made no provision for interest on the alleged loan.

The fourth, fifth and sixth causes of action alleging fraud in the inducement, bad faith and fraud should be dismissed because they: (i) are duplicative of the defendants' breach of contract

claim; (ii) fail to satisfy the applicable pleading standard of CPLR 3016(b), and (iii) fail to state viable claims for fraud, bad faith or fraud in the inducement.

**STATEMENT OF FACTS**

**A. Background.**

WPH Properties developed, financed, constructed and owns a brand new, state-of-the-art, 160-bed skilled nursing home located at 116-120 Church Street, White Plains, New York (the “Facility”). Affirmation of Alfred E. Donnellan dated February 3, 2021 (the “Donnellan affirmation” or “Donnellan aff.”), ex. A, ¶ 2. HBL, an entity controlled by Jozefovic, is the tenant and operator of the Facility. WPH Properties, as developer/landlord and HBL, as tenant/operator, are parties to a development agreement (the “Development Agreement”) and an amended and restated operating lease (the “Lease”), both dated as of November 19, 2015., Donnellan aff., exs. C (Development Agreement) and D (Lease). On July 12, 2017 WPH Properties and HBL entered into the renegotiated, amended and restated Lease, which remained dated as of November 19, 2015. Pursuant to the Development Agreement and the Lease WPH Properties designed, constructed and leased the Facility to HBL. Donnellan aff., ex. C, at 1, ¶¶ 1-4. The Lease also obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from HBL’s principals, Jozefovic and Neuman. Donnellan aff., ex. D, at §7.1. This action concerns the material default of HBL with respect to HBL’s obligations under the Lease and enforcement of the unconditional guaranties executed by Jozefovic and Neuman in favor of WPH Properties. Donnellan ex. A.

On August 22, 2019, after constructing the Facility in full compliance with its obligations

under the Development Agreement, WPH Properties obtained a temporary certificate of occupancy for the Facility. Donnellan aff., ex. E. Almost immediately after taking possession of the Facility, HBL defaulted on its obligations under the Lease. Donnellan ex. A, ¶ 38. After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease and, as a result, WPH Properties and HBL entered into a Letter of Intent. HBL thereafter breached its obligations under the Letter of Intent. Donnellan aff., ex. A, ¶¶ 53-62.

On January 7, 2020 WPH Properties served HBL with a Notice of Default and terminated the Lease effective January 13, 2020. Donnellan aff., ex. A, ¶¶ 63-66. HBL continues to occupy and operate the Facility as a hold-over tenant and HBL has defaulted on its obligations as a hold-over tenant. Donnellan aff., ex. A, ¶¶ 68-71.

On September 18, 2020, WPH Properties commenced this action seeking to recover the amounts due from HBL to WPH Properties as a result of HBL's default under the Lease, the Letter of Intent and as a hold-over tenant. Donnellan aff., ex. A.

**B. The Claims.**

On November 5, 2020, the defendants served an answer with counterclaims and a third-party complaint asserting the Claims (the "Answer"), which are all based on defendants' allegation that WPH Properties failed to meet its obligations with respect to the development, financing and construction of the Facility. Donnellan aff., ex. B, ¶¶ 14-87. The Claims allege that Jozefovic and Neuman proposed the Facility in 2009 and are the principals of HBL. Donnellan aff., ex. B, ¶ 8. The Claims further allege, that: (i) at the time HBL proposed the Facility (in 2009) WPH Properties and third-party defendants proposed that they act as developers of the Facility; (ii) WPH Properties

and third-party defendants made misrepresentations with respect to development, construction and financing of the Facility; (iii) WPH Properties and HBL thereafter entered into the Development Agreement and the Lease; and (iv) the Facility was delayed and project costs exceeded the original estimates due to issues relating to construction financing. *Donnellan aff.*, ex. B, ¶¶ 14-87.

The Claims demand an accounting (first cause of action), seek payment of “imputed interest” (second cause of action) and allege breach of contract (third cause of action), fraud in the inducement (fourth cause of action), “bad faith” (fifth cause of action) and fraud (sixth cause of action). The first cause of action is asserted against WPH Properties, Congress, CCCE and Fensterman, the second and third causes of action are asserted against WPH Properties, the fourth cause of action is asserted against Fensterman and Nicholson and the fifth and sixth causes of action are asserted against all of the third-party defendants (Fensterman, Nicholson, Congress, CCCE and Project Finance Consulting).

**ARGUMENT**

**I**

**THE CLAIMS AGAINST WPH PROPERTIES HAVE BEEN RELEASED AND DISCHARGED PURSUANT TO THE DEVELOPMENT AGREEMENT AND THE LEASE.**

As the Appellate Division has stated:

In general, a valid release constitutes a complete bar to an action on a claim which is the subject of the release. If the language of a release is clear and unambiguous, the signing of a release is a jural act binding on the parties. A valid general release will apply not only to known claims, but may encompass unknown claims, including unknown fraud claims, if the parties so intend and the agreement is fairly and knowingly made.

*Rivera v. Wycoff Heights Medical Center*, 113 A.D.3d 667, 670-71 (2d Dep’t 2014) (citations and

internal quotation marks omitted). “A release will not be treated lightly, and will be set aside by a court only for duress, illegality, fraud, or mutual mistake.” *Seff v. Meltzer, Lippe, Goldstein & Schlissel, P.C.*, 55 A.D.3d 592, 593 (2d Dep’t 2008) *see also* *Rivera v. Wycoff Heights Medical Center*, 113 A.D.3d at 670 (same). The party seeking to invoke the release establishes its “prima facie entitlement to judgment as a matter of law by submitting the release.” *Schiller v. Guthrie*, 102 A.D.3d 852, 854 (2d Dep’t 2013). “[A] signed release shifts the burden of going forward . . . to the [plaintiff] to show that there has been fraud, duress or some other fact which will be sufficient to void the release.” *Davis v. Rochdale Village Inc.*, 109 A.D.3d 867, 867 (2d Dep’t 2013) (internal citations and quotations omitted) (citing *Centro Empresarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011)).

Here, the Claims’ first three causes of action -- for an accounting, “imputed interest” and breach of contract, respectively -- are asserted against WPH Properties. Those claims should be dismissed pursuant to CPLR 3211(a)(5) because they have been released pursuant to express, clear and unambiguous provisions in the Development Agreement and the Lease.

The parties to the Development Agreement are HBL (defined as the Operator/Tenant) and WPH Properties (defined as the Developer). *Donnellan aff.*, ex. C, at 1. Pursuant to Article III § I of the Development Agreement, the Claims against WPH Properties were released and discharged on the Substantial Completion Date of the Facility. The Substantial Completion Date passed long ago and, therefore, the release is fully effective. The Claims against WPH Properties have also been released pursuant to section 5.6 (b) of the Lease, which releases the Claims and provides that HBL will acquire the Facility “solely on the basis of its own physical and financial examinations,

reviews and inspections.” Donnellan aff., ex. D, § 5.6.

Notably, the defendants assert repeatedly that “[t]he Development Agreement and Lease are essential parts of the same transaction and are constitute integrated agreements.” Answer, ¶ 38; *see also* Answer, ¶¶ 1 (first affirmative defense), 2 (second affirmative defense). Black’s Law Dictionary defines “integrated contract” as “[o]ne or more writings constituting a final expression of one or more terms of the agreement – Also termed integrated agreement, integrated writing.” Black’s Law Dictionary (11th ed. 2019). “[T]wo instruments . . . negotiated and executed as part of an integrated agreement . . . should be read and considered together as part of the same transaction.” *Bronxville Knolls, Inc. v. Webster Town Center Partnership*, 221 A.D.2d 248, 248 (1st Dep’t 1995). Because the defendants concede that the Development Agreement and the Lease constitute an integrated agreement, the release provisions in each agreement are to be read and interpreted together, making even more clear that the provisions broadly apply to release all Claims concerning any aspect of the Facility.

**A. The Development Agreement released the Claims against WPH Properties.**

Article III § I of the Development Agreement provides that the Tenant/Operator (HBL) agrees that the Developer (WPH Properties) has fulfilled all of its responsibilities under the Development Agreement to the satisfaction of HBL on the Substantial Completion Date. It provides that:

Except as provided in the Lease, on the Substantial Completion Date the Tenant/Operator shall (i) be deemed to have taken occupancy and accepted possession of the Project, (ii) have agreed that the Project has been completed in accordance with the Plans and Specifications, and (iii) **have agreed that the Developer has fulfilled all of its responsibilities hereunder to the satisfaction of Tenant/Operator.**

Donnellan aff., ex. C, Art. III § I (emphasis added).

Article VIII of the Development Agreement provides that:

The "Substantial Completion Date" shall mean the date which is the later of: (i) the date specified in the AJA Form 0704, duly executed and certified by the Architect, that the Project was substantially completed and in substantial compliance with the Plans and Specifications for the Project, (ii) the date Developer delivers a Temporary Certificate of Occupancy (the "TCO") for the Project, and (iii) the date the DOH approves the Project as constructed (but not necessarily the Operator/Tenant's operations) to accept patients, provided, however, if the Developer is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Operator/Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (i); Developer will give Operator/Tenant thirty (30) days' notice of the date Developer expects to be the Substantial Completion Date.

Donnellan aff., ex. C, Art. VIII.

The date specified in the AJA Form 0704 as the Substantial Completion Date is September 30, 2019. Donnellan aff., ex. F. WPH Properties delivered a TCO for the Facility dated August 22, 2019. Donnellan aff., ex. E. DOH approved the Facility as constructed to accept patients on November 14, 2019. Donnellan aff., ex. G. Because each of these dates passed long ago, the Substantial Completion Date has also passed and, therefore the release provision contained in Article III § I was fully effective as of the Substantial Completion Date. And under the express terms of that provision, the Developer has fulfilled all of its responsibilities to the satisfaction of Tenant/Operator. The defendants' Claims against WPH Properties, all of which relate to alleged breaches of WPH Properties' obligations with respect to the development, financing and construction have therefore necessarily been released and discharged. The release should be enforced in accordance with its plain terms. *Centro Empresarial Cempresa S.A. v. America Movil*,

*S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011) (“Generally, a valid release constitutes a complete bar to an action on a claim which is the subject of the release.”) (quoting *Global Mins. & Metals Corp. v. Holme*, 35 A.D.3d 93, 98 (1st Dept 2006)); *Matter of Brooklyn Resources Recovery, Inc.*, 309 A.D.2d 931, 932 (2d Dep’t 2003) (“The plain language of the release is controlling, regardless of one party's claim that he intended something else”).

**B. The Claims against WPH Properties have been released pursuant to the Lease.**

The parties to the Lease are HBN and WPH Properties. *Donnellan aff.*, ex. D, at 1. Section 5.6(b) of the Lease releases all claims against WPH Properties that HBL or any of its officers, directors, members, affiliates or other related or affiliated entity may have arising from, related to or in connection with the Facility including unknown or unsuspected causes of action and provides that HBL will take possession of the Facility solely on the basis of its own physical and financial reviews and inspections and waives any cause of action in law or in equity it may have with respect to any aspect of the Facility. That section provides:

Section 5.6 (b) . . . . . EFFECTIVE AS OF THE DATE OF THIS LEASE, TENANT SHALL RELEASE LANDLORD FROM ALL CLAIMS WHICH TENANT OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MANAGER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTNG ON TENANT'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH TENANT ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES, INCLUDING THE INFORMATION AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS, AND TENANT SHALL NOT LOOK TO LANDLORD IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS LEASE; (A)

TENANT, WILL ACQUIRE THE LEASED PREMISES SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS, AND (B) WITHOUT LIMITING THE FOREGOING, WAIVES ANY RIGHT IT OTHERWISE MAY HAVE AT LAW OR IN EQUITY AGAINST LANDLORD WITH RESPECT TO ANY ASPECT OF LEASED PREMISES.

Donnellan aff., ex. D, § 5.6(b).

By its express terms, therefore, effective as of the date of the Lease, section 5.6 broadly releases all claims “arising from or related to any matter or thing related to or in connection with the Leased Premises (the Facility), including claims “relating to unknown and unsuspected claims, damages and causes of action.” The language of section 5.6(b) goes on to highlight the broad scope of the release, stating that HBN “waives any right it otherwise may have at law or equity against the landlord with respect to any aspect of the Leased Premises.” The Claims against WPH Properties, all of which concern the development, construction and financing of the Facility. The Claims therefore all “arise from or are related to or in connection with” the Facility, and thus necessarily fall within the scope of this release. They should therefore be dismissed.

**II**

**NONE OF THE DEFENDANTS’ CLAIMS STATE A VIABLE CAUSE OF ACTION.**

The Court should dismiss all of the defendants’ causes of action pursuant to CPLR 3211(a)(7) because none of them state a viable cause of action as a matter of law.

**A. Defendants’ first cause of action seeking an accounting should be dismissed.**

The defendants’ first cause of action alleges that WPH Properties and third-party HBL, Jozefovic and Neuman advanced monies to WPH Properties and Fensterman before commencement of the project and seeks an accounting from WPH Properties and three of the third-

party defendants, Fensterman, CCCE and Congress. Answer, ¶¶ 88-91. On that basis, defendants seek an accounting. Defendants’ claim for accounting fails as a matter of law because they do and cannot not plead the existence of a fiduciary relationship.

As the Appellate Division has held:

The right to an accounting rests on the existence of a trust or fiduciary relationship regarding the subject matter of the controversy at issue.” A fiduciary relationship arises when one is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation. It is grounded in a higher level of trust than normally present in the marketplace between those involved in arm’s length business transactions. A conventional business relationship, without more, is insufficient to create a fiduciary relationship. Rather, a plaintiff must make a “showing of ‘special circumstances’ that could have transformed the parties’ business relationship to a fiduciary one, such as control by one party of the other for the good of the other.

*DiTolla v. Doral Dental IPA of New York, LLC*, 100 A.D.3d 586, 587 (2d Dep’t 2012) (internal citations and quotation marks omitted); *see also Baer v. Complete Office Supply Warehouse Corp.*, 89 A.D.3d 877, 878 (2d Dep’t 2011) (Dismissing accounting cause of action because, “[c]ontrary to the plaintiff’s contention, the complaint failed to plead facts demonstrating the existence of a special, confidential, or fiduciary relationship.”); *WIT Holding Corp. v. Klein*, 282 A.D.2d 527, 529 (2d Dep’t 2001) (“[A]n arm’s length business relationship does not give rise to fiduciary relationship.”); *Grossman v. Laurence Handprints – N.J., Inc.*, 90 A.D.2d 95, 105 (2d Dep’t 1982) (Dismissing accounting claim where “plaintiff’s allegations do not plead the existence of a fiduciary or trust relationship entailing a duty owed therein by defendants to the plaintiff, nor any special circumstances justifying the equitable relief of an accounting.”).

The defendants do not come close to pleading the existence of a fiduciary relationship among the parties. They allege only that “HBL SNF, LLC, Lizer Jozefovic and Mark Neuman had

a trust-based relationship with Fensterman, Nicholson, and WPHP” and that “[g]iven that relationship, HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman advanced monies to WPHP and Fensterman prior to commencement of the Project in order to allow the Project to proceed between the parties, which is necessary to obtain an accounting.” Answer, ¶¶ 89-90. These bare allegations fall far short of alleging that WPH Properties Fensterman, CCCE and/or Congress were “under a duty to act for or to give advice for the benefit of” the defendants.” And the defendants fail plead any special circumstances that would except the relationship here from the general rule that a conventional business relationship does not give rise of a fiduciary relationship.

Because the defendants have failed to plead the existence of a fiduciary relationship, their first cause of action seeking an accounting should be dismissed in its entirety.

**B. The second cause of action for imputed interest should be dismissed.**

The defendants allege that “the Jozefovic Team” made a capital contribution of \$2,200,000 to WPH Properties “as memorialized in a Term Sheet dated November 20, 2015” ... “to be used by Congress for pre-development costs.” Answer, ¶ 41. They allege that: (i) “[i]n consideration for the \$2,200,000 contribution to WPHP, WPHP agreed that these funds constituted a loan to WPHP to be repaid to HBL SNF, LLC;” and (ii) “no provision was made for the payment of interest on the loan notwithstanding that WPHP had the use of such funds since 2015.” Answer, ¶¶ 43-44.

Notwithstanding their admission that, under the parties’ alleged agreement relating to the loan, “no provision was made for the payment of interest” on the loan, the second cause of action

claims that “HBL SNF, LLC is entitled to “imputed interest on the \$2,200,000 made to WPHP loan from November 2015 to present.” Answer, ¶ 93.

To start, the defendants’ allegations are completely contradictory. On the one hand, they assert that the \$2,000,000 is a capital contribution “as memorialized in a November 20, 2015 Term Sheet.” Interest, whether imputed or otherwise, cannot possibly be owed on a capital contribution. And while the defendants also assert that the \$2,200,000 was a “loan to be repaid by HBL,” nowhere is there a reference to a loan agreement. In any event, the \$2,200,000 cannot be both a capital contribution and a loan, and the second cause of action makes conflicting allegations concerning what it is.

Even assuming for the sake of argument that the \$2,200,000 was a loan, the second cause of action fails to state a viable claim for breach of a provision in a contract providing for interest on the loan. “To plead breach of contract, the proponent must allege the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and resulting damages. *Second Source Funding, LLC v. Yellowstone Funding, LLC*, 144 A.D.3d 445,445-46 (1st Dep’t 2016). The defendants have not pled the breach of an agreement providing for the payment of interest on the alleged \$2,200,000 loan. Indeed, they have pled to the contrary by asserting that “no provision was made for the payment of interest on the loan.” Answer, ¶¶ 44. Even assuming the truth of the defendants’ allegations, therefore, they have not pled a viable claim for “imputed interest.” The defendants’ “imputed interest” claim should therefore be dismissed.

**C. The defendants’ causes of action for fraud, fraud in the inducement and “bad faith” should be dismissed.**

**1. The Claims for fraud, fraud in the inducement and “bad faith” should be dismissed as duplicative of the defendants’ breach of contract claim.**

Defendants’ fourth, fifth and sixth causes of action alleging fraud in the inducement, bad faith and fraud, respectively, should be dismissed because they are based on the same factual allegations and seek the same damages as defendants’ breach of contract claim against WPH Properties. New York does not permit the same conduct to be the basis for both a breach of contract and a tort claim. *Oceanview Assoc., LLC v. HLS Builders Corp.*, 184 A.D.3d 843, 845 (2d Dep’t 2020) (“where . . . a claim to recover damages for fraud is premised upon an alleged breach of contractual duties and the supporting allegations do not concern representations which are collateral or extraneous to the terms of the parties’ agreement, a cause of action sounding in fraud does not lie.”) (quoting *McKernin v. Fanny Farmer Candy Shops, Inc.*, 176 A.D. 2d 233, 234 (2d Dep’t 1991)); *Bd. of Managers of Beacon Tower Condominium v. 85 Adams St., LLC*, 136 A.D.3d 680, 684 (2d Dep’t 2016) (dismissing claim for fraud in the inducement as duplicative of breach of contract claim, stating that “[a] cause of action alleging fraud does not lie where the only fraud claim relates to a breach of contract.”) (quoting *WIT Holding Corp. v. Klein*, 282 A.D.2d 527 528 (2d Dep’t 2001)); *Pollak v. Moore*, 85 A.D.3d 578, 579 (1st Dep’t 2011) (Plaintiff’s alternative claims for fraud and fraud in the inducement were duplicative of breach of contract claims and therefore were properly dismissed.).

The defendants’ first cause of action for breach of contract against WPH Properties alleges that “[p]ursuant to the Development Agreement, the Project was to be ‘turn-key’ meaning that the

plaintiff and third-party defendants would deliver a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place in accordance with the approval granted by NYSDOH,” Answer, ¶ 39, and that the Lease and the Development Agreement “are essential parts of the same transaction and comprise an “integrated agreement.” Answer, ¶ 38.

The defendants allege that WPH Properties breached the Development Agreement by failing to timely complete the Facility (Answer ¶¶ 51-52), allowing cost overruns and delivering the project over budget (Answer, ¶¶ 66, 71, 73), and failing to provide permanent financing (Answer, ¶ 75). And they allege that WPH Properties breached the Lease by failing to provide permanent financing (Answer, ¶ 75), allowing cost overruns and causing the loss of eligibility for rent reimbursement (Answer, ¶ 73).

The fraud and fraud in the inducement causes of action are based on the same facts and circumstances and allege misrepresentations that are at the core of the alleged breach of contract. *See, e.g.*, Answer, ¶ 15 (“Led by third-party defendant Fensterman, these parties represented that they were capable of performing all aspects of development of the Facility including construction and financing.”); *see also* Answer, ¶¶ 20 (“Fensterman and Nicholson represented that they could arrange for 100% of the Project financing.”); 87 (“Throughout the development process, WPHP, Fensterman, Nicholson and Congress have made false representations to the Jozefovic Team and have taken adverse actions which have adversely affected the business of HBL SNF, LLC.”); 100 (“Fensterman and Nicholson misrepresented the Project costs.”); 101 (“Fensterman and Nicholson misrepresented their ability to secure permanent HUD financing.”); 102 (“Fensterman and Nicholson misrepresented their ability to complete the Project.”); 103 (“Fensterman

misrepresented the capital contributions made to CCCE to satisfy the equity requirement for the Project.”)

As to the fourth cause of action for “bad faith,” it alleges only that “[a]s alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.” Answer, ¶ 108. While the legal underpinning of this claim is unclear and the viability of a cause of action asserting a claim for “bad faith” unmoored to any recognized cause of action is highly questionable, it appears that the “bad faith” claim purports to assert a claim sounding in fraud or some other tort. And as previously discussed, the allegations in the third-party complaint all relate to the same facts and circumstances underlying the defendants’ breach of contract claim. The “bad faith” claim is therefore also based on the same alleged facts and circumstances and is also duplicative of the breach of contract claim.

The fourth, fifth and sixth causes of action should therefore all be dismissed because they sound in fraud and tort and are duplicative of the defendants’ breach of contract claim. *Page v. Muze, Inc.*, 270 A.D.2d 401, 402 (2d Dep’t 2000); (“A cause of action to recover damages for fraud may not be maintained when the only fraud alleged relates to a breach of contract.”); *23/23 Communications Corp. v. General Motors Corp.*, 257 A.D.2d 367, 368 (1st Dep’t 1999) (“[P]laintiff’s tort claims were properly dismissed as duplicative of its breach of contract claim.”).

**2. Dismissal for failure to comply with the pleading requirements of CPLR 3016(b).**

The defendants’ claims for fraud in the inducement, “bad faith” and fraud should also be dismissed because they fail to satisfy the requirement that claims asserting fraud and/or misrepresentation be pled with specificity.

CPLR 3016(b) provides that “[w]here a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail.” “To plead a cause of action for fraud, a party must allege the elements of representation of a material existing fact, falsity, scienter, justifiable reliance and damages. In addition, each of these essential elements must be supported by factual allegations sufficient to satisfy the requirement of CPLR 3016(b) that the circumstances surrounding the fraud be pleaded in detail.” *Bramex Associates, Inc. v. CBI Agencies, Ltd.*, 149 A.D.2d 384, 383 (1st Dep’t 1989). Courts have therefore dismissed claims sounding in fraud where the allegations were not pled with the required specificity. *See e.g., Matter of Woodson*, 136 A.D.3d 691, 693 (2d Dep’t 2016) (Dismissing fraud claims, stating that “[h]ere, the petition consists of bare, conclusory allegations, without any supporting detail, which do not meet the specificity requirements of CPLR 3016(b) to sufficiently plead the existence of an underlying fraud, knowledge thereof on the part of [respondent], or substantial assistance in achievement of the fraud.); *Helbig v. City of New York*, 212 A.D.2d 506, 508 (2d Dep’t 1995) (dismissing fraud claims where “the plaintiffs failed to plead the allegations of fraud with the specificity required by CPLR 3016(b).”).

To begin with, the fifth and sixth causes of action -- for “bad faith” and fraud, respectively -- are asserted against all the third-party defendants (Nicholson, Fensterman, Congress, CCCE and Project Equity Consulting). But the only allegation that alludes to CCCE and Project Equity Consulting -- and not even by name -- is that “[a]s alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.” Answer, ¶ 108. And the only allegation

referencing Congress asserts that “[t]hroughout the development process, WPHP, Fensterman, Nicholson and Congress have made false representations to the Jozefovic Team and have taken adverse actions which have adversely affected the business of HBL SNF, LLC. Answer, ¶ 87. These allegations fall far short of the specificity required by CPLR 3016(b) and the applicable case law. The fifth and sixth causes of action against Congress, CCCE, Project Equity Consulting should therefore be dismissed.

The defendant’s fraud allegations against Nicholson and Fensterman -- the remaining third-party defendants -- fail for lack of specificity as well. The defendants allege that Fensterman, and Nicholson, made certain misrepresentations concerning their ability to finance, construct and provide equity for the project, Answer, ¶¶ 15, 20, 23, 100-103, 111, that defendants relied on those representations, Answer, ¶ 33, and that they “made false representations to the Jozefovic Team and have taken adverse actions which have adversely affected the business of HBL SNF, LLC.” Answer, ¶ 87.

But the defendants fail to plead the “circumstances surrounding the fraud” by specifying the time, place and manner in which the alleged misrepresentations were made. *Riverbay Corp. v. Thyssenkrupp Northern Elevator Corp.*, 116 A.D.3d 487, 488 (1st Dep’t 2014) (fraud cause of action dismissed where it “failed to allege specific facts with respect to the time, place, or manner in which defendants-appellants made the purported misrepresentations.”); *Ritchie v. Carvel Corp.*, 180 A.D.2d 786, 788 (2d Dep’t 1992) (fraud claim dismissed where “the time, place, and speaker of the alleged misrepresentations, or the documents in which they appear, are not identified with specificity.”) Defendants’ recitation of the alleged misrepresentations without specifying in detail

the circumstances surrounding those misrepresentations fails to satisfy the pleading requirement of CPLR 3016(b). The defendants' claim for fraud and fraud in the inducement should therefore be dismissed.

The defendants' "bad faith" cause of action alleges only that "[a]s alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith." Answer, ¶ 108. As previously noted, therefore, it appears that this claim is premised on the purported misrepresentations alleged in the third-party complaint. As such, the defendants' "bad faith" cause of action suffers from the same pleading deficiency as the fraud and fraud in the inducement claims and should therefore be dismissed.

**3. Dismissal for failure to allege a present intention to deceive.**

"Absent a present intention to deceive, a statement of future intentions, promises or expectations is not actionable on the grounds of fraud." *Non-Linear Trading Co., Inc. v. Braddis Associates, Inc.*, 243 A.D.2d 107, 118 (1st Dep't 1998) (citing *Adams v. Clark*, 239 N.Y. 403 (1925)). Therefore, "[a] complaint based upon a statement of future intention must allege facts to show that the defendant, at the time the promissory representation was made, never intended to honor or act the defendant, at the time the promissory representation was made, never intended to honor or act on his statement." *Non-Linear Trading Co.*, 243 A.D.2d at 118; *see also Lanzi v. Brooks*, 54 A.D.2d 1057, 1058 (3d Dep't 1976) ("Absent a present intent to deceive, a statement of future intentions, promises or expectations is not actionable on the grounds of fraud. A complaint based upon a statement of future intention must allege facts to show that the defendant,

at the time the promissory representation was made, never intended to honor or act on his statement.”).

The defendants’ fraud, fraud in the inducement and bad faith claims do not assert a “present intention to deceive.” The fraud in the inducement cause of action relies on alleged misrepresentations by Fensterman and Nicholson and one alleged instance of an alleged failure to disclose a prior civil proceeding against Nicholson. Answer, ¶¶ 101-104. But that cause of action simply does not assert that at the time the representations were made, WPH Properties, Nicholson, Fensterman and Congress never intended to honor or act on their representations, nor does it allege that the failure to disclose the prior civil proceeding was motivated by an intention to deceive.

As for the “bad faith” cause of action,” it alleges that the defendants acted in bad faith as alleged in the third-party complaint, Answer, ¶ 108, but nowhere in the third-party complaint is there an allegation of a present intention to deceive or specific facts supporting such an allegation as required by CPLR 3016(b).

Finally, the sixth cause of action asserting fraud alleges only that that WPH Properties and third-party defendants “new [sic] such statements were false” and “made such statements to deceive HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman.” Answer, ¶¶ 113-114. But the sixth cause of action does not plead the alleged present intention to deceive with the specificity required by CPLR 3016(b) (*see* pages 17-18, *supra*) by alleging specific “facts to show that the defendant, at the time the promissory representation was made, never intended to honor or act on his statement.” *Lanzi v. Brooks*, 54 A.D.2d at 1058.

CONCLUSION

For all of these reasons, WPH Properties and third-party defendants respectfully request that the defendants' counterclaims and third-party complaint be dismissed and that the Court award such other relief as it deems just.

Dated: White Plains, New York  
February 3, 2021

DELBELLO DONNELLAN WEINGARTEN WISE  
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**CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, ALFRED E. DONNELLAN, ESQ., an attorney at law licensed to practice in the State of New York, and counsel of record herein, certify that this document contains 5,901 words, exclusive of the caption page, table of contents and table of authorities and signature block, as counted by the word count of the word-processing system used to prepare this document.

Dated: White Plains, New York  
February 3, 2021

/s/ Alfred E. Donnellan  
ALFRED E. DONNELLAN

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February 4, 2021

**VIA ECF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King Blvd.  
White Plains, New York 10601

***Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al***  
***Index No. 60278/2020***

Dear Justice Walsh:

This firm represents plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties” and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, “third-party defendants”) in the above action.

The discussion at the most recent conference centered on the plaintiff’s desire to amend the complaint, to move to dismiss the defendants’ counterclaims and third-party claims and to stay discovery on those claims. The defendants would not consent to the amendment, so the plaintiffs have moved for leave. The motion is returnable on February 12, 2021.

It was contemplated at the conference that, in anticipation that leave to amend would be granted, the plaintiffs would hold off moving to dismiss the counterclaims and third-party claims until a new complaint and a new answer, presumably asserting the same counterclaims and third-party claims, had been served. But that presents a serious scheduling problem for the defendants. The preliminary conference order requires that responses to document demands and interrogatories are due on February 26, 2021, long before a motion to dismiss the counterclaims and third-party claims and the new answer can be heard. Therefore, the plaintiffs have moved to dismiss the current counterclaims and third-party claims and request a conference at which they can ask the Court to stay their obligation to respond to the 80+ discovery demands addressed to those claims until either the current motion to dismiss or a subsequent motion to dismiss has been decided.

Respectfully,  
/s/ Alfred E. Donnellan  
Alfred E. Donnellan

cc: John Giardino, Esq.  
(via ECF)

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 : Index No. 60278/2020  
 Plaintiff, :  
 :  
 -against- :  
 :  
 HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, and WILLIAM :  
 NICHOLSON, :  
 Third-Party Defendants :  
 -----X

**MEMORANDUM OF LAW IN OPPOSITION  
 TO MOTION FOR LEAVE TO AMEND THE COMPLAINT**

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**I. PRELIMINARY STATEMENT**

Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic (“Jozefovic”), and Mark Neuman (collectively, “Defendants”) respectfully submit this Memorandum of Law and accompanying Affirmation in opposition to White Plains Healthcare Properties I, LLC’s (“White Plains” or “Plaintiff”) motion for leave to file an amended complaint, dated January 26, 2020 (the “Motion”), or in the alternative, request that the Court stay the Motion.

Defendants oppose the Motion on one fundamental principle: the same issues cannot be litigated at the same time in different actions. This principle is clear and ultimately results dismissal of the copycat litigation. Simply put, the Motion should be denied because Plaintiff is attempting to insert duplicate facts and claims from a separate, pending action into this action.

There are currently two, distinct actions. Plaintiff, Defendants, and Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman (“Fensterman”), and William Nicholson are before this Court in the action captioned *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.*, Index No. 60278/2020, (the “Westchester Action”). Separately, Jozefovic, White Plains, Fensterman, and Metropolitan Commercial Bank (“MCB”) are involved in an action captioned *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, Index No. 655549/2020, before Judge Bannon (the “New York Action”).

The Westchester Action involves nine parties and is based upon the events leading up to and after Plaintiff and Defendants entered into an operating lease, dated November 19, 2015 (the “Lease Agreement”). In contrast, the New York Action is based upon the August 17, 2017 Collateral Assignment Pledge of Membership Interest and Security Agreement (the “Collateral Assignment”) and the attempted sale of Jozefovic’s membership interest in Waterview Acquisition I, LLC. The Westchester Action and the New York Action are entirely distinct, as they involve

different parties, facts, contracts, and issues of law. In short, a decision in the Westchester Action would have no impact on the New York Action, or vice versa.

Regardless, Defendants have taken the position that the New York Action should be consolidated with the Westchester Action. On October 26, 2020, Defendants filed an order to show cause to consolidate in the New York Action (the “Motion to Consolidate”). Judge Bannon has already heard oral arguments and entered an interim order on December 16, 2020, with a final decision expected at any moment. Yet, Plaintiff now moves to amend its complaint with essentially the same claims that are still pending before Judge Bannon in the New York Action.

It is premature and inappropriate for Plaintiff to comingle the facts and issues in the New York Action with the Westchester Action through an amended complaint. Plaintiff has already filed the Motion to Consolidate, which it presumably still endorses. If the motion to consolidate is denied, it would be improper to simultaneously litigate the same claims in separate actions. Plaintiff cannot and should not be allowed to amend with duplicative claims that are subject to dismissal while the New York Action is pending.

Defendants are forced to oppose the Motion as a result of Plaintiff’s insistence. There is no reason why Plaintiff’s proposed amendment could not be stayed until the Motion to Consolidate is resolved. As Plaintiff has forced the issue, Defendants respectfully request that the Motion be denied in its entirety, or in the alternative, that the Motion be stayed until a decision on the Motion to Consolidate is reached.

## **II. STATEMENT OF FACTS**

Jozefovic is the owner of a seventy percent (70%) interest in Waterview Acquisition I, LLC (the “Membership Interest”), and on August 17, 2017 entered into the Collateral Assignment, which involved the establishment of a rent security account for the White Plains Skilled Nursing

Facility. Affirmation of John Giardino in Opposition to the Motion to Amend (“Giardino Aff.”) ¶¶ 4-5. The Collateral Assignment contains two key provisions: (1) It automatically self-terminated upon the deposit of \$1,600,000 into a rent security account; and (2) White Plains’ rights are limited to enforcing the maintenance of the rent security account. Giardino Aff. ¶ 6.

In November 2015, Jozefovic deposited \$1.6 million into a Chase Account ending in xxxx-xxx-xxxx-7272 to establish the rent security (the “Rent Security”). Giardino Aff. ¶¶ 8-9. In 2017, the Rent Security was transferred to the Chase account ending in xxxx-xxx-xxxx-0885 with White Plains and Fensterman’s knowledge and consent. Giardino Aff. ¶¶ 11-15. Neither White Plains nor Fensterman objected to this transfer and Jozefovic attempted to make Fensterman a signatory on the Chase account, yet Fensterman failed to do so. Giardino Aff. ¶¶ 16-19.

The Operating Agreement of Waterview Acquisition I, LLC was subsequently amended, permitting Jozefovic to assign the Membership Interest to MCB in connection with a \$3 million loan, most of which was paid in the form of rent to White Plains. Giardino Aff. ¶¶ 20-22. MCB then perfected its security interest in the Membership Interest and maintains physical possession of the membership certificates. Giardino Aff. ¶ 23.

On September 18, 2020, White Plains initiated the Westchester Action by filing claims against Defendants for allegedly breaching the Lease Agreement. Giardino Aff. ¶ 24. On November 5, 2020, Defendants responded by filing an answer which includes substantial affirmative defenses, and counterclaims, as well as third-party claims against CCC Equities, LLC, Project Equity Consulting, the Congress Companies, Fensterman, and William Nicholson. Giardino Aff. ¶ 25.

On October 6, 2020, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP (“DDW LLP”) issued a purported Notification of Disposition of Collateral, dated October 6, 2020, which stated that Plaintiff was a “debtor” and announced the sale of the Membership Interest at “public auction” scheduled for 10:00 am on Friday, October 30, 2020. Giardino Aff. ¶ 26. This action was taken independently from any events connected to the Westchester Action. Giardino Aff. ¶ 28.

The Notification was both false and improper, as Jozefovic had not been found in breach of the Collateral Assignment and DDW LLP had no right to seize or sell the Membership Interest, especially while MCB held a perfected security interest. Giardino Aff. ¶ 29. On October 22, 2020, facing immediate, irreparable harm, Jozefovic initiated the New York Action by filing a complaint against White Plains, Fensterman, and MCB for multiple causes of action, and simultaneously filed an order to show cause seeking a temporary restraining order and a preliminary injunction to halt DDW LLP’s wrongful sale. Giardino Aff. ¶ 30.

On October 26, 2020, White Plains and Fensterman filed the Motion to Consolidate. Giardino Aff. ¶ 32. Judge Bannon heard oral argument on both Jozefovic’s request for a preliminary injunction and the Motion to Consolidate, and on December 16, 2020, issued an interim order maintaining the status quo. Giardino Aff. ¶ 33.

Throughout this time, the Westchester Action has continued forward on an entirely separate track, proving that there is no need to consolidate the actions. However, rather than wait for Judge Bannon to decide the Motion to Consolidate, Plaintiff attempted to file a proposed amended complaint on November 30, 2020 (the “PAC”). Giardino Aff. ¶ 36. Defendants disputed the PAC for two reasons: (1) the PAC contains the same facts and issues that are in the New York Action; and (2) Plaintiff could not amend as of right, as the PAC was filed more than 20 days after Defendants filed their answer. Giardino Aff. ¶ 36. On January 26, 2021, Plaintiff filed the Motion.

**III. LEGAL ARGUMENT**

**1. The Court Should Deny the Motion to Amend**

**A. Legal Standard**

CPLR § 3025(b) states:

Amendments and supplemental pleadings by leave. A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

Although motions to amend are treated liberally, there are limits. A proposed amended complaint must be denied if it “(1) would unfairly prejudice or surprise the opposing party, or (2) is palpably insufficient or patently devoid of merit.” *Favia v Harley-Davidson Motor Co., Inc.*, 119 AD3d 836, 836 [2d Dept 2014] (citations omitted). Prejudice occurs when a party “has been hindered in the preparation of his case or has been prevented from taking some measure in support of his position.” *Loomis v Civetta Corinno Const. Corp.*, 54 NY2d 18, 23 [1981]; *see also Urias v Daniel P. Buttafuoco & Assoc., PLLC*, 173 AD3d 1244, 1245 [2d Dept 2019].

Additionally, CPLR § 3211(a)(4) states in relevant part:

(a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

4. there is another action pending between the same parties for the same cause of action in a court of any state or the United States.

Therefore, when there is “a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same, a court has broad discretion in determining whether an action should be dismissed pursuant to CPLR 3211(a)(4) on the ground that there is another action pending.” *Scottsdale Ins. Co. v Indem. Ins. Corp. RRG*, 110 AD3d 783, 784 [2d Dept 2013] (citations omitted). Courts must dismiss a duplicative pleading when “both suits arise out of the same subject matter or series of alleged wrongs.” *Cherico, Cherico & Assoc. v Midollo*, 67 AD3d 622, 622 [2d Dept 2009] (citations omitted).

**B. The Motion to Amend Seeks to Add Duplicative Claims From the New York Action**

The substantive addition in the PAC is a new section titled “THE JOZEFOVIC SECURITY AGREEMENT” and a separate cause of action for breach of contract against Jozefovic based upon the Collateral Assignment (the “Proposed Amendment”). PAC ¶¶ 38-53, 100-101. The Proposed Amendment duplicates the core facts, issues, and claims that Jozefovic has already pled in the New York Action:

<u>PAC</u>	<u>Complaint in the New York Action</u>
<u>38.</u> ...Jozefovic executed a Collateral Assignment and Pledge of Membership Interest and Security Agreement...	<u>18.</u> [Jozefovic] previously entered into a collateral assignment, which established a rent security account for the White Plains Skilled Nursing Facility...
<u>41.</u> On September 15, 2020 [White Plains] duly perfected its security interest with respect to the Jozefovic Waterview Collateral by filing a UCC financing statement.	<u>33.</u> ...MCB has perfected its security interest in the Membership Interest and maintains physical possession of the membership certificates...
<u>42.</u> ...in or around December 2019, Jozefovic assigned the Jozefovic Waterview Collateral to [MCB] to secure Jozefovic’s obligation to repay a \$3,000,000 loan...	<u>32.</u> In December 2019, Jozefovic assigned the Membership Interest to MCB in connection with a \$3,000,000.00 loan as part of a financing arrangement to provide working capital to benefit the White Plains project, most of which was paid in the form of rent to [White Plains and Fensterman].

<p><u>43.</u> ...to effectuate Jozefovic’s assignment of the Jozefovic Waterview Collateral to MCB, Jozefovic agreed to and voluntarily permitted the amendment of the Waterview Acquisition I, LLC Operating Agreement.</p>	<p><u>31.</u> ...the Operating Agreement of Waterview was subsequently amended in order to authorize [Jozefovic], as the majority member, to assign his interest.</p>
<p><u>45.</u> Jozefovic further breached the Jozefovic Security Agreement by failing to take all of the necessary steps to add [Fensterman]...as a co-signatory to the JPMorgan Chase accounts...</p>	<p><u>26.</u> ...[the] account holder certification form [for the Chase account was] tendered to Fensterman.</p>
<p><u>50.</u> ...WPH Properties is entitled, among other remedies, to dispose of the Jozefovic Waterview Collateral at a public sale</p>	<p><u>7.</u> ...[White Plains and Fensterman] have no right or ability to sell [Jozefovic’s] interest in Waterview Acquisition I, LLC.</p>

Notably, Plaintiff did not include these facts and claims regarding the Collateral Assignment when it filed its original complaint. Plaintiff and Defendants’ claims in the Westchester Action are limited to the Lease Agreement, a distinct contract which has no bearing on the Collateral Assignment. Likewise, the New York Action is focused on the Collateral Assignment, and does not involve any claims arising from or related to the Lease Agreement.

Courts regularly deny motions to amend where the proposed amendment is procedurally or substantively improper. *See, e.g., Feldman v Finkelstein & Partners, LLP*, 76 AD3d 703, 705 [2d Dept 2010]; *Crossbeat New York, LLC v LiiRN, LLC*, 169 AD3d 604, 604 [1st Dept 2019]. Courts have specifically denied motions to amend that attempt to duplicate claims from another action, as it is self-evidently prejudicial and without merit:

“Since the claims asserted in the proposed counterclaim were duplicative of those set forth in the legal malpractice action, the Supreme Court providently exercised its discretion in denying the defendant's motion for leave to amend her answer to assert a counterclaim alleging legal malpractice.”

*Bleakley Platt & Schmidt, LLP v Barbera*, 136 AD3d 725, 726 [2d Dept 2016]; *see also Johnson v State*, 125 AD3d 1073, 1074 [3d Dept 2015] (“Inasmuch as the first proposed cause of action is

duplicative of another claim pending in the Court of Claims...the Court of Claims properly denied claimant's motion for leave to amend.”).

Here, Plaintiff’s attempted end-run around the Motion to Consolidate will prejudice Defendants. Rather than wait for Judge Bannon to issue a decision and proceed accordingly, Plaintiff is using the PAC to forcibly consolidate the New York Action with the Westchester Action. It is fundamentally prejudicial to require Defendants to litigate the same claims before two courts at the same time.

If the Motion to Consolidate is granted, then the Motion will be moot. However, if the Motion is granted and then the Motion to Consolidate is denied, the parties will be faced with predictable chaos, and the Court will be required to spend additional time and resources removing the duplicative claims. Plaintiff has no justification for attempting to add claims concerning the Collateral Assignment, which involves the same parties and legal theories as the New York Action. *See, e.g., JPMorgan Chase Bank, N.A. v Luxama*, 172 AD3d 1341, 1342 [2d Dept 2019] (dismissing a complaint when “both arise from the same subject matter and alleged wrongs, and involve substantial identity of the parties and similarity of claims); *Dec v BFM Realty, LLC*, 153 AD3d 497, 497 [2d Dept 2017]; *Matter of In re Willnus*, 101 AD3d 1036, 1037 [2d Dept 2012].

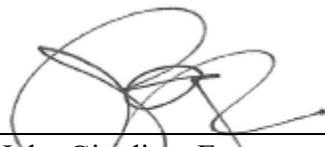
Therefore, Defendants respectfully request that the Motion be denied in its entirety, or in the alternative, that the Motion be stayed until Judge Bannon issues a decision on the Motion to Consolidate.

**IV. CONCLUSION**

For the foregoing reasons, Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman respectfully request that the Court deny White Plains Healthcare Properties I, LLC’s motion for leave to amend the complaint, or in the alternative, stay the motion until the Motion to Consolidate is decided.

Dated: New York, New York  
February 5, 2020

MICHELMAN & ROBINSON, LLP

By:  \_\_\_\_\_

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Mark Neuman*

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
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 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, and WILLIAM :  
 NICHOLSON, :  
 Third-Party Defendants :  
 -----X

**AFFIRMATION OF JOHN GIARDINO IN OPPOSITION  
 TO MOTION FOR LEAVE TO AMEND THE COMPLAINT**

JOHN GIARDINO, ESQ., an attorney duly admitted to practice law in the State of New York, affirms the following to be true under the penalties of perjury:

1. I am a partner at the law firm of Michelman & Robinson, LLP, attorneys for the Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic (“Jozefovic”), and Mark Neuman (collectively “Defendants”).
2. I respectfully submit this Affirmation in Opposition to Plaintiff White Plains Healthcare Properties I, LLC’s (“Plaintiff”) Motion for Leave to Amend the Complaint.
3. This Affirmation is based upon my personal knowledge and upon files maintained by my firm in relation to this action.

4. Jozefovic is the majority member of Waterview Acquisition I, LLC (the “Membership Interest”), owning a seventy percent (70%) interest.

5. On or about August 17, 2017, Jozefovic entered into a collateral assignment, which involved the establishment of a rent security account for the White Plains Skilled Nursing Facility (the “Collateral Assignment”).

6. The Collateral Assignment states, in relevant part:

- a. Under Paragraph 2, upon the deposit of \$1,600,000 into the rent security account, the “assignment shall automatically terminate and be void and of no further effect”;
- b. Under Section 13, the exercise of the White Plains Health Care Properties LLC’s (the “Assignee”) rights is limited to a violation of the “terms and provisions concerning the maintenance of the account...”; and
- c. Under Section 13(c), any proceeds derived from the disposition of the collateral must be applied to the rent security account.

7. A true and correct copy of the Collateral Assignment is attached as Exhibit A.

8. On November 19, 2015, an email was sent to Third-Party Defendant Howard Fensterman (“Fensterman”) (the “November 19 Email”). The November 19 Email states, in relevant part: “\$1,595,368.32 is going to be held until such time as we give them instructions to deposit in an Account in the Name of HBL-SNF to be opened at Chase Private Banking.”

9. In November 2015, pursuant to the November 19 Email, \$1,595,031.44 was deposited into Chase Account ending in xxxx-xxx-xxxx-7272 (the “First Account”) to establish the rent security (the “Rent Security”) on behalf of Jozefovic.

10. Fensterman was personally aware that the Rent Security had been established and the Collateral Assignment had been satisfied, as he was directly informed of the creation of the account, the money to fund the account was wired from the Abrams, Fensterman LLP account, and Fensterman was made a signatory.

11. On August 10, 2017, an email was sent to Fensterman (the “August 10 Email”). The August 10 Email states, in relevant part, that the following “reflects what we agreed to. Please confirm...[and] do the paperwork to finalize this. If you have any issues with what I did please call me on cell.” The August 10 Email continues to state that “[w]ith respect to the Waterview account: 1. Howard Fensterman and Lizer Jozefovic shall be co-signatories to the Waterview account...”

12. On August 16, 2017, Fensterman was sent an email (the “August 16 Emails”). The August 16 Emails state, in relevant part, “[e]nclosed please find the Chase Certification that we received today; Please note that the Certification requires that the Resolution that we prepared be annexed as an exhibit. What I need from Howard is original signature cards from Howard with wet ink signatures-Lizer should have all of the resolutions and certifications signed this evening.”

13. On August 17, 2017, an email was sent to Fensterman (the “August 17 Email”). The August 17 Email states, in relevant part, that “I need [Fensterman’s] signature on the last page.”

14. The purpose of the August 17 Email was to transfer the Rent Security to a new account pursuant to a resolution of Waterview Acquisition I, LLC

15. In 2017, the Rent Security was transferred to the Chase account ending in xxxx-xxx-xxxx-0885 (the “Second Account”).

16. Once completed, the resolution and account holder certification form were tendered to Fensterman.

17. All of Jozefovic’s obligations under the Collateral Assignment were fully satisfied by the provision of the Rent Security, resulting in the automatic termination of the Collateral Assignment.

18. Fensterman simply had to sign the forms provided and submit them in order to become a signatory on the Second Account.

19. Following the August 17 Email, Fensterman took no actions to become a signatory and never discussed the matter with Jozefovic until the recent events leading up to this action.

20. At the time of the Collateral Assignment, the Operating Agreement of Waterview Acquisition I, LLC did not permit its members to assign their membership interests.

21. On October 11, 2005, Abrams, Fensterman LLP filed a Certificate of Amendment of the Articles of Organization for Waterview Acquisition I, LLC, which authorized Jozefovic, as the Majority Member, to assign the Membership Interest.

22. In December 2019, Jozefovic, in connection with a \$3,000,000.00 loan, assigned the Membership Interest to Metropolitan Commercial Bank (“MCB”) as part of a financing arrangement to provide working capital to benefit the White Plains project, most of which was paid in the form of rent to the White Plains and Fensterman.

23. On December 23, 2019, Jozefovic granted MCB a security interest in the Membership Interest, and MCB perfected its security interest by taking possession of the related certifications and filing a Uniform Commercial Code Financing Statement.

24. On September 18, 2020, White Plains filed a complaint against HBL SNF, LLC, Jozefovic, and Mark Neuman (collectively, “Defendants”) in Westchester County, in an action

captioned *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.*, Index No. 60278/2020 (the “Westchester Action”).

25. On November 5, 2020, Defendants filed an answer which included affirmative defenses, counterclaims, and third-party claims against CCC Equities, LLC, Project Equity Consulting, the Congress Companies, Fensterman, and William Nicholson.

26. On or about October 6, 2020, I received a purported Notification of Disposition of Collateral issued by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP (“DDW LLP”), dated October 6, 2020 (the “Notification”), which announced the intention to sell the Membership Interest at “public auction”.

27. A true and correct copy of the Notification is attached as Exhibit B.

28. The Notification was not based on or connected to any events, decisions, or orders in the Westchester Action.

29. The Notification is false, as Jozefovic is not now, nor has ever been, indebted to White Plains or Fensterman, and White Plains and Fensterman have no claim to the Membership Interest, much less the right to sell it at public auction.

30. On October 22, 2020, I filed a complaint on behalf of Jozefovic against White Plains, Fensterman, and MCB alleging multiple causes of action (the “Complaint”), and simultaneously filed an order to show cause seeking a temporary restraining order and a preliminary injunction to halt DDW LLP’s wrongful sale.

31. A true and correct copy of the Complaint is attached as Exhibit C.

32. On October 26, 2020, White Plains and Fensterman filed an order to show cause to consolidate in the New York Action (the “Motion to Consolidate”).

33. On December 16, 2020, Judge Bannon issued an interim order maintaining the status quo and gave the parties a short period of time to attempt to resolve the issues (the “Interim Order”).

34. A true and correct copy of the Interim Order is attached as Exhibit D.

35. On November 30, 2020, White Plains attempted to file a proposed amended complaint (the “PAC”).

36. I rejected the PAC because it was filed more than 20 days after the answer, and because it was based on the same facts and issues as the New York Action.

Dated: New York, New York  
February 5, 2021

By:   
JOHN GIARDINO, ESQ.

COLLATERAL ASSIGNMENT AND PLEDGE OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT

THIS ASSIGNMENT made as of August 11, 2017, by Liza Jozefovic, an individual having an address at 53 Mariner Way, Monsey New York 10952 (the "Assignor") to Howard Fensterman as nominee for White Plains Health Care Properties LLC, a Massachusetts Limited Liability Company (the "Assignee") with reference to the following facts.

WHEREAS, HBL-SNF a New York Limited Liability Company ("Operator/Tenant) an entity controlled by Assignor had entered into a development agreement with WHITE PLAINS HEALTHCARE PROPERTIES I, LLC (the "Developer") dated November 19, 2015 (the "Agreement") which was amended by and between the Parties by that certain first Amendment to the Development Agreement (the "Amendment") dated as of July 12, 2017.

WHEREAS, the Development Agreement among other things obligated the Tenant to enter into a Lease with Developer in return for the Developer, developing, designing, financing and Building a 160 Bed Skilled Nursing Home for Tenant in White Plains New York; and

WHEREAS the Development Agreement obligated the Tenant to obtain CON approval to build such 160 Bed Skilled Nursing Home for Tenant in White Plains New York and to deliver to Developer such documents as are reasonably requested by Developers lenders; and

WHEREAS, the Tenant has obtained all CON approvals necessary to construct the Skilled Nursing Home and the Developer has obtained all zoning and building department of approvals and a Construction Loan; and

WHEREAS, in or about November 2015 in consideration of Howard Fensterman and/or CCC Equities assigning all mortgages held by them on property owned by Waterview Acquisition I, LLC agreed that he would pre-pay Two Million Two Hundred Thousand Dollars to White Plains Healthcare Properties and would additionally establish a joint signature account in JP Morgan Bank into which the sum of One Million Six Hundred Thousand Dollars was deposited; and

WHEREAS, The Lease requires the sum of 1.6 Million Dollars to be delivered to Landlord at least 60 days prior to the Commencement date of the Lease as additional security for the Tenants faithful performance of the terms and conditions of the Lease; and

WHEREAS, Section 10.2 of the Loan Agreement by and between Developer and its Construction lender restates the language of the Lease and Developer has undertaken to ensure that the 1.6 Million Dollars on deposit with JP Morgan shall be delivered according to the terms and provisions of the Lease; and

WHEREAS, the Sums in the JP Morgan Account entitled HBL SNF, LLC Account Number 3379737272 have been transferred to two JP Morgan Account's entitled Waterview Acquisition I, LLC Account Number 513087002 and Account Number 962-90885 in which Howard Fensterman is not a signatory and the parties want to enter into this agreement by which Howard Fensterman will be added as a signatory to such account under terms and conditions set forth below; and

WHEREAS, Tenant and Assignor have promised to add Howard Fensterman as a signatory to such account so as to ensure that no withdrawals may be made so as to reduce the amount of the account below 1.6 Million and so as to ensure that when required 60 days prior to the commencement date the money in the account or equivalent shall be delivered as additional cash security for the lease, and;

WHEREAS in order to secure the promises made by Assignor concerning such account Assignor has agreed to deliver to Assignee this Assignment; and the Assignor desires to pledge to Assignee all of his membership interest in Waterview Acquisition I, LLC (the "Company"), in order to secure the promises made herein and in the Lease and Security Agreement delivered to the Construction Lender;

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignee and the Assignor hereby agree as follows:

1. As collateral security for the Borrowers' obligations under the Lease, the Security Agreement, the Loan, and the Development Agreement the Assignor hereby pledges and assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member in the Company (the "Collateral").

2. Upon the effectuation of Section 7.1(a)(ii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the interest in the Company assigned to the Assignee pursuant to Paragraph 4 hereof shall be automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect. Notwithstanding the foregoing, the Assignee hereby agrees to execute any document reasonably required for the purpose of evidencing the reassignment of such interest and the termination of this Assignment.

3. The Assignor represents, covenants and warrants that he is the legal and beneficial owner of the Collateral and has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in the Company and that there are no current liens or encumbrances that exist as of the day of the execution of this assignment.

4. The Assignor agrees not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

5. The Assignor covenants and agrees not to voluntarily withdraw as the managing member of the Company without the prior written consent of Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

6. The covenants provided for in this Assignment shall be binding upon the

successors and assignees of the parties hereto.

7. This Assignment shall be governed by the laws of the State of New York.

8. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument in writing duly signed by or on behalf of the Assignor or Assignee.

9. Assignor represents and warrants that he has a 71 % membership interest in the Company and that he is manager thereof.

10. In accordance with the laws of the State of New York and as part of the consideration for the making of the Loan, Assignor consents to the jurisdiction of any local, state or federal court located within New York and further consents that all service of process may be made by registered mail to his address set forth below and service so made shall be deemed completed five (5) days after the same shall have been mailed.

11. Assignor covenants and agrees to execute such additional documents and to take such further actions as may be reasonably required to carry out the provisions and intent of this Assignment including, without limitation, executing a financing statement or statements and continuations thereof. In addition, Assignor grants to Assignee a power of attorney coupled with an interest to effectuate the terms of the foregoing sentence and to file all continuations, renewals or amended financing statements without the signature of Assignor.

13. Should Assignor violate the terms and provisions concerning the maintenance of the account as set forth in the resolution of Waterview Acquisition I, LLC annexed hereto as Exhibit A the Assignee shall have:

(a) The right to sell the Collateral in the State of New York at one or more public or private sales at such price and on such terms as Assignee in its discretion accepts, for cash, upon or for future delivery. Upon any such sale, the Assignee shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral. Such purchaser at any such sale shall hold the Collateral sold absolutely free from any claim or right on the part of the Assignor, and the Assignor hereby waives (to the extent permitted by law) all rights of redemption, stay or appraisal which he has or may have under any rule of law or statute now existing or hereafter adopted. The Assignee shall give the Assignor twenty-one (21) days' written notice by registered or certified mail, postage prepaid, return receipt requested (which Assignor acknowledges is reasonable and sufficient), of the Assignee's intention to make any such public or private sale. Such notice, in the case of public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places in the State of New York as the Assignee may fix in the

notice of such sale. The Assignee shall not be obligated to make any sale of the Collateral if it shall determine not to do so, regardless of the fact that notice of such sale of the Collateral may have been given. The Assignee may, upon one day's written notice, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place within in the State of New York to which the same was so adjourned. In case sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Assignee until the sale price is paid by the purchaser or purchasers thereof, but the Assignee shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold, and, in case of any such failure, such Collateral may be sold again upon like notice. As an alternative to exercising the power of sale herein conferred upon it, the Assignee may proceed by a suit or suits at law or in equity to foreclose this Assignment and to sell the Collateral, or any portion thereof, pursuant to a judgment or decree of a court of competent jurisdiction;

(b) such other rights with respect to the Collateral as shall be afforded to secured parties by the Uniform Commercial Code of the State of New York including, but not limited to, the right to setoff; and/or

(c) to apply any proceeds of any disposition of the Collateral to the payment of the cash security required under the terms and provisions of the lease and reasonable expenses of the Assignee in connection with the exercise of its rights or remedies, including reasonable fees and expense of attorneys, and any balance shall be paid to such party as shall be entitled thereto pursuant to law,

13. The Assignor hereby waives any right to require that the Assignee proceed against any real or personal property or any guaranty given as security for the Note, whether or not existing or hereafter given, before exercising its rights and remedies with respect to the Collateral.

14. This Agreement may be executed in counterparts, each of which, when taken together, shall be construed as one and the same instrument.

15. All notices, demands and other communications provided for herein shall be deemed received upon personal delivery or delivery by national overnight delivery service, or three (3) business days following deposit in the U.S. mail, postage prepaid, first class registered or certified.

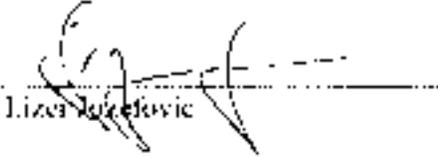
to Assignor or assignee at the following addresses:

If to Assignor:  
Lizer Jozefovic  
53 Manner Way  
Monsey, New York

With a copy to:  
Michelman & Robinson, LLP  
800 Third Avenue  
New York, New York  
Attention: Mark H. Zadun, Esq.

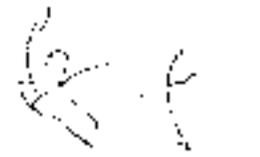
If to Assignee:  
Howard Fensterman  
C/o Abrams, Fensterman et al  
3 Dakota Drive  
Suite 300  
Lake Success, New York 11042

IN WITNESS WHEREOF, Assignor has duly executed this Assignment, as of the day and year first written above.

  
Lizer Jozefovic

The Company hereby acknowledges receipt of this Assignment by Assignor.

WATERVIEW ACQUISITION L.L.C.

By: 

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
Case Type: **Commercial Division**  
Case Status: **Active**  
eFiling Status: [Full Participation Recorded](#)  
Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

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Motion Info:  Filed Date:  thru

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#	Document	Filed By	Status
76	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
77	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Complaint in New York Action</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
78	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Judge Bannon's Interim Order</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
79	<a href="#">AFFIDAVIT OR AFFIRMATION IN REPLY</a> (Motion #3) <i>Reply Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
80	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>NY County Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
81	<a href="#">MEMORANDUM OF LAW IN REPLY</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
82	<a href="#">STIPULATION - DISCOVERY ( REQUEST TO SO</a> <a href="#">ORDER</a> ) (Motion #4)	<a href="#">Giardino, J.</a> Filed: 03/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

STIPULATION (Motion #2)

Stipulation regarding document discovery and motion to dismiss

Received: 03/04/2021

83 STIPULATION - SO ORDERED

Court User  
Filed: 03/11/2021  
Received: 03/11/2021

**Processed**  
[Confirmation Notice](#)

84 DECISION + ORDER ON MOTION (Motion #3)

Court User  
Filed: 03/18/2021  
Received: 03/18/2021

**Processed**  
[Confirmation Notice](#)

85 NOTICE OF ENTRY (Motion #3)

[Lara-Garduno, N.](#)  
Filed: 03/19/2021  
Received: 03/19/2021

**Processed**  
[Confirmation Notice](#)

86 COMPLAINT (AMENDED)

First Amended Verified Complaint

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

87 EXHIBIT(S) - 1

Amended and Restated Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

88 EXHIBIT(S) - 2

Jozefovic Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

89 EXHIBIT(S) - 3

Neuman Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

90 EXHIBIT(S) - 4

Jozefovic Security Agreement  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

91 EXHIBIT(S) - 5

Letter of Intent  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

92 EXHIBIT(S) - 6

Notice of Default  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

93 LETTER / CORRESPONDENCE TO JUDGE

[Lara-Garduno, N.](#)  
Filed: 03/26/2021  
Received: 03/26/2021

**Processed**  
[Confirmation Notice](#)

94 LETTER / CORRESPONDENCE TO JUDGE

[Donnellan, A.](#)  
Filed: 04/09/2021  
Received: 04/09/2021

**Processed**  
[Confirmation Notice](#)

95 DECISION + ORDER ON MOTION (Motion #4)

Motion withdrawn without prejudice

Court User  
Filed: 04/20/2021  
Received: 04/20/2021

**Processed**  
[Confirmation Notice](#)

96 ANSWER (AMENDED)

[Barnett-Howell, A.](#)  
Filed: 05/21/2021  
Received: 05/21/2021

**Processed**  
[Confirmation Notice](#)

# Document

Filed By

Status

97	<a href="#">EXHIBIT(S)</a> - A <i>Incorporated Complaint from New York County</i>	<a href="#">Barnett-Howell, A.</a> Filed: 05/21/2021 Received: 05/21/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
98	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 05/25/2021 Received: 05/25/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
99	<a href="#">NOTICE TO ADMIT</a>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
100	<a href="#">EXHIBIT(S)</a> - 1 <i>to Notice to Admit - Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
101	<a href="#">EXHIBIT(S)</a> - 2 <i>to Notice to Admit - Development Agreement</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
102	<a href="#">EXHIBIT(S)</a> - 3 <i>to Notice to Admit - Temporary C of O</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
103	<a href="#">EXHIBIT(S)</a> - 4 <i>to Notice to Admit - AJA form 0704</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
104	<a href="#">EXHIBIT(S)</a> - 5 <i>to Notice to Admit - NYSDOH letter</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
105	<a href="#">ORDER - MEDIATION</a>	Court User Filed: 06/03/2021 Received: 06/03/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
106	<a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
107	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
108	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>First Notification of Disposition of Collateral, 10.6.20</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
109	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Second Notification of Disposition of Collateral, 6.9.21</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
110	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Term Sheet, 11.20.15</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
111	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>

# Document

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Status

112	<a href="#">EXHIBIT(S)</a> - E (Motion #5) <i>November 19 Email and Account Statement</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
113	<a href="#">EXHIBIT(S)</a> - F (Motion #5) <i>August 10 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
114	<a href="#">EXHIBIT(S)</a> - G (Motion #5) <i>August 16 Emails</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
115	<a href="#">EXHIBIT(S)</a> - H (Motion #5) <i>August 17 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
116	<a href="#">EXHIBIT(S)</a> - I (Motion #5) <i>Letter of Intent</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
117	<a href="#">EXHIBIT(S)</a> - J (Motion #5) <i>Security Benefit Letters</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
118	<a href="#">EXHIBIT(S)</a> - K (Motion #5) <i>NYSDOH Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
119	<a href="#">EXHIBIT(S)</a> - L (Motion #5) <i>Certificate of Amendment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
120	<a href="#">EXHIBIT(S)</a> - M (Motion #5) <i>2020 Monthly Invoices</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
121	<a href="#">EXHIBIT(S)</a> - N (Motion #5) <i>September Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
122	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>Proposed UCC Form</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
123	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
124	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' / Third-Party Plainti ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
125	<a href="#">EXHIBIT(S)</a> - 1 (Motion #5) <i>Exhibit 1 - Bandazian Affidavit</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
126	<a href="#">EXHIBIT(S)</a> - 2 (Motion #5) <i>Exhibit 2 - Prior Order to Show Cause</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

Received: 06/25/2021

- |     |  |  |   |
|-----|--|--|---|
| 127 | <a href="#">EXHIBIT(S)</a> - 3 (Motion #5)<br><i>Exhibit 3 - Answer with Cross-Claims</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 128 | <a href="#">EXHIBIT(S)</a> - 4 (Motion #5)<br><i>Exhibit 4 - Decision and Order</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 129 | <a href="#">EXHIBIT(S)</a> - 5 (Motion #5)<br><i>Exhibit 5 - Notice of Sale</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 130 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)<br><i>Third-Party Defendant/Cross-Claimant Metropolitan Commercial Bank's Memorandum of Law in Partial Joi ... show more</i>        | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 131 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Donnellan, A.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 132 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 133 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)<br><i>Affidavit of Lizer Jozefovic</i>   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 134 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5)<br><i>Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' Third-Pa ... show more</i> | <a href="#">Malatak, R.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 135 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 136 | <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5)<br><i>Affidavit of William A. Nicholson</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 137 | <a href="#">EXHIBIT(S)</a> - A (Motion #5)<br><i>Lease</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 138 | <a href="#">EXHIBIT(S)</a> - B (Motion #5)<br><i>Jozefovic Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 139 | <a href="#">EXHIBIT(S)</a> - C (Motion #5)<br><i>Neuman Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 140 | <a href="#">EXHIBIT(S)</a> - D (Motion #5)<br><i>Collateral Assignment and Pledge</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021                         | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

**Redacted** per 22 NYCRR §202.5(e)

Received: 06/29/2021

- 141 [EXHIBIT\(S\)](#) - E (Motion #5)  
*UCC Financing Statement*
- 142 [EXHIBIT\(S\)](#) - F (Motion #5)  
*Notice of Defalt*  
**Redacted** per 22 NYCRR §202.5(e)
- 143 [EXHIBIT\(S\)](#) - G (Motion #5)  
*Construction Loan Agreement*
- 144 [EXHIBIT\(S\)](#) - H (Motion #5)  
*Note*
- 145 [EXHIBIT\(S\)](#) - I (Motion #5)  
*Mortgage*
- 146 [EXHIBIT\(S\)](#) - J (Motion #5)  
*Security Benefit Notice of Default*
- 147 [EXHIBIT\(S\)](#) - K (Motion #5)  
*Security Benefit Notice of Default*
- 148 [EXHIBIT\(S\)](#) - L (Motion #5)  
*Security Benefit Complaint*
- 149 [EXHIBIT\(S\)](#) - M (Motion #5)  
*Email*
- 150 [EXHIBIT\(S\)](#) - N (Motion #5)  
*Hebrew Hospital Bankruptcy Filing Notice*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

October 6, 2020

To: Lizer Josefovic (Debtor)  
53 Mariner Way  
Monsey, New York 10952-1248

Metropolitan Commercial Bank  
99 Park Avenue, 4th floor  
New York, New York 10016

Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Attn: Michele Arboeny, Esq.

From: ~~Howard Fensterman as nominee for White Plains Healthcare Properties, LLC,~~  
2 Bourbon Street, Peabody, Massachusetts 01960 (Secured Party)

Re: Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Pledge"), dated August 11, 2017, made by and between Lizer Josefovic ("Assignor") and Howard Fensterman, as nominee for White Plains Health Care Properties, LLC ("Assignee") as such agreement may have been further amended or modified from time to time.

We will sell the Collateral described in Exhibit A hereto and made a part hereof to the highest qualified bidder in public as follows:

**Day and Date:** Friday, October 30, 2020  
**Time:** 10:00 a.m.  
**Place:** DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, phone: 914-681-0200.

You are entitled to, at no charge, an accounting of the unpaid indebtedness secured by the collateral that we intend to sell. You may request an accounting by contacting Alfred E. Donnellan DelBello Donnellan Weingarten Wise & Wiederkehr, LLP One North Lexington Ave. White Plains, NY 10601, Phone: 914-681-0200.

Very truly yours,

/s/ Howard Fensterman  
Howard Fensterman as nominee for  
White Plains Health Care Properties, LLC

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LIZER JOZEFOVIC,

Plaintiff,

-vs-

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.

-----X

**SUMMONS**

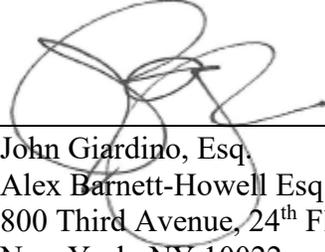
TO THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if the summons is not personally delivered to you within the State of New York). If you fail to appear or answer, judgment will be taken against you by default of the relief demanded herein.

The Plaintiff designates New York County as the place of trial.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_  
John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
(212) 730-7700  
jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Plaintiff*

Defendants' Addresses:

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC

2 Bourbon Street

Peabody, Massachusetts 01960

HOWARD FENSTERMAN

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP

3 Dakota Dr., Suite 300

Lake Success, NY 11042

METROPOLITAN COMMERCIAL BANK

99 Park Avenue, Fourth Floor

New York, New York 10016

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LIZER JOZEFOVIC,

Plaintiff,

Index No.

-vs-

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.

-----X

**COMPLAINT**

Plaintiff Lizer Jozefovic (“Plaintiff”), by his attorneys Michelman & Robinson, LLP, brings his complaint against Defendants White Plains Healthcare Properties I, LLC (“WPHP”), Howard Fensterman (“Mr. Fensterman”), and Metropolitan Commercial Bank (“MCB”), alleging upon information and belief the following:

**INTRODUCTION**

1. This is an action to halt the dissemination of false and harmful statements as well as to prevent the fraudulent sale and to clarify the ownership of a limited liability company.
2. Plaintiff is the majority owner of Waterview Acquisition I, LLC.
3. Plaintiff previously entered into a collateral assignment, which established a rent security account for the White Plains Skilled Nursing Facility.
4. Plaintiff performed all obligations under the collateral assignment, which was acknowledged and documented by Mr. Fensterman.
5. Plaintiff subsequently assigned his interest in Waterview Acquisition I, LLC to MCB, as part of a financing arrangement, which both WPHP and Mr. Fensterman were aware of.

6. On October 6, 2020, WPHP and Mr. Fensterman issued a purported Notification of Disposition of Collateral, which stated that Plaintiff was a “debtor” and announced that Plaintiff’s interest in Waterview Acquisition I, LLC would be sold at “public auction” on October 30, 2020 (the “Notification”).

7. The Notification is entirely false: Plaintiff is not now, and has never been, indebted to WPHP or Mr. Fensterman, and WPHP and Mr. Fensterman have no right or ability to sell the Plaintiff’s interest in Waterview Acquisition I, LLC. Any attempt to do so is false, improper, and in breach of the collateral assignment.

8. Moreover, the Notification was designed to inflict maximum damage, as it was widely broadcast to Plaintiff’s business partners and other interested parties, harming Plaintiff’s reputation and ability to operate his facilities.

9. Moreover, Mr. Fensterman has represented Plaintiff previously, and continues to represent Plaintiff in a variety of matters, making his decision to act directly against Plaintiff’s interests bizarre, improper, and actionable.

10. Moreover, if WPHP and Mr. Fensterman continue with a fraudulent sale, as stated in the Notification, it will harm Plaintiff’s business and operations, as well as potential third parties who improperly attempt to purchase Plaintiff’s interest.

**THE PARTIES**

- 11. Plaintiff Lizer Jozefovic is a resident of the State of New York.
- 12. Defendant White Plains Healthcare Properties I, LLC is a foreign limited liability company that regularly conducts business in the State of New York.
- 13. Defendant Howard Fensterman is a resident of the State of New York and regularly conducts business in the State of New York.

14. Defendant Metropolitan Commercial Bank is a commercial bank with its headquarters located at 99 Park Ave, New York, NY 10016 and regularly conducts business in the State of New York.

15. This Court has jurisdiction over all causes of action asserted herein because all causes of action asserted herein arise out of conduct undertaken by defendants in the State of New York.

16. Each defendant has sufficient minimum contacts with the State of New York and has otherwise intentionally availed himself/itself of the State of New York so as to render the exercise of jurisdiction over it by the State of New York court consistent with traditional notions of fair play and substantial justice.

**FACTUAL ALLEGATIONS**

**The Collateral Assignment**

17. Plaintiff has a 70% share of Waterview Acquisition I, LLC (the “Membership Interest”), making him the majority owner.

18. Plaintiff previously entered into a collateral assignment, which established a rent security account for the White Plains Skilled Nursing Facility (the “Collateral Assignment”).

19. The Collateral Assignment states, in relevant part:

- a. Under Paragraph 2, upon the deposit of \$1,600,000 into the rent security account, the “assignment shall automatically terminate and be void and of no further effect”;
- b. Under Section 13, the exercise of the White Plains Health Care Properties LLC’s (the “Assignee”) rights is limited to a violation of the “terms and provisions concerning the maintenance of the account...”; and

c. Under Section 13(c), any proceeds derived from the disposition of the collateral must be applied to the rent security account.

20. In November 2015, Plaintiff deposited \$1,595,031.44 into Chase Account ending in xxxx-xxx-xxxx-7272 to establish the rent security (the “Rent Security”).

21. The funds for the Rent Security were derived from the refinancing of the Waterview real property.

22. At that time, both Gerald Billow, Esq an attorney at Posternak, Blankstein & Lund LLP, in Boston and Greg Stollar, Esq. of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (“Abrams, Fensterman LLP”), attorneys for WPHP and Mr. Fensterman, were directly informed that the Rent Security had been established, satisfying the Collateral Assignment requirements.

23. Moreover, Mr. Fensterman was personally aware of the Rent Security and that the Collateral Assignment had been satisfied, as he and his legal counsel were informed of the creation of the account, and the money to fund the account was wired from Abrams, Fensterman LLP after Plaintiff established the account and made arrangements for Mr. Fensterman to be a signatory.

24. On December 14, 2015, Mr. Fensterman signed the Business Account Signature Form.

25. In 2017, the Rent Security was transferred to the Chase account ending in xxxx-xxx-xxxx-0885 by resolution of Waterview Acquisition I, LLC.

26. The resolution and account holder certification form were tendered to Mr. Fensterman.

27. As a result of Plaintiff's performance, all relevant obligations under the Collateral Assignment were completely satisfied by the provision of the Rent Security, automatically terminating the Collateral Assignment and rendering it void pursuant to its own provisions.

**Assignment of the Membership Interest to MCB**

28. At the time of the Collateral Assignment, the Operating Agreement of Waterview Acquisition I, LLC did not permit its members to assign their membership interests.

29. At that time, the Operating Agreement of Waterview Acquisition I, LLC stated, in relevant part:

- a. Articles 5 and 6 did not provide for any assignment of the Membership Interest;
- b. Article 12 specifically prohibited an assignment of the Membership Interest to Mr. Fensterman as Nominee of White Plains Healthcare Properties LLC.

30. Mr. Fensterman is aware of these facts, as well as the limitations on transferring and assigning the Membership Interest, as Mr. Fensterman and his firm Abrams, Fensterman LLP acted as counsel to Waterview Acquisition I, LLC in its formation and execution of its operating agreement.

31. However, the Operating Agreement of Waterview was subsequently amended in order to authorize Plaintiff, as the majority member, to assign his interest.

32. In December 2019, Plaintiff assigned the Membership Interest to MCB in connection with a \$3,000,000.00 loan as part of a financing arrangement to provide working capital to benefit the White Plains project, most of which was paid in the form of rent to Defendants WPHP and Mr. Fensterman.

33. Currently, MCB has perfected its security interest in the Membership Interest and maintains physical possession of the membership certificates evidencing Plaintiff's ownership of interests in Waterview Acquisition I, LLC.

34. Mr. Fensterman knew of the approved of the loan from and assignment to MCB, as the proceeds have been used to pay rent on the White Plains Nursing Home.

35. Moreover, Mr. Fensterman has continued to represent Waterview Acquisition I, LLC to the present date, and has recently tendered bills and asked for payment for certain litigation matters.

36. Moreover, Mr. Fensterman previously acted as Plaintiff's personal counsel, during which time he represented Plaintiff in matters related to the corporate compliance and collection matters for all of Plaintiff's nursing homes.

#### **Distribution of the Notification and Resulting Harm**

37. On October 6, 2020, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP ("DDW LLP") issued a purported Notification of Disposition of Collateral, dated October 6, 2020, which announced the intention to sell the Membership Interest at "public auction" (the "Notification").

38. The Notification was first sent on October 6, 2020 by Mr. Fensterman "as nominee for White Plains Health Care Properties, LLC."

39. The Notification claims to be based upon the Collateral Assignment.

40. The Notification states that Plaintiff is a "debtor" and that the Membership Interest will be sold "to the highest qualified public bidder in public" at 10:00 am on Friday, October 30, 2020 at DDW LLP.

41. Since then, Defendants WPHP and Mr. Fensterman have distributed the notice to multiple hospital operators across the state, as well as Plaintiff’s current and potential colleagues and business partners.

42. Plaintiff has received multiple calls inquiring about the alleged “debt” claimed in the Notification.

43. Plaintiff has never received any funds from WPHP or Mr. Fensterman. Therefore, neither Waterview Acquisition I, LLC nor Plaintiff owes any money to WPHP as there is no debt, and Plaintiff is not and cannot be a debtor.

44. Moreover, since 2015, Plaintiff has given WPHP and Mr. Fensterman over \$4.6 million in a combination of loans, unallocated payments, and a down-payment for the purchase of a building.

45. Moreover, since September 2019, Plaintiff has paid rent of over \$6 million.

46. In Plaintiff’s business, the public allegation of unpaid debts is very serious and damaging and has negatively impacted Plaintiff’s standing in the business and banking communities.

47. On October 16, 2020, Plaintiff, through counsel, attempted to contact Alfred E. Donnellan, Esq. (“Mr. Donnellan), the Managing Partner at DDW LLP, to confirm by October 20, 2020 that the Notification has been withdrawn and that there will be no attempts to proceed against the Membership Interest.

48. Neither Mr. Donnellan nor Mr. Fensterman have responded.

49. Plaintiff has been irreparably harmed by the Notification and any purported sale of the Membership Interest, and this harm will continue until the Notification is withdrawn and a correction is issued.

50. The wide dissemination of the false claims in the Notification has damaged Plaintiff's reputation and standing within the nursing home community.

51. Moreover, Plaintiff has been questioned by lenders and other interested parties as to the viability of his business concerns.

52. Moreover, the publication of the Notification has materially affected admissions to Plaintiff's facilities.

53. Moreover, if WPHP and Mr. Fensterman continue with a wrongful and fraudulent sale of the Membership Interest, it will disastrously and irreparably harm Plaintiff and potential third-parties who attempt to purchase the Membership Interest based upon a non-existent debt and without the ability to do so.

54. This action is brought to seek redress for WPHP and Mr. Fenster's harmful conduct, and to clarify ownership of the Membership Interest as to MCB.

**FIRST CAUSE OF ACTION**  
**Declaratory Judgment**  
**(All Defendants)**

55. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

56. The Collateral Assignment states that it is automatically terminated upon the establishment of the Rent Security.

57. Plaintiff properly established the Rent Security, pursuant to the requirements of the Collateral Assignment.

58. Defendants have personal knowledge that the Collateral Assignment was satisfied and is therefore null and void.

59. Plaintiff properly assigned the Membership Interest to MCB.

60. Defendants have personal knowledge that the Membership Interest has been assigned to MCB.

61. Plaintiff requests that the Court issue a declaratory judgment finding that: the Collateral Assignment is null and void following the establishment of the Rent Security; that the Membership Interest has been assigned to MCB; that Plaintiff is not indebted to WPHP or Mr. Fensterman; and consequently that WPHP and Mr. Fensterman have no right or claim to the Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest.

**SECOND CAUSE OF ACTION**  
**Breach of Contract**  
**(WPHP and Mr. Fensterman)**

62. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

63. Plaintiff and WPHP entered into the Collateral Assignment

64. Plaintiff has performed all conditions, covenants, and promises required to be performed by Plaintiff in accordance with the terms of the Collateral Assignment alleged herein.

65. Specifically, Plaintiff established the Rent Security pursuant to the terms of the Collateral Assignment, resulting in the termination of the Collateral Assignment and rendering it void pursuant to its own provisions.

66. Defendants have personal knowledge that the Rent Security has been established, and that the Collateral Assignment has been terminated.

67. WPHP and Mr. Fensterman issued the Notification in breach of the Collateral Assignment.

68. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

69. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**THIRD CAUSE OF ACTION**

**Fraud**

**(WPHP and Mr. Fensterman)**

70. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

71. WPHP and Mr. Fensterman have made multiple false statements regarding the Plaintiff and the Membership Interest.

72. Specifically, WPHP and Mr. Fensterman issued the Notification claiming that Plaintiff was a debtor, and that the Membership Interest would be sold to satisfy the debt.

73. However, Plaintiff is not indebted to WPHP and Mr. Fensterman, and WPHP and Mr. Fensterman have no right to sell the Membership Interest.

74. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

75. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**THIRD CAUSE OF ACTION**  
**Defamation**  
**(WPHP and Mr. Fensterman)**

76. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

77. On October 6, 2020, WPHP and Mr. Fensterman caused the Notification to be issued.

78. The Notification claims that Plaintiff is a “debtor,” and that WPHP, Mr. Fensterman, and DDW LLP will sell the Membership Interest at a public auction to satisfy Plaintiff’s debts. These statements are false.

79. WPHP and Mr. Fensterman knew that the statements in the Notification were false at the time the Notification was issued.

80. The Notification was widely distributed to Plaintiff’s current and potential colleagues and business partners.

81. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

82. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**FOURTH CAUSE OF ACTION**  
**Breach of Fiduciary Duty**  
**(Mr. Fensterman)**

83. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

84. At all relevant times, as Plaintiff's former and current legal representative, Mr. Fensterman owed fiduciary duties to Plaintiff, including the duties of loyalty, good faith, and care.

85. Mr. Fensterman breached his fiduciary duties to Plaintiff by issuing the Notification.

86. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

87. Mr. Fensterman's conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**FIFTH CAUSE OF ACTION**  
**Legal Malpractice**  
**(Mr. Fensterman)**

88. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

89. Mr. Fensterman acted as legal counsel to Plaintiff, both during and after the Collateral Assignment.

90. Mr. Fensterman was required to represent Plaintiff's interests without conflict.

91. Mr. Fensterman abused his position as Plaintiff's legal counsel and acted in direct opposition to Plaintiff's interests by issuing the Notification.

92. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

93. Mr. Fensterman's conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**SIXTH CAUSE OF ACTION**  
**Judiciary Law Section 487**  
**(Mr. Fensterman)**

94. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

95. Mr. Fensterman acted as legal counsel to Plaintiff, both during and after the Collateral Assignment.

96. Mr. Fensterman acted deceitfully by issuing the Notification in an attempt to fraudulently sell the Membership Interest and to harm Plaintiff, his own client.

97. Mr. Fensterman intends to receive compensation from other parties, including WPHP, by acting against Plaintiff's interests.

98. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

99. Mr. Fensterman's conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

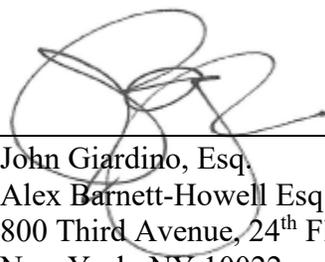
**PRAYER FOR RELIEF**

Wherefore, Plaintiff Lizer Jozefovic prays for judgment against Defendants White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank as follows:

1. On the First Cause of Action, an order declaring that:
  - a. The Collateral Assignment is null and void following the establishment of the Rent Security;
  - b. The Membership Interest has been properly assigned to MCB;
  - c. Plaintiff is not indebted to WPHP or Mr. Fensterman; and
  - d. WPHP and Mr. Fensterman have no right or claim to the Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest;
2. On the Second, Third, and Fourth, Fifth, and Sixth Causes of Action herein, for compensatory and consequential damages in in an amount subject to proof at trial;
3. For punitive damages;
4. For recovery of attorney's fees as provided by law, contract, or statute;
5. For pre-judgment interest at the maximum rate permitted by law;
6. For costs incurred; and
7. For any other and further relief as the court may deem proper.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_

John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
(212) 730-7700  
jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Plaintiff Lizer Jozefovic*

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all issues so triable in this action.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_  
John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
(212) 730-7700  
jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Plaintiff Lizer Jozefovic*

**SUPREME COURT OF THE STATE OF NEW YORK  
 NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

*Justice*

-----X

LIZER JOZEFOVIC,		INDEX NO.	<u>655549/2020</u>
	Plaintiff,	MOTION DATE	<u>12/14/2020,</u> <u>12/14/2020</u>
	- v -	MOTION SEQ. NO.	<u>001 002</u>
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, HOWARD FENSTERMAN, METROPOLITAN COMMERCIAL BANK	Defendants.		

**INTERIM  
 DECISION + ORDER ON  
 MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76 were read on this motion to/for PRELIMINARY INJUNCTION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 7, 8, 9, 10, 11, 12, 13, 61, 62, 63, 77, 78, 79, 80, 81, 82, 83, 84, 85 were read on this motion to/for CHANGE VENUE.

It is hereby  
 ORDERED that the plaintiff's motion for injunctive relief (MOT SEQ 001) and the defendant's motion to change venue (MOT SEQ 002) are adjourned to January 4, 2021, for submission on papers, and it is further  
 ORDERED that the TRO granted in this court's order dated October 27, 2020 (MOT SEQ 001) is continued until a further order of the court, and it is further  
 ORDERED that the parties shall notify the court of any stipulation reached in regard to MOT SEQ 001 or 002, as discussed at oral argument on December 14, 2020, and it is further  
 ORDERED that the Clerk shall mark the file accordingly.

  
 NANCY M. BANNON, J.S.C.  
 HON. NANCY M. BANNON

12/14/2020  
 DATE

CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION  
 GRANTED  DENIED  GRANTED IN PART  OTHER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
  
Plaintiff,  
  
- against  
  
HBI, SNE, LLC, LIZER JOZEOFVIC A/K/A LIZER  
JOZOFVIC and MARK NEUMAN,  
  
Defendants and Third-Party Plaintiffs,  
  
- against -  
  
CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,  
  
Third-Party Defendants.

Index No. 60278/2020

REPLY AFFIRMATION OF  
ALFRED E. DONNELLAN

Alfred E. Donnellan, an attorney duly admitted to practice in the courts of the State of New York, affirms the following to be true under the penalty of perjury:

1. I am a member of the law firm of DeBullo Donnellan Weingarten Wise & Wiederkehr, LLP, lead counsel for plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties") and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, "third-party defendants"). I submit this reply affirmation in further support of the motion of WPH Properties, pursuant to CPLR § 3025(h), for leave to file an amended complaint.

2. A true and correct copy of the complaint in *Jozefovic v. White Plains Healthcare Properties I, LLC et al* (Supreme Court, New York County, Index No. 655549/2020) is attached as **Exhibit A**.

WHEREFORE, this Court should grant the motion of WPH Properties for leave to amend the complaint and grant such other relief as the Court deems just.

Dated: White Plains, New York  
February 18, 2021

  
\_\_\_\_\_  
Alfred E. Donnellan

**CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, ALFRED E. DONNELLAN, ESQ., an attorney at law licensed to practice in the State of New York, and counsel of record herein, certify that this document contains 163 words, exclusive of the caption page, table of contents and table of authorities and signature block, as counted by the word count of the word-processing system used to prepare this document.

Dated: White Plains, New York  
February 18, 2021

  
\_\_\_\_\_  
ALFRED E. DONNELLAN

# Exhibit A

## to Donnellan Aff.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LIZER JOZEFOVIC,

Plaintiff,

-vs-

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.  
-----X

**SUMMONS**

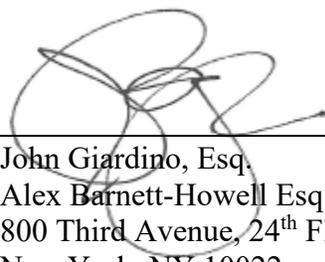
TO THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if the summons is not personally delivered to you within the State of New York). If you fail to appear or answer, judgment will be taken against you by default of the relief demanded herein.

The Plaintiff designates New York County as the place of trial.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
 \_\_\_\_\_  
 John Giardino, Esq.  
 Alex Barnett-Howell Esq.  
 800 Third Avenue, 24<sup>th</sup> Floor  
 New York, NY 10022  
 (212) 730-7700  
 jgiardino@mrlp.com  
 abarnett-howell@mrlp.com  
*Attorneys for Plaintiff*

Defendants' Addresses:

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC

2 Bourbon Street

Peabody, Massachusetts 01960

HOWARD FENSTERMAN

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP

3 Dakota Dr., Suite 300

Lake Success, NY 11042

METROPOLITAN COMMERCIAL BANK

99 Park Avenue, Fourth Floor

New York, New York 10016

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LIZER JOZEFOVIC,

Plaintiff,

Index No.

-vs-

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.

-----X

**COMPLAINT**

Plaintiff Lizer Jozefovic (“Plaintiff”), by his attorneys Michelman & Robinson, LLP, brings his complaint against Defendants White Plains Healthcare Properties I, LLC (“WPHP”), Howard Fensterman (“Mr. Fensterman”), and Metropolitan Commercial Bank (“MCB”), alleging upon information and belief the following:

**INTRODUCTION**

1. This is an action to halt the dissemination of false and harmful statements as well as to prevent the fraudulent sale and to clarify the ownership of a limited liability company.
2. Plaintiff is the majority owner of Waterview Acquisition I, LLC.
3. Plaintiff previously entered into a collateral assignment, which established a rent security account for the White Plains Skilled Nursing Facility.
4. Plaintiff performed all obligations under the collateral assignment, which was acknowledged and documented by Mr. Fensterman.
5. Plaintiff subsequently assigned his interest in Waterview Acquisition I, LLC to MCB, as part of a financing arrangement, which both WPHP and Mr. Fensterman were aware of.

6. On October 6, 2020, WPHP and Mr. Fensterman issued a purported Notification of Disposition of Collateral, which stated that Plaintiff was a “debtor” and announced that Plaintiff’s interest in Waterview Acquisition I, LLC would be sold at “public auction” on October 30, 2020 (the “Notification”).

7. The Notification is entirely false: Plaintiff is not now, and has never been, indebted to WPHP or Mr. Fensterman, and WPHP and Mr. Fensterman have no right or ability to sell the Plaintiff’s interest in Waterview Acquisition I, LLC. Any attempt to do so is false, improper, and in breach of the collateral assignment.

8. Moreover, the Notification was designed to inflict maximum damage, as it was widely broadcast to Plaintiff’s business partners and other interested parties, harming Plaintiff’s reputation and ability to operate his facilities.

9. Moreover, Mr. Fensterman has represented Plaintiff previously, and continues to represent Plaintiff in a variety of matters, making his decision to act directly against Plaintiff’s interests bizarre, improper, and actionable.

10. Moreover, if WPHP and Mr. Fensterman continue with a fraudulent sale, as stated in the Notification, it will harm Plaintiff’s business and operations, as well as potential third parties who improperly attempt to purchase Plaintiff’s interest.

**THE PARTIES**

- 11. Plaintiff Lizer Jozefovic is a resident of the State of New York.
- 12. Defendant White Plains Healthcare Properties I, LLC is a foreign limited liability company that regularly conducts business in the State of New York.
- 13. Defendant Howard Fensterman is a resident of the State of New York and regularly conducts business in the State of New York.

14. Defendant Metropolitan Commercial Bank is a commercial bank with its headquarters located at 99 Park Ave, New York, NY 10016 and regularly conducts business in the State of New York.

15. This Court has jurisdiction over all causes of action asserted herein because all causes of action asserted herein arise out of conduct undertaken by defendants in the State of New York.

16. Each defendant has sufficient minimum contacts with the State of New York and has otherwise intentionally availed himself/itself of the State of New York so as to render the exercise of jurisdiction over it by the State of New York court consistent with traditional notions of fair play and substantial justice.

**FACTUAL ALLEGATIONS**

**The Collateral Assignment**

17. Plaintiff has a 70% share of Waterview Acquisition I, LLC (the “Membership Interest”), making him the majority owner.

18. Plaintiff previously entered into a collateral assignment, which established a rent security account for the White Plains Skilled Nursing Facility (the “Collateral Assignment”).

19. The Collateral Assignment states, in relevant part:

- a. Under Paragraph 2, upon the deposit of \$1,600,000 into the rent security account, the “assignment shall automatically terminate and be void and of no further effect”;
- b. Under Section 13, the exercise of the White Plains Health Care Properties LLC’s (the “Assignee”) rights is limited to a violation of the “terms and provisions concerning the maintenance of the account...”; and

c. Under Section 13(c), any proceeds derived from the disposition of the collateral must be applied to the rent security account.

20. In November 2015, Plaintiff deposited \$1,595,031.44 into Chase Account ending in xxxx-xxx-xxxx-7272 to establish the rent security (the “Rent Security”).

21. The funds for the Rent Security were derived from the refinancing of the Waterview real property.

22. At that time, both Gerald Billow, Esq an attorney at Posternak, Blankstein & Lund LLP, in Boston and Greg Stollar, Esq. of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (“Abrams, Fensterman LLP”), attorneys for WPHP and Mr. Fensterman, were directly informed that the Rent Security had been established, satisfying the Collateral Assignment requirements.

23. Moreover, Mr. Fensterman was personally aware of the Rent Security and that the Collateral Assignment had been satisfied, as he and his legal counsel were informed of the creation of the account, and the money to fund the account was wired from Abrams, Fensterman LLP after Plaintiff established the account and made arrangements for Mr. Fensterman to be a signatory.

24. On December 14, 2015, Mr. Fensterman signed the Business Account Signature Form.

25. In 2017, the Rent Security was transferred to the Chase account ending in xxxx-xxx-xxxx-0885 by resolution of Waterview Acquisition I, LLC.

26. The resolution and account holder certification form were tendered to Mr. Fensterman.

27. As a result of Plaintiff's performance, all relevant obligations under the Collateral Assignment were completely satisfied by the provision of the Rent Security, automatically terminating the Collateral Assignment and rendering it void pursuant to its own provisions.

**Assignment of the Membership Interest to MCB**

28. At the time of the Collateral Assignment, the Operating Agreement of Waterview Acquisition I, LLC did not permit its members to assign their membership interests.

29. At that time, the Operating Agreement of Waterview Acquisition I, LLC stated, in relevant part:

- a. Articles 5 and 6 did not provide for any assignment of the Membership Interest;
- b. Article 12 specifically prohibited an assignment of the Membership Interest to Mr. Fensterman as Nominee of White Plains Healthcare Properties LLC.

30. Mr. Fensterman is aware of these facts, as well as the limitations on transferring and assigning the Membership Interest, as Mr. Fensterman and his firm Abrams, Fensterman LLP acted as counsel to Waterview Acquisition I, LLC in its formation and execution of its operating agreement.

31. However, the Operating Agreement of Waterview was subsequently amended in order to authorize Plaintiff, as the majority member, to assign his interest.

32. In December 2019, Plaintiff assigned the Membership Interest to MCB in connection with a \$3,000,000.00 loan as part of a financing arrangement to provide working capital to benefit the White Plains project, most of which was paid in the form of rent to Defendants WPHP and Mr. Fensterman.

33. Currently, MCB has perfected its security interest in the Membership Interest and maintains physical possession of the membership certificates evidencing Plaintiff's ownership of interests in Waterview Acquisition I, LLC.

34. Mr. Fensterman knew of the approved of the loan from and assignment to MCB, as the proceeds have been used to pay rent on the White Plains Nursing Home.

35. Moreover, Mr. Fensterman has continued to represent Waterview Acquisition I, LLC to the present date, and has recently tendered bills and asked for payment for certain litigation matters.

36. Moreover, Mr. Fensterman previously acted as Plaintiff's personal counsel, during which time he represented Plaintiff in matters related to the corporate compliance and collection matters for all of Plaintiff's nursing homes.

#### **Distribution of the Notification and Resulting Harm**

37. On October 6, 2020, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP ("DDW LLP") issued a purported Notification of Disposition of Collateral, dated October 6, 2020, which announced the intention to sell the Membership Interest at "public auction" (the "Notification").

38. The Notification was first sent on October 6, 2020 by Mr. Fensterman "as nominee for White Plains Health Care Properties, LLC."

39. The Notification claims to be based upon the Collateral Assignment.

40. The Notification states that Plaintiff is a "debtor" and that the Membership Interest will be sold "to the highest qualified public bidder in public" at 10:00 am on Friday, October 30, 2020 at DDW LLP.

41. Since then, Defendants WPHP and Mr. Fensterman have distributed the notice to multiple hospital operators across the state, as well as Plaintiff’s current and potential colleagues and business partners.

42. Plaintiff has received multiple calls inquiring about the alleged “debt” claimed in the Notification.

43. Plaintiff has never received any funds from WPHP or Mr. Fensterman. Therefore, neither Waterview Acquisition I, LLC nor Plaintiff owes any money to WPHP as there is no debt, and Plaintiff is not and cannot be a debtor.

44. Moreover, since 2015, Plaintiff has given WPHP and Mr. Fensterman over \$4.6 million in a combination of loans, unallocated payments, and a down-payment for the purchase of a building.

45. Moreover, since September 2019, Plaintiff has paid rent of over \$6 million.

46. In Plaintiff’s business, the public allegation of unpaid debts is very serious and damaging and has negatively impacted Plaintiff’s standing in the business and banking communities.

47. On October 16, 2020, Plaintiff, through counsel, attempted to contact Alfred E. Donnellan, Esq. (“Mr. Donnellan), the Managing Partner at DDW LLP, to confirm by October 20, 2020 that the Notification has been withdrawn and that there will be no attempts to proceed against the Membership Interest.

48. Neither Mr. Donnellan nor Mr. Fensterman have responded.

49. Plaintiff has been irreparably harmed by the Notification and any purported sale of the Membership Interest, and this harm will continue until the Notification is withdrawn and a correction is issued.

50. The wide dissemination of the false claims in the Notification has damaged Plaintiff's reputation and standing within the nursing home community.

51. Moreover, Plaintiff has been questioned by lenders and other interested parties as to the viability of his business concerns.

52. Moreover, the publication of the Notification has materially affected admissions to Plaintiff's facilities.

53. Moreover, if WPHP and Mr. Fensterman continue with a wrongful and fraudulent sale of the Membership Interest, it will disastrously and irreparably harm Plaintiff and potential third-parties who attempt to purchase the Membership Interest based upon a non-existent debt and without the ability to do so.

54. This action is brought to seek redress for WPHP and Mr. Fenster's harmful conduct, and to clarify ownership of the Membership Interest as to MCB.

**FIRST CAUSE OF ACTION**  
**Declaratory Judgment**  
**(All Defendants)**

55. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

56. The Collateral Assignment states that it is automatically terminated upon the establishment of the Rent Security.

57. Plaintiff properly established the Rent Security, pursuant to the requirements of the Collateral Assignment.

58. Defendants have personal knowledge that the Collateral Assignment was satisfied and is therefore null and void.

59. Plaintiff properly assigned the Membership Interest to MCB.

60. Defendants have personal knowledge that the Membership Interest has been assigned to MCB.

61. Plaintiff requests that the Court issue a declaratory judgment finding that: the Collateral Assignment is null and void following the establishment of the Rent Security; that the Membership Interest has been assigned to MCB; that Plaintiff is not indebted to WPHP or Mr. Fensterman; and consequently that WPHP and Mr. Fensterman have no right or claim to the Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest.

**SECOND CAUSE OF ACTION**  
**Breach of Contract**  
**(WPHP and Mr. Fensterman)**

62. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

63. Plaintiff and WPHP entered into the Collateral Assignment

64. Plaintiff has performed all conditions, covenants, and promises required to be performed by Plaintiff in accordance with the terms of the Collateral Assignment alleged herein.

65. Specifically, Plaintiff established the Rent Security pursuant to the terms of the Collateral Assignment, resulting in the termination of the Collateral Assignment and rendering it void pursuant to its own provisions.

66. Defendants have personal knowledge that the Rent Security has been established, and that the Collateral Assignment has been terminated.

67. WPHP and Mr. Fensterman issued the Notification in breach of the Collateral Assignment.

68. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

69. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**THIRD CAUSE OF ACTION**

**Fraud  
(WPHP and Mr. Fensterman)**

70. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

71. WPHP and Mr. Fensterman have made multiple false statements regarding the Plaintiff and the Membership Interest.

72. Specifically, WPHP and Mr. Fensterman issued the Notification claiming that Plaintiff was a debtor, and that the Membership Interest would be sold to satisfy the debt.

73. However, Plaintiff is not indebted to WPHP and Mr. Fensterman, and WPHP and Mr. Fensterman have no right to sell the Membership Interest.

74. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

75. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**THIRD CAUSE OF ACTION**  
**Defamation**  
**(WPHP and Mr. Fensterman)**

76. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

77. On October 6, 2020, WPHP and Mr. Fensterman caused the Notification to be issued.

78. The Notification claims that Plaintiff is a “debtor,” and that WPHP, Mr. Fensterman, and DDW LLP will sell the Membership Interest at a public auction to satisfy Plaintiff’s debts. These statements are false.

79. WPHP and Mr. Fensterman knew that the statements in the Notification were false at the time the Notification was issued.

80. The Notification was widely distributed to Plaintiff’s current and potential colleagues and business partners.

81. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

82. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**FOURTH CAUSE OF ACTION**  
**Breach of Fiduciary Duty**  
**(Mr. Fensterman)**

83. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

84. At all relevant times, as Plaintiff's former and current legal representative, Mr. Fensterman owed fiduciary duties to Plaintiff, including the duties of loyalty, good faith, and care.

85. Mr. Fensterman breached his fiduciary duties to Plaintiff by issuing the Notification.

86. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

87. Mr. Fensterman's conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**FIFTH CAUSE OF ACTION**  
**Legal Malpractice**  
**(Mr. Fensterman)**

88. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

89. Mr. Fensterman acted as legal counsel to Plaintiff, both during and after the Collateral Assignment.

90. Mr. Fensterman was required to represent Plaintiff's interests without conflict.

91. Mr. Fensterman abused his position as Plaintiff's legal counsel and acted in direct opposition to Plaintiff's interests by issuing the Notification.

92. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

93. Mr. Fensterman's conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**SIXTH CAUSE OF ACTION**  
**Judiciary Law Section 487**  
**(Mr. Fensterman)**

94. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

95. Mr. Fensterman acted as legal counsel to Plaintiff, both during and after the Collateral Assignment.

96. Mr. Fensterman acted deceitfully by issuing the Notification in an attempt to fraudulently sell the Membership Interest and to harm Plaintiff, his own client.

97. Mr. Fensterman intends to receive compensation from other parties, including WPHP, by acting against Plaintiff's interests.

98. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

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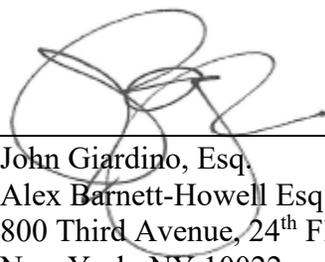
**PRAYER FOR RELIEF**

Wherefore, Plaintiff Lizer Jozefovic prays for judgment against Defendants White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank as follows:

1. On the First Cause of Action, an order declaring that:
  - a. The Collateral Assignment is null and void following the establishment of the Rent Security;
  - b. The Membership Interest has been properly assigned to MCB;
  - c. Plaintiff is not indebted to WPHP or Mr. Fensterman; and
  - d. WPHP and Mr. Fensterman have no right or claim to the Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest;
2. On the Second, Third, and Fourth, Fifth, and Sixth Causes of Action herein, for compensatory and consequential damages in in an amount subject to proof at trial;
3. For punitive damages;
4. For recovery of attorney's fees as provided by law, contract, or statute;
5. For pre-judgment interest at the maximum rate permitted by law;
6. For costs incurred; and
7. For any other and further relief as the court may deem proper.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_

John Giardino, Esq.  
Alex Barnett-Howell Esq.  
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**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all issues so triable in this action.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
 \_\_\_\_\_  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Index No. 60278/2020

Plaintiff,

- against -

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION  
FOR LEAVE TO AMEND COMPLAINT**

**DEI BELLO DONNELLAN WEINGARTEN WISE & WILDERKHEIR, LLP**  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
One North Lexington Avenue, 11<sup>th</sup> Floor  
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Tel.: (914) 681-0200

-and-

**ABRAMIS, FENSTERMAN, FENSTERMAN, EISMAN, TURMAZO, FERRARA, WOLF & CARONE, LLP**  
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**PRELIMINARY STATEMENT**

Plaintiff, White Plains Healthcare Properties I, LLC (“WPHI” or the “plaintiff”) by its attorneys, DelBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, respectfully submits this reply memorandum of law in further support of its motion, pursuant to CPLR § 3025(b), granting WPHI leave to file an amended complaint.

**ARGUMENT**

**I**

**THE COURT SHOULD GRANT LEAVE TO FILE THE AMENDED COMPLAINT.**

The defendants’ argument that granting leave to file the amended complaint would unfairly prejudice them and that the plaintiff improperly seeks to “coningle the facts and issues in the New York Action with the Westchester Action through an amended complaint” are completely without merit. Memorandum of law in opposition to motion for leave to amend complaint dated February 5, 2020 (the “Opp. br.”), at 2.

To start, it is not the plaintiff that has acted improperly here, it is the defendants. Defendant Lizer Jozefovic commenced the action in New York County more than a month after this action was filed for the obvious and unlawful purpose of dividing the dispute between the parties into two different courts. In contrast, the plaintiff properly seeks simply to add a cause of action against Jozefovic for his breach of the two agreements (a lease and a pledge agreement) that are at the core of the dispute raised in the original complaint.

As more fully set forth below, the defendants’ assertions that they will suffer prejudice if the complaint is amended and that the proposed amendment is barred by CPLR 3211(a)(4) are without any basis.

**A. Jozefovic commenced the New York County action to improperly divide the dispute between the parties.**

The plaintiff commenced this action on September 18, 2020. Affirmation of Alfred E. Donnellan dated January 26, 2021 (the "Donnellan aff."), ex. B. More than a month later, on October 22, 2020, Jozefovic commenced the action in New York County, *Jozefovic v. White Plains Health Care Properties I, LLC*, Index No. 655549/2020 (Sup. Ct. N.Y. Cty.) (the "New York County action"); see also Affirmation of Alfred E. Donnellan dated February 18, 2021 (the "Donnellan reply aff."), ex. A. The New York County action concerns the same parties and contractual agreements and the same dispute arising out of those agreements.

In particular, both actions relate to the same nursing home facility located in Westchester County (the "Facility") and to an obligation to post \$1.6 million in additional security under an Amended and Restated Operating Lease dated as of November 19, 2015 (the "Lease") and a Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 (the "Pledge Agreement"). This action seeks to enforce the terms of the Lease, under which HBL SNF, LLC ("HBL") -- an entity controlled by Jozefovic -- is the tenant and Jozefovic is a guarantor. The New York County action seeks to enjoin the sale of Jozefovic's membership interest in Waterview Acquisition I, LLC ("Waterview"), which was given as collateral to WPHP for Jozefovic's obligations under the Lease and Pledge Agreement. WPHP -- the plaintiff in this case -- is attempting to sell that membership interest on account of defaults under the Lease and the Pledge Agreement.

Indeed, there is no legitimate basis at all for venue in New York County. All of the events giving rise to the claims asserted in the New York County action occurred in Westchester County.

See CPLR 503(a). The New York County action seeks to enjoin the sale of Jozefovic's membership interest in Waterview, which is located in Westchester County.<sup>1</sup> WPHP is seeking to sell that membership interest on account of defaults: (i) by HBL and Jozefovic (as guarantor) under the Lease, which is of commercial property in Westchester County; and (ii) by Jozefovic under the Pledge Agreement, which pledged Jozefovic's membership interest in Waterview (located in Westchester County) as collateral.

The only party in the New York County action that resides in New York County is Metropolitan Commercial Bank ("MCB"), but MCB was named as a defendant for the sole purpose of fabricating venue in New York County. The New York County action complaint seeks no relief whatever against MCB. MCB is mentioned in the complaint only in connection with Jozefovic's allegation that he assigned the membership interest to the bank before assigning it to WPHP, and his request for a declaration to that effect. Domellan aff., ex. A, ¶¶ 32-34, 59-61. None of that is relevant to the claims Jozefovic makes in the New York County action. If the allegations in the New York County action are true, Jozefovic's interest will be sold subject to the rights of MCB. Jozefovic has no need to assert MCB's priority. There is only one reason that Jozefovic named MCB as a defendant in the New York County action: to invent a basis for venue in New York County, so that he can divide the parties' dispute into two different fora. That is improper. *Espinoza v. Concordia Int'l Forwarding Corp.*, 39 A.D.3d 258 (1st Dep't 2007) (Where venue

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<sup>1</sup> Waterview owns a 130-bed skilled nursing facility known as Waterview Hills Rehabilitation and Nursing Center located at 537 Route 22, Purdys, Westchester County, New York 10578.

properly lies elsewhere, it is error to retain venue on the basis of a nominal defendant against whom there is no legitimate claim.).

In contrast to Jozefovic's improper conduct in commencing the New York County action, plaintiff has acted more than appropriately in seeking leave to amend the complaint to add a cause of action against Jozefovic individually for FBI's breach of the same provisions in the Lease as alleged in the original complaint and for his breach of the Pledge Agreement. Jozefovic pledged his membership interest in Waterview as security to ensure FBI's compliance with the Lease and the Pledge Agreement. The cause of action added to the amended complaint, therefore, seeks to do nothing more than enforce against Jozefovic the terms of the Lease and the Pledge Agreement, the agreements at the core of the parties' dispute.

**B. The defendants will suffer no prejudice if the motion for leave to amend is granted.**

The defendants argue that it would be "fundamentally prejudicial to require Defendants to litigate the same claims before two courts at the same time." Opp. br., at 8. To reiterate, it is Jozefovic that commenced the New York action asserting what the defendants say are the same claims more than a month after the plaintiff filed this action. Accordingly, to the extent that the parties are "litigat[ing] the same claims before two courts at the same time," that is the defendants' doing, not the plaintiff's.

The plaintiff further notes that the defendants curiously also make the contradictory claim that New York action and this action raise different claims because this action is based on the Lease and the New York County action is based on the Pledge Agreement. Opp. br., at 7 ("Plaintiff and Defendants' claims in the Westchester Action are limited to the Lease Agreement, a distinct

contract which has no bearing on the [Pledge Agreement]. Likewise, the New York action is focused on the [Pledge Agreement], and does not involve any claims arising from or related to the Lease Agreement.”). The defendants cannot have it both ways. If the claims in this action and the New York action are the “same,” then the defendants acted improperly by commencing the New York action. If the claims are different, then the defendants’ assertion that the proposed amendment to the complaint is improper because it is duplicative of the claims in the New York County action is wrong.

In any event, as the plaintiff has previously argued, no prejudice to the defendants could possibly result from allowing the complaint to be amended. Plaintiff’s Memorandum of Law in Support of Motion for Leave to Amend the Complaint dated January 26, 2021, at 1-3. Discovery in this case has only just commenced. Defendants served their first set of interrogatories and request for the production of documents on December 18, 2020. Pursuant to the Court’s preliminary conference order, responses to those discovery requests are due on February 26, 2021. The parties also agreed to adjourn the responses for thirty days with the Court’s consent. Depositions have not yet commenced. Since leave is being sought at the commencement of discovery, the defendants cannot plausibly claim that they somehow changed their position in reliance on the original complaint, or even that the amended complaint would somehow cause them significant trouble or expense.

The cases cited by the defendants, *Bleakley Platt & Schmidt, LLP v. Barbera*, 136 A.D.3d 725, 726 (2d Dept 2016) and *Johnson v. State*, 125 A.D.3d 1073, 1074 (3d Dept 2015), *Opp. br.*, at 7-8, are completely inapposite. Unlike the claims at issue in those cases, the cause of action

added to the amended complaint here is not duplicative of the claims asserted in the New York County action. The claim added to the amended complaint asserts breaches of the Lease and the Pledge Agreement and seeks damages against Jozefovic on account of those breaches. The New York action, in contrast, asserts claims relating to the proposed sale of Jozefovic's membership interest in Waterview and seeks to enjoin the sale.

The defendants also cite CPLR 3211(a)(4), which allows for dismissal of an action if there is another action pending between the same parties for the "same cause of action." CPLR 3211(a)(4) does not apply here. It "requires that the prior action or proceeding be 'for the same cause of action,' an essential that seriously limits the availability of this defensive motion." *Kent Development Co., Inc. v. Liccione*, 37 N.Y.2d 899, 901 (1975). Accordingly, "[e]ven where both causes of action may arise out of the same occurrence, where the relief requested is different, more than one action can obviously be maintained." *Hofinger v. Hofinger*, 107 Misc.2d 573, 575 (Sup. Ct. Suffolk Cty. 1981); see also *Kent Development Co., Inc. v. Liccione*, 37 N.Y.2d at 901 (Even where "the causes of action in both suits arise out of the same subject matter or series of alleged wrongs," dismissal is not warranted under CPLR 3211(a)(4) where "the nature of the relief sought is not the same or substantially the same."); *Reliance Ins. Co. v. Am. Elec. Power Co., Inc.*, 224 A.D.2d 235, 235 (1st Dep't 1996) (denying motion where "[t]he requisite complete identity of issues, for purposes of CPLR 3211(a)(4), does not exist.").

While the facts and circumstances that are the subjects of this action and the New York action arise out of the same dispute, the causes of action asserted in the two cases and the relief sought are different. In the New York action, Jozefovic asserts that the sale of his membership

interest in Waterview was improperly noticed and scheduled and seeks to enjoin the sale and claims damages on various legal theories on the basis of the alleged improper notification, scheduling and conduct of the proposed sale. See *Donnellan* aff., ex. B. In this action, in contrast, the plaintiff: (i) asserts breaches of the Lease, a related letter of intent and the Pledge Agreement, and seek damages against HBL and Jozefovic on those grounds; and (ii) seeks to enforce the guarantees of the obligations under the Lease executed by Jozefovic and Neuman. See *Donnellan* aff., ex. A. Unlike in the New York action, the plaintiff in this action seeks no relief concerning the proposed sale of the Waterview membership interest. Because the causes of action asserted in the two cases are not the same and the relief sought is different, CPLR 3211(a)(4) does not apply.

II.

**THE DEFENDANTS' REQUEST FOR A STAY SHOULD BE DENIED.**

The defendants' request in the alternative that the Court "stay" the motion for leave to amend pending a decision on the motion to consolidate the New York County action with this action in this Court. That request should be denied. As previously argued, the cause of action added to the amended complaint asserts a different cause of action than those in the New York action and seeks different relief. As the defendants have conceded that "a decision in the Westchester Action would have no impact on the New York Action, or vice versa." *Op. br.*, at 1-2. If the motion to consolidate is denied, the claims asserted in each of the actions will proceed independently. Accordingly, there is no need for a stay.

CONCLUSION

For all of these reasons, WPHIP respectfully request that the Court grant leave to file the amended complaint and award such other relief as the Court deems just.

Dated: White Plains, New York  
February 18, 2021

DEI BELLO DONNELLAN WIENGARTEN  
WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains  
Healthcare Properties I, LLC*

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*Attorneys for White Plains Healthcare  
Properties I, LLC*

**CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, ALFRED E. DONNELLAN, ESQ., an attorney at law licensed to practice in the State of New York, and counsel of record herein, certify that this document contains 2,090 words, exclusive of the caption page, table of contents and table of authorities and signature block, as counted by the word count of the word-processing system used to prepare this document.

Dated: White Plains, New York  
February 18, 2021

  
\_\_\_\_\_  
ALFRED E. DONNELLAN

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X	
WHITE PLAINS HEALTHCARE PROPERTIES I,	:
LLC,	:
	:
Plaintiff,	:
	:
-against-	:
	:
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A	:
LIZER JOZOFOVIC, and MARK NEUMAN,	:
	:
Defendants and Third-Party Plaintiffs,	:
	:
-against-	:
	:
CCC EQUITIES, LLC, PROJECT EQUITY	:
CONSULTING, THE CONGRESS COMPANIES,	:
HOWARD FENSTERMAN, and WILLIAM	:
NICHOLSON,	:
	:
Third-Party Defendants	:
-----X	

Index No. 60278/2020

**STIPULATION**

**IT IS HEREBY STIPULATED AND AGREED** by and between Plaintiff White Plains Healthcare Properties I, LLC and Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, “Plaintiffs”) and Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman (collectively, “Defendants”), though their undersigned counsel, as follows:

**IT IS FURTHER STIPULATED AND AGREED** that the Preliminary Conference Order, dated November 11, 2020 [Doc No. 36], is modified so that the deadline to serve (a) Responses to Demands for Discovery and Inspection and (b) Answers to Interrogatories shall be extended by 30 days, from February 26, 2021 to March 29, 2021.

**IT IS FURTHER STIPULATED AND AGREED** that the time for Defendants to oppose or otherwise respond to Plaintiff’s Motion to Dismiss, dated February 3, 2021 [Doc Nos. 62-71],

shall be extended by 60 days, from February 17, 2021 to April 19, 2021. The return date for Plaintiff's Motion to Dismiss is extended to May 7, 2021 with Plaintiff's reply due May 6, 2021.

**IT IS FURTHER STIPULATED AND AGREED** that electronically reproduced or facsimile signatures on this Stipulation shall have the same effect as original signatures.

Dated: New York, New York  
March 4, 2021

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP

MICHELMAN & ROBINSON, LLP

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*Attorneys for Plaintiff and Third-Party  
Defendants*

*Attorneys for Defendants and Third-Party  
Plaintiffs*

**SO ORDERED:**

---

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I,  
LLC,

Plaintiff,

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A  
LIZER JOZOFOVIC, and MARK NEUMAN,

Defendants and Third-Party Plaintiffs,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants  
-----X

Index No. 60278/2020

**STIPULATION**

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Dated: New York, New York  
March 4, 2021

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP

MICHELMAN & ROBINSON, LLP

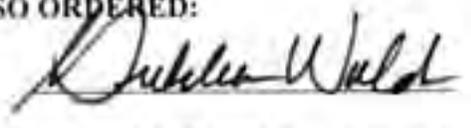
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*Attorneys for Plaintiff and Third-Party Defendants*

*Attorneys for Defendants and Third-Party Plaintiffs*

SO ORDERED:

 3/11/21

HON. GRETCHEN WALSH  
JUSTICE SUPREME COURT

To commence the statutory time period of appeals as of right pursuant to (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER: COMMERCIAL DIVISION

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC

Plaintiff,

against

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARC NEUMAN,

Defendants and  
Third-Party Plaintiffs,

against

CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING,  
THE CONGRESS COMPANIES, HOWARD FENSTERMAN,  
and WILLIAM NICHOLSON,

Third-Party Defendants.  
-----X

Index Number: 60278/2020  
Motion Seq. 3  
Motion Date: 2/18/2021  
**DECISION AND ORDER**

WALSH, J.

The following e-filed documents, listed in NYSCEF by Document Numbers 51-61, 73-81 were read on this motion by Plaintiff White Plains Healthcare Properties I, LLC ("Plaintiff" or "WPHP") for an order pursuant to CPLR 3025(b) granting it the right to amend its Complaint. Defendants/Third-Party Plaintiffs HBL SNF, LLC ("HBL"), Lizer Jozefovic a/k/a Lizer Jozofovic ("Jozefovic") and Marc Neuman ("Neuman") (collectively "Defendants") oppose Plaintiff's motion. Upon the foregoing papers, and for the reasons set forth herein, Plaintiff's motion is granted.

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff initiated this action on September 18, 2020 by filing its Summons and Complaint seeking to recover damages due to HBL's alleged default under an amended and restated operating lease dated November 19, 2015 and amended July 12, 2017 (the "Lease"). Pursuant to the Lease, HBL is the tenant and operator of a 160-bed nursing facility that WPHP constructed at 116-120

Church Street, White Plains, New York (the “nursing facility”). On November 5, 2020, Defendants filed their answer with counterclaims and a third-party complaint. On November 13, this Court held a Preliminary Conference and issued a Preliminary Conference Order with a discovery cut-off date of June 4, 2021 and a trial readiness conference scheduled for June 9, 2021.

On November 30, 2020, Plaintiff filed an Amended Verified Complaint in which Plaintiff amended its initial Complaint by adding a Fifth Cause of Action against Jozefovic seeking to enforce a pledge agreement provided by Jozefovic as security against any breach of the Lease (the “Proposed Fifth Cause of Action”). The pledge agreement assigns Jozefovic’s interest in Waterview Acquisition I, LLC (“Waterview”).

By letter dated December 2, 2020, Defendants’ counsel rejected service of the Amended Complaint on the grounds that: (1) the Amended Complaint was not filed within 20 days of Defendants’ Answer, and (2) Jozefovic filed an action in Supreme Court, New York County Index No. 655549/2020 (the “NY Action”) seeking, *inter alia*, a preliminary injunction enjoining Plaintiff’s sale of Jozefovic’s interest in Waterview. In the NY Action, Jozefovic also asserts a claim of libel based on the Notification WPHP and Howard Fensterman (“Fensterman”) circulated in connection with the proposed sale. Because the NY Action was filed after Plaintiff filed this action, WPHP moved to transfer and consolidate the NY Action with this action. That motion is *sub judice* before Hon. Nancy Bannon, J.S.C. At various conferences with this Court,<sup>1</sup> WPHP has indicated that it believes the motion will be granted. Defendants agree that if the motion to consolidate is granted, Plaintiff should be permitted to amend its Complaint to add the Proposed Fifth Cause of Action, but unless and until that happens, Defendant oppose Plaintiff’s attempt to amend.

## PLAINTIFF’S MOTION TO AMEND

### A. Plaintiff’s Contentions in Support of its Motion

In support of its motion to amend, Plaintiff submits: (1) an Affirmation of Alfred E. Donnellan, Esq. dated January 26, 2021, together with its attached exhibits (“Donnellan Aff.”); and (2) a memorandum of law. In his Affirmation, Donnellan asserts that Plaintiff owns a “brand new, state-of-the-art, 160 bed skilled nursing home” in White Plains, New York, and that HBL is the tenant and operator under the Lease (Donnellan Aff. at ¶ 2). Donnellan contends that Jozefovic and Neuman are HBL’s principals and guarantors under the Lease, and the guaranty is subject to a security agreement in which Jozefovic pledged his 71% controlling interest in Waterview as security for HBL’s obligations (“Collateral Assignment”) (*id.*). Donnellan states that the Proposed Amended Complaint (“PAC”), which is the subject of this motion, seeks to add the Proposed Fifth Cause of Action, which alleges that Jozefovic breached his obligations under the Collateral Assignment by: (1) “voluntarily permitting the amendment of the operating agreement” of Waterview by assigning his controlling interest to Metropolitan Commercial Bank (“MCB”) as security for another obligation; (2) “failing to add defendant Howard Fensterman as a co-signatory

<sup>1</sup> At these conferences, the Court attempted to have the parties agree to transfer the NY Action here thereby obviating the need for this motion, but the parties were unable to reach an agreement in this regard.

to certain accounts held by JP Morgan Chase;" and (3) failing to post an additional security deposit (*id.* at ¶ 4).

According to counsel, the PAC was filed after the 20-day deadline because of a clerical error, resulting in the PAC being served shortly after Thanksgiving Day weekend (*id.* at ¶ 5). He contends that Defendants' objections are not a basis for this Court's denial of Plaintiff's motion because: (1) Plaintiff moved to change venue and consolidate the NY Action with this action; and (2) the additional breach claims relate to this action and belong here, "not in the libel action [Jozefovic] commenced in [the NY Action]" (*id.* at ¶ 6). Counsel further argues that the proposed Fifth Cause of Action is "based on the clear and unambiguous provisions of the [Collateral Assignment] and the Lease," annexed as Exhibit F and Exhibit G, and are "either indisputable or are established by the answer" filed by MCB in the NY Action, annexed as Exhibit H (*id.* at ¶ 9). According to Donnellan, MCB's answer confirms that Jozefovic pledged his controlling interest in Waterview as collateral to MCB and that Waterview's Operating Agreement was amended to allow him to do so (*id.* at ¶ 10).<sup>2</sup>

In its memorandum of law, Plaintiff asserts that its motion should be granted because Defendants would not be prejudiced or surprised by the additional cause of action (Plf's Mem. at 2). Plaintiff argues that since the case is in the early stages of discovery, "[D]efendants cannot plausibly claim that they somehow changed their position in reliance on the original complaint, or even that the amended complaint would somehow cause them significant trouble or expense" (*id.*). Plaintiff further contends there is a lack of surprise since the PAC adds a cause of action against Jozefovic individually for breach of the same provisions of the Lease (*id.* at 3). Lastly, Plaintiff argues that the allegations contained in the Proposed Fifth Cause of Action have merit because they are based on "clear and unambiguous provisions of the Collateral Assignment and Lease, and many of the allegations contained in the fifth cause of action are indisputable" (*id.* at 5). In support, Plaintiff relies on MCB's Answer and Jozefovic's affidavit in the NY Action as evidence (*id.*). Plaintiff also contends that the arguments set forth in Defendants' counsel's letter dated December 2, 2020 are unavailing because: (1) the NY Action began after this one; (2) venue for the NY Action is improper; and (3) Plaintiff has moved to change venue and consolidate the NY Action with this action (*id.* at 6).

### ***B. Defendants' Contentions in Opposition***

In opposition, Defendants submit: (1) an Affirmation in Opposition of John Giardino, Esq. dated February 5, 2021 ("Giardino Opp. Aff."), together with its attached exhibits, and (2) a memorandum of law in opposition.

Because Giardino affirms to various facts without providing a basis for his personal knowledge, they have not been considered for purposes of this motion (*United Specialty Ins. Co. v. Columbia Cas. Co.*, 186 AD3d 650 [2d Dept 2020]; *Currie v. Wilhouski*, 93 AD2d 816 [2d Dept 2012]). In any event, given the current procedural context of a motion to amend, most of the facts

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<sup>2</sup> Donnellan asserts that Jozefovic admits to the same in an affidavit he submitted in the NY Action (Donnellan Aff. at ¶ 10).

asserted are irrelevant because they simply involve Defendants' contention that: (1) Jozefovic's obligations under the Collateral Assignment were satisfied through his tender of the rent security; and (2) the assignment to MCB was authorized by Plaintiff.<sup>3</sup>

With regard to the facts for which counsel does have personal knowledge, Giardino asserts that on October 6, 2020, he received a "purported Notification Disposition of Collateral issued by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP . . . which announced the intention to sell the Membership Interest at 'public auction,'" (the "Notification") a copy of which is annexed as Exhibit B (Giardino Opp. Aff. at ¶¶ 26-27). According to Giardino, the Notification was not issued in connection with this action, and the Notification is false because Jozefovic is not indebted to WPHP or Howard Fensterman ("Fensterman"), and WPHP and Fensterman have no claim to his Membership Interest, much less the right to sell it at public auction (*id.* at ¶ 28-29). Giardino asserts that as a result of his receipt of the Notification, he initiated the NY Action against WPHP and Fensterman on October 22, 2020, and that WPHP and Fensterman moved to transfer the venue of the NY Action to Westchester County and to consolidate the NY Action with this action on October 26, 2020 (*id.* at ¶¶ 30, 32). Counsel states that he rejected the PAC because it was filed more than 20 days after Defendants' answer and because it was based on the same facts and issues as the NY Action (*id.* at ¶ 36).

In their memorandum of law, Defendants take the position that Plaintiff's motion should be denied because "Plaintiff is attempting to insert duplicative facts and claims from the [NY Action] into this action" (Defs' Opp. Mem. at 1). Defendants repeat the facts asserted in the Giardino affirmation, only some of which have been considered on this motion (*id.* at 1-4). Defendants' argument rests primarily on the similarity between six paragraphs contained in the affirmative defenses WPHP asserted in its answer in the NY Action and the allegations in the Proposed Fifth Cause of Action (*id.* at 6-7). Defendants argue that Plaintiff did not include the facts and claims in its original Complaint because this action is limited to the Lease, which is not related to the Collateral Assignment (*id.* at 7). Defendants contend this is an attempt to force consolidation, which will ultimately prejudice Defendants (*id.* at 8). Defendants request that this Court either deny Plaintiff's motion, or wait for Justice Bannon to rule on the motion to consolidate (*id.*).

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<sup>3</sup> "In determining a motion for leave to amend a pleading, 'a court shall not examine the legal sufficiency or merits of a pleading unless such insufficiency or lack of merit is clear and free from doubt'" (*Great Homes Group, LLC v GMAC Mgtg., LLC*, 180 AD3d 1013, 1015 [2d Dept 2020], quoting *Faielia v Tysons Park Apts., LLC*, 110 AD2d 1028, 1029 [2d Dept 2013]). It is well settled that the standard on a motion to amend (whether the proposed amendments are palpably insufficient or patently devoid of merit) should not be confused with the standard on a motion to dismiss (whether the facts as alleged fit within any cognizable legal theory) and, accordingly, simply because the proposed amendment would not withstand a motion to dismiss is not a basis to deny a motion to amend (*Katz v Hampton Hills Assoc. G.P.*, 186 AD3d 688 [2d Dept 2020]).

**C. Plaintiff's Contentions in Further Support of the Motion**

In reply, Plaintiff submits: (1) a Reply Affirmation of Alfred E. Donnellan, Esq. dated February 18, 2021 ("Donnellan Reply Aff.") and its attached exhibit; and (2) a Reply Memorandum of Law.

In further support of its motion, Plaintiff argues that it was Jozefovic who acted improperly by filing the NY Action "for the obvious and unlawful purpose of dividing the dispute between the parties into two different courts" (Plf's Reply at 1). Plaintiff admits that both actions relate to the same facility and contracts (*i.e.*, the Lease and Collateral Assignment signed by Jozefovic) (*id.* at 2). However, it is Plaintiff's contention that this action is to enforce the Lease against HBL, which is controlled by Jozefovic who is also the guarantor, while the NY Action seeks to prevent Plaintiff from selling Jozefovic's Membership Interest in Waterview, which was given as collateral for Jozefovic's obligations under the Lease (*id.*). Plaintiff contends there is no basis for venue in New York County since all the events at issue occurred in Westchester County (*id.*). Plaintiff alleges the only party who resides in New York County is MCB, who was named as a defendant in that action "for the sole purpose of fabricating venue in New York County" (*id.* at 3). According to Plaintiff, the complaint in the NY Action seeks no relief from MCB, and MCB is only mentioned in connection with Jozefovic's alleged assignment of his Membership Interest to MCB before assigning it to Plaintiff (*id.*). Plaintiff contends there is no need for Jozefovic to assert MCB's priority because if the allegations in the NY Action are true, the interest will be sold subject to MCB's rights (*id.*). According to Plaintiff, the new claim asserted in the PAC is proper because Jozefovic offered his Membership Interest as security under the Lease, and Plaintiff's new cause of action seeks to enforce the terms of the Lease against Jozefovic (*id.* at 4).

Plaintiff claims that Defendants' argument that they will be prejudiced by having to litigate the same claims between two courts is without merit because Jozefovic initiated the NY Action asserting the same claims arising in this action (*id.*). Plaintiff further contends that Defendants' arguments in its opposition are inconsistent because "[i]f the claims in this action and the [NY Action] are the 'same,' then the [D]efendants acted improperly by commencing the [NY Action]. If the claims are different, then the [D]efendants' assertion that the proposed amendment to the complaint is improper because it is duplicative of the claims in the [NY Action] is wrong" (*id.* at 4-5). Plaintiff maintains there is no prejudice to Defendants because the amendment is being sought at the commencement of discovery, and Defendants cannot claim their position changed in reliance on the original complaint (*id.* at 5). Plaintiff further argues the causes of action and relief sought in this case are separate and distinct from those in the NY Action (*id.* at 6). According to Plaintiff, in the NY Action, Jozefovic asserts that his Membership Interest in Waterview was improperly noticed for sale and he seeks to prevent the sale claiming damages on the basis of improper notification, scheduling, and conduct of the proposed sale (*id.* at 7). In this action, Plaintiff seeks to recover damages for breaches of the Lease and Collateral Assignment, and to enforce the guarantees of Jozefovic and Neuman under the Lease. As such, it is Plaintiff's contention that unlike the NY Action, this action seeks no relief concerning the proposed sale of Jozefovic's Membership Interest in Waterview (*id.*).

#### D. The PAC

The crux of the proposed amendment is Plaintiff's Proposed Fifth Cause of Action in which Plaintiff seeks to add a new claim alleging breach of contract against Jozefovic based on his alleged "default in the performance of his obligations under the Jozefovic [Collateral Assignment] and HBL's default in the performance of its obligations under the Lease" (PAC at ¶ 100). To support its new cause of action, Plaintiff alleges that Jozefovic executed the Collateral Assignment and "Pledge of Membership Interest and Security Agreement" assigning a "first and superior security interest" in Waterview to WPHP (*id.* at ¶ 38). Plaintiff alleges that under the Collateral Assignment, Jozefovic agreed not to encumber or use his Waterview Interest as collateral in other transactions, and Jozefovic agreed not to amend or allow an amendment to the Waterview Operating Agreement that would "materially adversely affect" the Collateral Assignment and WPHP's rights to the collateral (*id.* at ¶¶ 39-40). Plaintiff alleges it perfected its security interests on September 15, 2020 by filing a financing statement under the Uniform Commercial Code ("UCC") (*id.* at ¶ 42). Plaintiff asserts that in violation of the Collateral Assignment, Jozefovic assigned his Waterview interest to MCB and agreed to allow the Waterview Operating Agreement to be amended (*id.* at ¶ 43). Plaintiff also alleges that: (1) Jozefovic further breached the Collateral Assignment by "failing to take all of the necessary steps to add Howard Fensterman . . . as a co-signatory to the JP Morgan Chase accounts identified" in the Collateral Assignment (*id.* at ¶¶ 44-45); and (2) Jozefovic and HBL breached the Collateral Assignment and Lease by failing to post \$1.6 million security deposit (*id.* at ¶¶ 46-47). Plaintiff alleges it is entitled to dispose of Jozefovic's Waterview interest at a public sale as a remedy for his alleged breaches under the Collateral Assignment and Lease (*id.* at ¶¶ 49-51).

#### DISCUSSION

CPLR 3025(b) provides that "[a] party may amend his or her pleading . . . at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances" (CPLR 3025[b]). In the absence of prejudice or surprise, leave should be granted unless the amendment is palpably insufficient or patently devoid of merit (*Watkins-Bey v City of New York*, 174 AD3d 553 [2d Dept 2019]; *39 College Point Corp. v Transpac Capital Corp.*, 27 AD3d 454 [2d Dept 2006]; *Ravnikar v Skyline Credit-Ride, Inc.*, 79 AD3d 1118 [2d Dept 2010]; *Maloney Carpantry, Inc. v Budnik*, 37 AD3d 558 [2d Dept 2007]; *Emilia v Rahtson Oil Corp.*, 28 AD3d 417 [2d Dept 2006]). "The burden of demonstrating prejudice or surprise, or that a proposed amendment is palpably insufficient or patently devoid of merit, falls upon the party opposing the motion . . . [and] a party seeking leave to amend is not required to make a showing of merit in the proposed amendment" (*National Recruiting Group, LLC v Bern Ripka, LLP*, 183 AD3d 831, 832 [2d Dept 2020], quoting *Faiella Apts., LLC*, 110 AD3d at 1029). While leave to amend a pleading shall be freely granted (*see* CPLR 3025 [b]), a motion for leave to amend is committed to the broad discretion of the court (*see* *Ravnikar*, 79 AD3d at 1119).

A review of the PAC reveals that there is nothing palpably insufficient or patently devoid of merit with regard to the allegations in the Proposed Fifth Cause of Action. Thus, Defendants' argument is predicated on their claim that because WPHP has asserted affirmative defenses in the NY Action which are similar in nature to the allegations contained in the Proposed Fifth Cause of Action, by allowing the amendment, there will be duplicative litigation and presumably, the possibility for a waste of judicial resources and inconsistent determinations.

In its Complaint, Plaintiff already alleges a cause of action against Jozefovic to enforce the terms of the guaranty based on HBL's alleged breach of the Lease. The Collateral Assignment was given by Jozefovic as security for his guaranty and, as such, Plaintiff's Proposed Fifth Cause of Action concerning Jozefovic's alleged breach of the Collateral Assignment is intertwined with not only Plaintiff's existing cause of action seeking to enforce the Jozefovic guaranty,<sup>4</sup> but also its existing cause of action for breach of the Lease.<sup>5</sup> WPHP filed this action more than a month before Jozefovic filed the NY Action. As such, it is this action and not the NY Action which is the first-filed action arising from the alleged breaches by HBL and Jozefovic. One of Plaintiff's remedies for these alleged breaches includes its right to enforce its security interest (*i.e.*, Jozefovic's interest in Waterview). Jozefovic is contending that Plaintiff has no right to proceed with a sale of that interest under the UCC. Given that Jozefovic was granted a TRO from Justice Bannon, he may be correct in his position. Although this Court is not deciding the merits of the motion made by WPHP and Fensterman to transfer and consolidate the NY Action with this action, the Court believes WPHP and Fensterman are likely to be successful. In that event, as Defendants' concede, Plaintiff should be permitted to amend its Complaint in the manner proposed. However, although WPHP has asserted affirmative defenses in the NY Action which include some of the factual allegations supporting its Proposed Fifth Cause of Action, WPHP has not asserted a counterclaim in the NY Action and, as such, it will not be entitled to any affirmative relief in the NY Action. In the event the NY Action is not transferred and consolidated here, the Court has discretion to fashion relief to avoid inconsistent determinations between the NY Action and this action (*e.g.*, by severing and staying any claims/defenses that are duplicative in both actions). Furthermore, Jozefovic should not be rewarded for having filed the NY Action when Jozefovic's claims are related to the claims in this action, particularly given the fact that New York County has no connection to: (1) the

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<sup>4</sup> In this regard, in its PAC, Plaintiff alleges that the Collateral Assignment "provides that Jozefovic pledges, assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member of Waterview Acquisition I, LLC to WPH Properties in order to secure the obligations under the [Collateral Assignment] and under the Lease" (PAC at ¶ 49).

<sup>5</sup> In this regard, in its PAC, Plaintiff alleges that "Jozefovic and HBL breached their obligation to post the \$1,600,000 additional security deposit required by the [Collateral Assignment] and the Lease. Jozefovic's moving of funds into a separate account that he controls does not satisfy the obligation to post the \$1.6 million additional security deposit as required by the [Collateral Assignment] and the Lease" (PAC at ¶¶ 46-47).

parties' residence other than the residence of the nominal defendant MCB; (2) the facility at issue; and (3) the contracts at issue.

Finally, Defendants' reliance on CPLR 3211(a)(4)<sup>6</sup> as a basis to deny Plaintiff's motion to amend is unavailing both because it is premature, and because even if Defendants subsequently move to dismiss the Proposed Fifth Cause of Action based on CPLR 3211(a)(4), it is unlikely that this Court would dismiss it. Here, a month after this action was filed, Jozefovic decided to institute the NY Action rather than assert his claims in this action. Although it is true that the NY Action includes a claim of libel that has nothing to do with this action, it is clear that the disposition of Jozefovic's interest in Waterview is a critical issue in this action as it provides the security for Jozefovic's guaranty which Plaintiff is seeking to enforce. Based on the motion papers filed in the NY Action, other than the residence of MCB, these claims all arise out of transactions and entities located in Westchester County and it was likely brought in New York County for tactical advantage.

It is well settled that a court has "broad discretion in considering whether to dismiss an action on the grounds that another action is pending between the same parties on the same cause of action" (*Whitney v. Whitney*, 57 NY2d 731, 732 [1982]; *Simonetti v. Larson*, 44 AD3d 1028, 1029 [2d Dept 2007] [court may dismiss subsequently filed action where there is substantial identity between the parties and the causes of action – i.e., "the two actions must be 'sufficiently similar' and the relief sought must be 'the same or substantially the same' ... 'both suits arise out of the same subject matter or series of alleged wrongs'"]). Further, under CPLR 3211(a)(4), if there is another action pending between the same parties for the same causes of action, the court need not dismiss upon this ground but may make such order as justice requires. The rationale for the rule is "to avoid vexatious litigation and duplication of effort, with the attendant risk of divergent rulings on similar issues" (*White Light Prods., Inc. v. On The Scene Prods., Inc.*, 231 AD2d 90,96 [1st Dept 1997]). In deciding the motion, "[t]he court must consider in which jurisdiction litigation was first commenced, how far each litigation has progressed and which forum has a more significant and substantive nexus to the controversy, and thus is the most appropriate forum for its resolution" (*Matter of Topps Co., Inc. Shareholder Litig.*, 2007 NY Slip Op 52543[U], 19 Misc 3d 1103[A] at \*2 [Sup Ct NY County 2007]). Thus, "in deciding a motion to dismiss based on the pendency of another action, the analysis is similar to that employed in entertaining a motion predicated on forum non conveniens" (*White Light Prods., Inc.*, 231 AD2d at 570) and the court should consider "whether the litigation and the parties have sufficient contact with this State to justify the burdens imposed on our judicial system" (*id.* at 572, quoting *Flintkote Co. v. American Mut. Liab. Ins. Co.*, 103 AD2d 501, 506 [2d Dept

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<sup>6</sup> **Error! Main Document Only.** CPLR 3211(a)(4) provides, in pertinent part:

A party may move for a judgment dismissing one or more causes of action asserted against him on the ground that ... there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires ...

1984), *affd* 67 NY2d 857 (1986)). The issue is one of “judicial economy, the question is which court should defer, as a matter of comity, to the other in order to avoid vexatious litigation and duplication of effort, with the attendant risk of divergent rulings on similar issues” (*White Light Prods., Inc.*, *supra*, 231 AD2d at 96).

Even though Defendants’ argument based on CPLR 3211(a)(4) is premature, even if Defendants were moving to dismiss the Fifth Cause of Action under CPLR 3211(a)(4), it is not clear to the Court that the two actions are “sufficiently similar” and that relief sought therein is “the same or substantially the same,” as would require the dismissal of it under CPLR 3211(a)(4) (*see Whitney*, *supra*, 57 NY2d at 732; *Simonetti*, *supra*, 44 AD3d at 1029).

Furthermore, with respect to whether the NY Action was in fact a “prior action pending” for purposes of CPLR 3211(a)(4), the Appellate Division, First Department has noted:

“Another action pending” is, by contrast, a “first-in-time”-oriented defense. Here the focus is shifted from inconvenience to a more objective standard of chronology. A CPLR 3211(1)(4) motion requires, first and foremost, the pendency of another action between the parties which was instituted earlier in time ... and has not yet been terminated .... Priority in time is not always controlling, however. Exceptions to the general application of this defense are recognized where competing actions have been commenced “reasonably close in time” to one another ... Virtually every exception to the first-in-time rule involves competing litigation commenced within days or even hours of each other ... (*National Union Fire Ins. Co. of Pittsburgh, PA v. Jordache Enter., Inc.*, 205 AD2d 341, 343 [1st Dept 1994]).

Thus, even if the NY Action had been, technically speaking, the first action for CPLR 3211(a)(4) purposes, “[w]hile technical priority in the commencement of actions is a factor to be considered in determining whether dismissal pursuant to CPLR 3211(a) is appropriate, it is not necessarily dispositive” and a court will decline to dismiss a second filed action if it is determined that the filing of the action was motivated on the basis of obtaining a tactical advantage through forum shopping (*L-3 Communications Corp. v. Safenet, Inc.*, 45 AD3d 1 [1st Dept 2007]; *Seneca Ins. Co. v. Lincolnshire Mgt. Inc.*, 269 AD2d 274 [1st Dept 2000]; *Seaboard Surety Co. v. Gillette Co.*, 75 AD2d 525 [1st Dept 1980]; *National Union Fire Ins. Co. of Pittsburgh, PA*, 205 AD2d 341; *Aon Risk Serv. v. Cusack*, 2012 WL 11009718 [Sup Ct, NY County 2012]). Courts do not favor the tactic by which “a party who has reason to know a lawsuit will be brought against him ... employ[s] the expedient of filing an action to subject his opponent to a preferred forum” (*see White Light Productions, Inc.*, 231 AD2d 90). The use of such a tactic militates in favor of allowing the later filed action to proceed to judgment in the plaintiff’s chosen forum (*id.*).

Based upon the foregoing, and for the reasons stated above, it is hereby

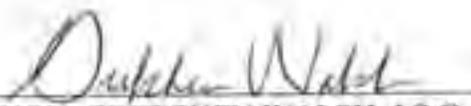
ORDERED that the motion by Plaintiff White Plains Healthcare Properties I, LLC for an order granting it leave to amend its Complaint is granted, and it is further

ORDERED that Plaintiff shall serve and file its First Amended Verified Complaint within 7 days of this Decision and Order.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York  
March 18, 2021

ENTER

  
HON. GRETCHEN WALSH, J.S.C.

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**60278/2020 - Westchester County Supreme Court**

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
Case Type: **Commercial Division**  
Case Status: **Active**  
eFiling Status: **Full Participation Recorded**  
Assigned Judge: **Gretchen Walsh**

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77	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Complaint in New York Action</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
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79	<a href="#">AFFIDAVIT OR AFFIRMATION IN REPLY</a> (Motion #3) <i>Reply Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
80	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>NY County Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
81	<a href="#">MEMORANDUM OF LAW IN REPLY</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
82	<a href="#">STIPULATION - DISCOVERY ( REQUEST TO SO</a> <a href="#">ORDER</a> ) (Motion #4)	<a href="#">Giardino, J.</a> Filed: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

STIPULATION (Motion #2)

Stipulation regarding document discovery and motion to dismiss

Received: 03/04/2021

83 STIPULATION - SO ORDERED

Court User  
Filed: 03/11/2021  
Received: 03/11/2021

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84 DECISION + ORDER ON MOTION (Motion #3)

Court User  
Filed: 03/18/2021  
Received: 03/18/2021

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85 NOTICE OF ENTRY (Motion #3)

[Lara-Garduno, N.](#)  
Filed: 03/19/2021  
Received: 03/19/2021

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86 COMPLAINT (AMENDED)

First Amended Verified Complaint

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

87 EXHIBIT(S) - 1

Amended and Restated Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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88 EXHIBIT(S) - 2

Jozefovic Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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89 EXHIBIT(S) - 3

Neuman Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
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90 EXHIBIT(S) - 4

Jozefovic Security Agreement  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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91 EXHIBIT(S) - 5

Letter of Intent  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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92 EXHIBIT(S) - 6

Notice of Default  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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[Confirmation Notice](#)

93 LETTER / CORRESPONDENCE TO JUDGE

[Lara-Garduno, N.](#)  
Filed: 03/26/2021  
Received: 03/26/2021

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94 LETTER / CORRESPONDENCE TO JUDGE

[Donnellan, A.](#)  
Filed: 04/09/2021  
Received: 04/09/2021

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95 DECISION + ORDER ON MOTION (Motion #4)

Motion withdrawn without prejudice

Court User  
Filed: 04/20/2021  
Received: 04/20/2021

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96 ANSWER (AMENDED)

[Barnett-Howell, A.](#)  
Filed: 05/21/2021  
Received: 05/21/2021

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# Document

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Status

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97	<a href="#">EXHIBIT(S)</a> - A <i>Incorporated Complaint from New York County</i>	<a href="#">Barnett-Howell, A.</a> Filed: 05/21/2021 Received: 05/21/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
98	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 05/25/2021 Received: 05/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
99	<a href="#">NOTICE TO ADMIT</a>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
100	<a href="#">EXHIBIT(S)</a> - 1 <i>to Notice to Admit - Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
101	<a href="#">EXHIBIT(S)</a> - 2 <i>to Notice to Admit - Development Agreement</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
102	<a href="#">EXHIBIT(S)</a> - 3 <i>to Notice to Admit - Temporary C of O</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
103	<a href="#">EXHIBIT(S)</a> - 4 <i>to Notice to Admit - AJA form 0704</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
104	<a href="#">EXHIBIT(S)</a> - 5 <i>to Notice to Admit - NYSDOH letter</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
105	<a href="#">ORDER - MEDIATION</a>	Court User Filed: 06/03/2021 Received: 06/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
106	<a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
107	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
108	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>First Notification of Disposition of Collateral, 10.6.20</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
109	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Second Notification of Disposition of Collateral, 6.9.21</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
110	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Term Sheet, 11.20.15</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
111	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

112	<a href="#">EXHIBIT(S)</a> - E (Motion #5) <i>November 19 Email and Account Statement</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
113	<a href="#">EXHIBIT(S)</a> - F (Motion #5) <i>August 10 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
114	<a href="#">EXHIBIT(S)</a> - G (Motion #5) <i>August 16 Emails</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
115	<a href="#">EXHIBIT(S)</a> - H (Motion #5) <i>August 17 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
116	<a href="#">EXHIBIT(S)</a> - I (Motion #5) <i>Letter of Intent</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
117	<a href="#">EXHIBIT(S)</a> - J (Motion #5) <i>Security Benefit Letters</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
118	<a href="#">EXHIBIT(S)</a> - K (Motion #5) <i>NYSDOH Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
119	<a href="#">EXHIBIT(S)</a> - L (Motion #5) <i>Certificate of Amendment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
120	<a href="#">EXHIBIT(S)</a> - M (Motion #5) <i>2020 Monthly Invoices</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
121	<a href="#">EXHIBIT(S)</a> - N (Motion #5) <i>September Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
122	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>Proposed UCC Form</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
123	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
124	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' / Third-Party Plainti ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
125	<a href="#">EXHIBIT(S)</a> - 1 (Motion #5) <i>Exhibit 1 - Bandazian Affidavit</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
126	<a href="#">EXHIBIT(S)</a> - 2 (Motion #5) <i>Exhibit 2 - Prior Order to Show Cause</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

Received: 06/25/2021

- |     |  |  |   |
|-----|--|--|---|
| 127 | <a href="#">EXHIBIT(S)</a> - 3 (Motion #5)<br><i>Exhibit 3 - Answer with Cross-Claims</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 128 | <a href="#">EXHIBIT(S)</a> - 4 (Motion #5)<br><i>Exhibit 4 - Decision and Order</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 129 | <a href="#">EXHIBIT(S)</a> - 5 (Motion #5)<br><i>Exhibit 5 - Notice of Sale</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 130 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)<br><i>Third-Party Defendant/Cross-Claimant Metropolitan Commercial Bank's Memorandum of Law in Partial Joi ... show more</i>        | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 131 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Donnellan, A.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 132 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 133 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)<br><i>Affidavit of Lizer Jozefovic</i>   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 134 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5)<br><i>Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' Third-Pa ... show more</i> | <a href="#">Malatak, R.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 135 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 136 | <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5)<br><i>Affidavit of William A. Nicholson</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 137 | <a href="#">EXHIBIT(S)</a> - A (Motion #5)<br><i>Lease</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 138 | <a href="#">EXHIBIT(S)</a> - B (Motion #5)<br><i>Jozefovic Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 139 | <a href="#">EXHIBIT(S)</a> - C (Motion #5)<br><i>Neuman Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 140 | <a href="#">EXHIBIT(S)</a> - D (Motion #5)<br><i>Collateral Assignment and Pledge</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021                         | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

**Redacted** per 22 NYCRR §202.5(e)

Received: 06/29/2021 **Notice** Pg 6 of 55

141 [EXHIBIT\(S\)](#) - E (Motion #5)  
*UCC Financing Statement*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

142 [EXHIBIT\(S\)](#) - F (Motion #5)  
*Notice of Defalt*  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

143 [EXHIBIT\(S\)](#) - G (Motion #5)  
*Construction Loan Agreement*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

144 [EXHIBIT\(S\)](#) - H (Motion #5)  
*Note*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

145 [EXHIBIT\(S\)](#) - I (Motion #5)  
*Mortgage*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

146 [EXHIBIT\(S\)](#) - J (Motion #5)  
*Security Benefit Notice of Default*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

147 [EXHIBIT\(S\)](#) - K (Motion #5)  
*Security Benefit Notice of Default*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

148 [EXHIBIT\(S\)](#) - L (Motion #5)  
*Security Benefit Complaint*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

149 [EXHIBIT\(S\)](#) - M (Motion #5)  
*Email*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

150 [EXHIBIT\(S\)](#) - N (Motion #5)  
*Hebrew Hospital Bankruptcy Filing Notice*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants and Third-Party Plaintiffs,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,  
Third-Party Defendants.

Index No. 60278/2020

**MOTION SEQUENCE #3**

**NOTICE OF ENTRY**

**PLEASE TAKE NOTICE** that the annexed is a true and correct copy of a Decision and Order of the Honorable Gretchen Walsh, dated March 18, 2021, and entered with the Office of the Clerk of the Court, Westchester County, on March 18, 2021.

Dated: White Plains, New York  
March 19, 2021

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains  
Healthcare Properties I, LLC*

By: /s/ Nelida Lara  
Nelida Lara, Esq.  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Tel.: (914) 681-0200

TO:

Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> floor  
New York, New York 10022

To commence the statutory time period of appeals as of right pursuant to (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER: COMMERCIAL DIVISION

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC

Plaintiff,

against

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARC NEUMAN,

Defendants and  
Third-Party Plaintiffs,

against

CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING,  
THE CONGRESS COMPANIES, HOWARD FENSTERMAN,  
and WILLIAM NICHOLSON,

Third-Party Defendants.  
-----X

Index Number: 60278/2020  
Motion Seq. 3  
Motion Date: 2/18/2021  
**DECISION AND ORDER**

WALSH, J.

The following e-filed documents, listed in NYSCEF by Document Numbers 51-61, 73-81 were read on this motion by Plaintiff White Plains Healthcare Properties I, LLC ("Plaintiff" or "WPHP") for an order pursuant to CPLR 3025(b) granting it the right to amend its Complaint. Defendants/Third-Party Plaintiffs HBL SNF, LLC ("HBL"), Lizer Jozefovic a/k/a Lizer Jozofovic ("Jozefovic") and Marc Neuman ("Neuman") (collectively "Defendants") oppose Plaintiff's motion. Upon the foregoing papers, and for the reasons set forth herein, Plaintiff's motion is granted.

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff initiated this action on September 18, 2020 by filing its Summons and Complaint seeking to recover damages due to HBL's alleged default under an amended and restated operating lease dated November 19, 2015 and amended July 12, 2017 (the "Lease"). Pursuant to the Lease, HBL is the tenant and operator of a 160-bed nursing facility that WPHP constructed at 116-120

Church Street, White Plains, New York (the “nursing facility”). On November 5, 2020, Defendants filed their answer with counterclaims and a third-party complaint. On November 13, this Court held a Preliminary Conference and issued a Preliminary Conference Order with a discovery cut-off date of June 4, 2021 and a trial readiness conference scheduled for June 9, 2021.

On November 30, 2020, Plaintiff filed an Amended Verified Complaint in which Plaintiff amended its initial Complaint by adding a Fifth Cause of Action against Jozefovic seeking to enforce a pledge agreement provided by Jozefovic as security against any breach of the Lease (the “Proposed Fifth Cause of Action”). The pledge agreement assigns Jozefovic’s interest in Waterview Acquisition I, LLC (“Waterview”).

By letter dated December 2, 2020, Defendants’ counsel rejected service of the Amended Complaint on the grounds that: (1) the Amended Complaint was not filed within 20 days of Defendants’ Answer, and (2) Jozefovic filed an action in Supreme Court, New York County Index No. 655549/2020 (the “NY Action”) seeking, *inter alia*, a preliminary injunction enjoining Plaintiff’s sale of Jozefovic’s interest in Waterview. In the NY Action, Jozefovic also asserts a claim of libel based on the Notification WPHP and Howard Fensterman (“Fensterman”) circulated in connection with the proposed sale. Because the NY Action was filed after Plaintiff filed this action, WPHP moved to transfer and consolidate the NY Action with this action. That motion is *sub judice* before Hon. Nancy Bannon, J.S.C. At various conferences with this Court,<sup>1</sup> WPHP has indicated that it believes the motion will be granted. Defendants agree that if the motion to consolidate is granted, Plaintiff should be permitted to amend its Complaint to add the Proposed Fifth Cause of Action, but unless and until that happens, Defendant oppose Plaintiff’s attempt to amend.

## PLAINTIFF’S MOTION TO AMEND

### A. Plaintiff’s Contentions in Support of its Motion

In support of its motion to amend, Plaintiff submits: (1) an Affirmation of Alfred E. Donnellan, Esq. dated January 26, 2021, together with its attached exhibits (“Donnellan Aff.”); and (2) a memorandum of law. In his Affirmation, Donnellan asserts that Plaintiff owns a “brand new, state-of-the-art, 160 bed skilled nursing home” in White Plains, New York, and that HBL is the tenant and operator under the Lease (Donnellan Aff. at ¶ 2). Donnellan contends that Jozefovic and Neuman are HBL’s principals and guarantors under the Lease, and the guaranty is subject to a security agreement in which Jozefovic pledged his 71% controlling interest in Waterview as security for HBL’s obligations (“Collateral Assignment”) (*id.*). Donnellan states that the Proposed Amended Complaint (“PAC”), which is the subject of this motion, seeks to add the Proposed Fifth Cause of Action, which alleges that Jozefovic breached his obligations under the Collateral Assignment by: (1) “voluntarily permitting the amendment of the operating agreement” of Waterview by assigning his controlling interest to Metropolitan Commercial Bank (“MCB”) as security for another obligation; (2) “failing to add defendant Howard Fensterman as a co-signatory

<sup>1</sup> At these conferences, the Court attempted to have the parties agree to transfer the NY Action here thereby obviating the need for this motion, but the parties were unable to reach an agreement in this regard.

to certain accounts held by JP Morgan Chase;" and (3) failing to post an additional security deposit (*id.* at ¶ 4).

According to counsel, the PAC was filed after the 20-day deadline because of a clerical error, resulting in the PAC being served shortly after Thanksgiving Day weekend (*id.* at ¶ 5). He contends that Defendants' objections are not a basis for this Court's denial of Plaintiff's motion because: (1) Plaintiff moved to change venue and consolidate the NY Action with this action; and (2) the additional breach claims relate to this action and belong here, "not in the libel action [Jozefovic] commenced in [the NY Action]" (*id.* at ¶ 6). Counsel further argues that the proposed Fifth Cause of Action is "based on the clear and unambiguous provisions of the [Collateral Assignment] and the Lease," annexed as Exhibit F and Exhibit G, and are "either indisputable or are established by the answer" filed by MCB in the NY Action, annexed as Exhibit H (*id.* at ¶ 9). According to Donnellan, MCB's answer confirms that Jozefovic pledged his controlling interest in Waterview as collateral to MCB and that Waterview's Operating Agreement was amended to allow him to do so (*id.* at ¶ 10).<sup>2</sup>

In its memorandum of law, Plaintiff asserts that its motion should be granted because Defendants would not be prejudiced or surprised by the additional cause of action (Plf's Mem. at 2). Plaintiff argues that since the case is in the early stages of discovery, "[D]efendants cannot plausibly claim that they somehow changed their position in reliance on the original complaint, or even that the amended complaint would somehow cause them significant trouble or expense" (*id.*). Plaintiff further contends there is a lack of surprise since the PAC adds a cause of action against Jozefovic individually for breach of the same provisions of the Lease (*id.* at 3). Lastly, Plaintiff argues that the allegations contained in the Proposed Fifth Cause of Action have merit because they are based on "clear and unambiguous provisions of the Collateral Assignment and Lease, and many of the allegations contained in the fifth cause of action are indisputable" (*id.* at 5). In support, Plaintiff relies on MCB's Answer and Jozefovic's affidavit in the NY Action as evidence (*id.*). Plaintiff also contends that the arguments set forth in Defendants' counsel's letter dated December 2, 2020 are unavailing because: (1) the NY Action began after this one; (2) venue for the NY Action is improper; and (3) Plaintiff has moved to change venue and consolidate the NY Action with this action (*id.* at 6).

### ***B. Defendants' Contentions in Opposition***

In opposition, Defendants submit: (1) an Affirmation in Opposition of John Giardino, Esq. dated February 5, 2021 ("Giardino Opp. Aff."), together with its attached exhibits, and (2) a memorandum of law in opposition.

Because Giardino affirms to various facts without providing a basis for his personal knowledge, they have not been considered for purposes of this motion (*United Specialty Ins. Co. v. Columbia Cas. Co.*, 186 AD3d 650 [2d Dept 2020]; *Currie v. Wilhouski*, 93 AD2d 816 [2d Dept 2012]). In any event, given the current procedural context of a motion to amend, most of the facts

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<sup>2</sup> Donnellan asserts that Jozefovic admits to the same in an affidavit he submitted in the NY Action (Donnellan Aff. at ¶ 10).

asserted are irrelevant because they simply involve Defendants' contention that: (1) Jozefovic's obligations under the Collateral Assignment were satisfied through his tender of the rent security; and (2) the assignment to MCB was authorized by Plaintiff.<sup>3</sup>

With regard to the facts for which counsel does have personal knowledge, Giardino asserts that on October 6, 2020, he received a "purported Notification Disposition of Collateral issued by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP . . . which announced the intention to sell the Membership Interest at 'public auction,'" (the "Notification") a copy of which is annexed as Exhibit B (Giardino Opp. Aff. at ¶¶ 26-27). According to Giardino, the Notification was not issued in connection with this action, and the Notification is false because Jozefovic is not indebted to WPHP or Howard Fensterman ("Fensterman"), and WPHP and Fensterman have no claim to his Membership Interest, much less the right to sell it at public auction (*id.* at ¶ 28-29). Giardino asserts that as a result of his receipt of the Notification, he initiated the NY Action against WPHP and Fensterman on October 22, 2020, and that WPHP and Fensterman moved to transfer the venue of the NY Action to Westchester County and to consolidate the NY Action with this action on October 26, 2020 (*id.* at ¶¶ 30, 32). Counsel states that he rejected the PAC because it was filed more than 20 days after Defendants' answer and because it was based on the same facts and issues as the NY Action (*id.* at ¶ 36).

In their memorandum of law, Defendants take the position that Plaintiff's motion should be denied because "Plaintiff is attempting to insert duplicative facts and claims from the [NY Action] into this action" (Defs' Opp. Mem. at 1). Defendants repeat the facts asserted in the Giardino affirmation, only some of which have been considered on this motion (*id.* at 1-4). Defendants' argument rests primarily on the similarity between six paragraphs contained in the affirmative defenses WPHP asserted in its answer in the NY Action and the allegations in the Proposed Fifth Cause of Action (*id.* at 6-7). Defendants argue that Plaintiff did not include the facts and claims in its original Complaint because this action is limited to the Lease, which is not related to the Collateral Assignment (*id.* at 7). Defendants contend this is an attempt to force consolidation, which will ultimately prejudice Defendants (*id.* at 8). Defendants request that this Court either deny Plaintiff's motion, or wait for Justice Bannon to rule on the motion to consolidate (*id.*).

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<sup>3</sup> "In determining a motion for leave to amend a pleading, 'a court shall not examine the legal sufficiency or merits of a pleading unless such insufficiency or lack of merit is clear and free from doubt'" (*Great Homes Group, LLC v GMAC Mgtg., LLC*, 180 AD3d 1013, 1015 [2d Dept 2020], quoting *Faielia v Tysons Park Apts., LLC*, 110 AD2d 1028, 1029 [2d Dept 2013]). It is well settled that the standard on a motion to amend (whether the proposed amendments are palpably insufficient or patently devoid of merit) should not be confused with the standard on a motion to dismiss (whether the facts as alleged fit within any cognizable legal theory) and, accordingly, simply because the proposed amendment would not withstand a motion to dismiss is not a basis to deny a motion to amend (*Katz v Hampton Hills Assoc. G.P.*, 186 AD3d 688 [2d Dept 2020]).

**C. Plaintiff's Contentions in Further Support of the Motion**

In reply, Plaintiff submits: (1) a Reply Affirmation of Alfred E. Donnellan, Esq. dated February 18, 2021 ("Donnellan Reply Aff.") and its attached exhibit; and (2) a Reply Memorandum of Law.

In further support of its motion, Plaintiff argues that it was Jozefovic who acted improperly by filing the NY Action "for the obvious and unlawful purpose of dividing the dispute between the parties into two different courts" (Plf's Reply at 1). Plaintiff admits that both actions relate to the same facility and contracts (*i.e.*, the Lease and Collateral Assignment signed by Jozefovic) (*id.* at 2). However, it is Plaintiff's contention that this action is to enforce the Lease against HBL, which is controlled by Jozefovic who is also the guarantor, while the NY Action seeks to prevent Plaintiff from selling Jozefovic's Membership Interest in Waterview, which was given as collateral for Jozefovic's obligations under the Lease (*id.*). Plaintiff contends there is no basis for venue in New York County since all the events at issue occurred in Westchester County (*id.*). Plaintiff alleges the only party who resides in New York County is MCB, who was named as a defendant in that action "for the sole purpose of fabricating venue in New York County" (*id.* at 3). According to Plaintiff, the complaint in the NY Action seeks no relief from MCB, and MCB is only mentioned in connection with Jozefovic's alleged assignment of his Membership Interest to MCB before assigning it to Plaintiff (*id.*). Plaintiff contends there is no need for Jozefovic to assert MCB's priority because if the allegations in the NY Action are true, the interest will be sold subject to MCB's rights (*id.*). According to Plaintiff, the new claim asserted in the PAC is proper because Jozefovic offered his Membership Interest as security under the Lease, and Plaintiff's new cause of action seeks to enforce the terms of the Lease against Jozefovic (*id.* at 4).

Plaintiff claims that Defendants' argument that they will be prejudiced by having to litigate the same claims between two courts is without merit because Jozefovic initiated the NY Action asserting the same claims arising in this action (*id.*). Plaintiff further contends that Defendants' arguments in its opposition are inconsistent because "[i]f the claims in this action and the [NY Action] are the 'same,' then the [D]efendants acted improperly by commencing the [NY Action]. If the claims are different, then the [D]efendants' assertion that the proposed amendment to the complaint is improper because it is duplicative of the claims in the [NY Action] is wrong" (*id.* at 4-5). Plaintiff maintains there is no prejudice to Defendants because the amendment is being sought at the commencement of discovery, and Defendants cannot claim their position changed in reliance on the original complaint (*id.* at 5). Plaintiff further argues the causes of action and relief sought in this case are separate and distinct from those in the NY Action (*id.* at 6). According to Plaintiff, in the NY Action, Jozefovic asserts that his Membership Interest in Waterview was improperly noticed for sale and he seeks to prevent the sale claiming damages on the basis of improper notification, scheduling, and conduct of the proposed sale (*id.* at 7). In this action, Plaintiff seeks to recover damages for breaches of the Lease and Collateral Assignment, and to enforce the guarantees of Jozefovic and Neuman under the Lease. As such, it is Plaintiff's contention that unlike the NY Action, this action seeks no relief concerning the proposed sale of Jozefovic's Membership Interest in Waterview (*id.*).

#### D. The PAC

The crux of the proposed amendment is Plaintiff's Proposed Fifth Cause of Action in which Plaintiff seeks to add a new claim alleging breach of contract against Jozefovic based on his alleged "default in the performance of his obligations under the Jozefovic [Collateral Assignment] and HBL's default in the performance of its obligations under the Lease" (PAC at ¶ 100). To support its new cause of action, Plaintiff alleges that Jozefovic executed the Collateral Assignment and "Pledge of Membership Interest and Security Agreement" assigning a "first and superior security interest" in Waterview to WPHP (*id.* at ¶ 38). Plaintiff alleges that under the Collateral Assignment, Jozefovic agreed not to encumber or use his Waterview Interest as collateral in other transactions, and Jozefovic agreed not to amend or allow an amendment to the Waterview Operating Agreement that would "materially adversely affect" the Collateral Assignment and WPHP's rights to the collateral (*id.* at ¶¶ 39-40). Plaintiff alleges it perfected its security interests on September 15, 2020 by filing a financing statement under the Uniform Commercial Code ("UCC") (*id.* at ¶ 42). Plaintiff asserts that in violation of the Collateral Assignment, Jozefovic assigned his Waterview interest to MCB and agreed to allow the Waterview Operating Agreement to be amended (*id.* at ¶ 43). Plaintiff also alleges that: (1) Jozefovic further breached the Collateral Assignment by "failing to take all of the necessary steps to add Howard Fensterman . . . as a co-signatory to the JP Morgan Chase accounts identified" in the Collateral Assignment (*id.* at ¶¶ 44-45); and (2) Jozefovic and HBL breached the Collateral Assignment and Lease by failing to post \$1.6 million security deposit (*id.* at ¶¶ 46-47). Plaintiff alleges it is entitled to dispose of Jozefovic's Waterview interest at a public sale as a remedy for his alleged breaches under the Collateral Assignment and Lease (*id.* at ¶¶ 49-51).

#### DISCUSSION

CPLR 3025(b) provides that "[a] party may amend his or her pleading . . . at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances" (CPLR 3025[b]). In the absence of prejudice or surprise, leave should be granted unless the amendment is palpably insufficient or patently devoid of merit (*Watkins-Bey v City of New York*, 174 AD3d 553 [2d Dept 2019]; *39 College Point Corp. v Transpac Capital Corp.*, 27 AD3d 454 [2d Dept 2006]; *Ravnikar v Skyline Credit-Ride, Inc.*, 79 AD3d 1118 [2d Dept 2010]; *Maloney Carpentry, Inc. v Budnik*, 37 AD3d 558 [2d Dept 2007]; *Emilia v Rahtson Oil Corp.*, 28 AD3d 417 [2d Dept 2006]). "The burden of demonstrating prejudice or surprise, or that a proposed amendment is palpably insufficient or patently devoid of merit, falls upon the party opposing the motion . . . [and] a party seeking leave to amend is not required to make a showing of merit in the proposed amendment" (*National Recruiting Group, LLC v Bern Ripka, LLP*, 183 AD3d 831, 832 [2d Dept 2020], quoting *Faiella Apts., LLC*, 110 AD3d at 1029). While leave to amend a pleading shall be freely granted (*see* CPLR 3025 [b]), a motion for leave to amend is committed to the broad discretion of the court (*see* *Ravnikar*, 79 AD3d at 1119).

A review of the PAC reveals that there is nothing palpably insufficient or patently devoid of merit with regard to the allegations in the Proposed Fifth Cause of Action. Thus, Defendants' argument is predicated on their claim that because WPHP has asserted affirmative defenses in the NY Action which are similar in nature to the allegations contained in the Proposed Fifth Cause of Action, by allowing the amendment, there will be duplicative litigation and presumably, the possibility for a waste of judicial resources and inconsistent determinations.

In its Complaint, Plaintiff already alleges a cause of action against Jozefovic to enforce the terms of the guaranty based on HBL's alleged breach of the Lease. The Collateral Assignment was given by Jozefovic as security for his guaranty and, as such, Plaintiff's Proposed Fifth Cause of Action concerning Jozefovic's alleged breach of the Collateral Assignment is intertwined with not only Plaintiff's existing cause of action seeking to enforce the Jozefovic guaranty,<sup>4</sup> but also its existing cause of action for breach of the Lease.<sup>5</sup> WPHP filed this action more than a month before Jozefovic filed the NY Action. As such, it is this action and not the NY Action which is the first-filed action arising from the alleged breaches by HBL and Jozefovic. One of Plaintiff's remedies for these alleged breaches includes its right to enforce its security interest (*i.e.*, Jozefovic's interest in Waterview). Jozefovic is contending that Plaintiff has no right to proceed with a sale of that interest under the UCC. Given that Jozefovic was granted a TRO from Justice Bannon, he may be correct in his position. Although this Court is not deciding the merits of the motion made by WPHP and Fensterman to transfer and consolidate the NY Action with this action, the Court believes WPHP and Fensterman are likely to be successful. In that event, as Defendants' concede, Plaintiff should be permitted to amend its Complaint in the manner proposed. However, although WPHP has asserted affirmative defenses in the NY Action which include some of the factual allegations supporting its Proposed Fifth Cause of Action, WPHP has not asserted a counterclaim in the NY Action and, as such, it will not be entitled to any affirmative relief in the NY Action. In the event the NY Action is not transferred and consolidated here, the Court has discretion to fashion relief to avoid inconsistent determinations between the NY Action and this action (*e.g.*, by severing and staying any claims/defenses that are duplicative in both actions). Furthermore, Jozefovic should not be rewarded for having filed the NY Action when Jozefovic's claims are related to the claims in this action, particularly given the fact that New York County has no connection to: (1) the

<sup>4</sup> In this regard, in its PAC, Plaintiff alleges that the Collateral Assignment "provides that Jozefovic pledges, assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member of Waterview Acquisition I, LLC to WPH Properties in order to secure the obligations under the [Collateral Assignment] and under the Lease" (PAC at ¶ 49).

<sup>5</sup> In this regard, in its PAC, Plaintiff alleges that "Jozefovic and HBL breached their obligation to post the \$1,600,000 additional security deposit required by the [Collateral Assignment] and the Lease. Jozefovic's moving of funds into a separate account that he controls does not satisfy the obligation to post the \$1.6 million additional security deposit as required by the [Collateral Assignment] and the Lease" (PAC at ¶¶ 46-47).

parties' residence other than the residence of the nominal defendant MCB; (2) the facility at issue; and (3) the contracts at issue.

Finally, Defendants' reliance on CPLR 3211(a)(4)<sup>6</sup> as a basis to deny Plaintiff's motion to amend is unavailing both because it is premature, and because even if Defendants subsequently move to dismiss the Proposed Fifth Cause of Action based on CPLR 3211(a)(4), it is unlikely that this Court would dismiss it. Here, a month after this action was filed, Jozefovic decided to institute the NY Action rather than assert his claims in this action. Although it is true that the NY Action includes a claim of libel that has nothing to do with this action, it is clear that the disposition of Jozefovic's interest in Waterview is a critical issue in this action as it provides the security for Jozefovic's guaranty which Plaintiff is seeking to enforce. Based on the motion papers filed in the NY Action, other than the residence of MCB, these claims all arise out of transactions and entities located in Westchester County and it was likely brought in New York County for tactical advantage.

It is well settled that a court has "broad discretion in considering whether to dismiss an action on the grounds that another action is pending between the same parties on the same cause of action" (*Whitney v. Whitney*, 57 NY2d 731, 732 [1982]; *Simonetti v. Larson*, 44 AD3d 1028, 1029 [2d Dept 2007] [court may dismiss subsequently filed action where there is substantial identity between the parties and the causes of action – i.e., "the two actions must be 'sufficiently similar' and the relief sought must be 'the same or substantially the same' ... 'both suits arise out of the same subject matter or series of alleged wrongs'"]). Further, under CPLR 3211(a)(4), if there is another action pending between the same parties for the same causes of action, the court need not dismiss upon this ground but may make such order as justice requires. The rationale for the rule is "to avoid vexatious litigation and duplication of effort, with the attendant risk of divergent rulings on similar issues" (*White Light Prods., Inc. v. On The Scene Prods., Inc.*, 231 AD2d 90,96 [1st Dept 1997]). In deciding the motion, "[t]he court must consider in which jurisdiction litigation was first commenced, how far each litigation has progressed and which forum has a more significant and substantive nexus to the controversy, and thus is the most appropriate forum for its resolution" (*Matter of Topps Co., Inc. Shareholder Litig.*, 2007 NY Slip Op 52543[U], 19 Misc 3d 1103[A] at \*2 [Sup Ct NY County 2007]). Thus, "in deciding a motion to dismiss based on the pendency of another action, the analysis is similar to that employed in entertaining a motion predicated on forum non conveniens" (*White Light Prods., Inc.*, 231 AD2d at 570) and the court should consider "whether the litigation and the parties have sufficient contact with this State to justify the burdens imposed on our judicial system" (*id.* at 572, quoting *Flintkote Co. v. American Mut. Liab. Ins. Co.*, 103 AD2d 501, 506 [2d Dept

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<sup>6</sup> **Error! Main Document Only.** CPLR 3211(a)(4) provides, in pertinent part:

A party may move for a judgment dismissing one or more causes of action asserted against him on the ground that ... there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires ...

1984), *affd* 67 NY2d 857 (1986)). The issue is one of “judicial economy, the question is which court should defer, as a matter of comity, to the other in order to avoid vexatious litigation and duplication of effort, with the attendant risk of divergent rulings on similar issues” (*White Light Prods., Inc.*, *supra*, 231 AD2d at 96).

Even though Defendants’ argument based on CPLR 3211(a)(4) is premature, even if Defendants were moving to dismiss the Fifth Cause of Action under CPLR 3211(a)(4), it is not clear to the Court that the two actions are “sufficiently similar” and that relief sought therein is “the same or substantially the same,” as would require the dismissal of it under CPLR 3211(a)(4) (*see Whitney*, *supra*, 57 NY2d at 732; *Simonetti*, *supra*, 44 AD3d at 1029).

Furthermore, with respect to whether the NY Action was in fact a “prior action pending” for purposes of CPLR 3211(a)(4), the Appellate Division, First Department has noted:

“Another action pending” is, by contrast, a “first-in-time”-oriented defense. Here the focus is shifted from inconvenience to a more objective standard of chronology. A CPLR 3211(1)(4) motion requires, first and foremost, the pendency of another action between the parties which was instituted earlier in time ... and has not yet been terminated .... Priority in time is not always controlling, however. Exceptions to the general application of this defense are recognized where competing actions have been commenced “reasonably close in time” to one another ... Virtually every exception to the first-in-time rule involves competing litigation commenced within days or even hours of each other ... (*National Union Fire Ins. Co. of Pittsburgh, PA v. Jordache Enter., Inc.*, 205 AD2d 341, 343 [1st Dept 1994]).

Thus, even if the NY Action had been, technically speaking, the first action for CPLR 3211(a)(4) purposes, “[w]hile technical priority in the commencement of actions is a factor to be considered in determining whether dismissal pursuant to CPLR 3211(a) is appropriate, it is not necessarily dispositive” and a court will decline to dismiss a second filed action if it is determined that the filing of the action was motivated on the basis of obtaining a tactical advantage through forum shopping (*L-3 Communications Corp. v. Safenet, Inc.*, 45 AD3d 1 [1st Dept 2007]; *Seneca Ins. Co. v. Lincolnshire Mgt. Inc.*, 269 AD2d 274 [1st Dept 2000]; *Seaboard Surety Co. v. Gillette Co.*, 75 AD2d 525 [1st Dept 1980]; *National Union Fire Ins. Co. of Pittsburgh, PA*, 205 AD2d 341; *Aon Risk Serv. v. Cusack*, 2012 WL 11009718 [Sup Ct, NY County 2012]). Courts do not favor the tactic by which “a party who has reason to know a lawsuit will be brought against him ... employ[s] the expedient of filing an action to subject his opponent to a preferred forum” (*see White Light Productions, Inc.*, 231 AD2d 90). The use of such a tactic militates in favor of allowing the later filed action to proceed to judgment in the plaintiff’s chosen forum (*id.*).

Based upon the foregoing, and for the reasons stated above, it is hereby

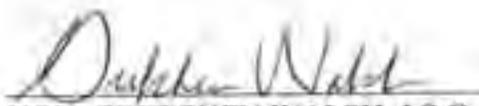
ORDERED that the motion by Plaintiff White Plains Healthcare Properties I, LLC for an order granting it leave to amend its Complaint is granted, and it is further

ORDERED that Plaintiff shall serve and file its First Amended Verified Complaint within 7 days of this Decision and Order.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York  
March 18, 2021

ENTER

  
HON. GRETCHEN WALSH, J.S.C.

APPEARANCES:

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
  
-- against --  
  
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZEFOVIC and MARK NEUMAN,  
Defendants.

Index No. 60278/2020

**FIRST AMENDED  
VERIFIED COMPLAINT**

Plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties"), by its attorneys, DeHelle, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, for its amended verified complaint against defendants, HBL SNF, LLC ("HBL"), Lizer Jozefovic a/k/a Lizer Jozefovic ("Jozefovic") and Mark Neuman ("Neuman"), alleges:

**NATURE OF THE CASE**

1. This action concerns HBL's material default of its obligations under an amended and restated operating lease dated as of November 19, 2015 (the "Lease"), by which WPH Properties leased to HBL a brand new, state-of-the-art, 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York.

2. WPH Properties had constructed the nursing facility and entered into the Lease with HBL, dated November 19, 2015. The Lease was amended and restated in 2017. It provided that HBL would operate the facility for 30 years. The Lease commenced on September 30, 2019. HBL took possession of the facility on September 30, 2019. By the end of October 2019, HBL had

defaulted.

3. On January 7, 2020, WPH Properties served notice of default and elected to terminate the Lease and accelerate all rents due. This action seeks to recover from HBL the Rent it owes and the other damages its defaults have caused and to enforce the unconditional guaranties of HBL's performance under the Lease given by Neuman and Jozefovic.

**PARTIES AND VENUE**

4. WPH Properties is a limited liability company duly organized and existing under the laws of the State of Massachusetts, with its principal place of business at 2 Bourbon Street, Suite 200, Peabody, Massachusetts. WPH Properties is duly authorized to do business in the State of New York.

5. HBL was and is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 537 Route 22, Purdys, New York.

6. Jozefovic is an individual residing at 53 Mariner Way, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

7. Neuman is an individual residing at 22 Lyncrest Drive, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

8. Pursuant to CPLR § 503(a), venue is properly designated in Westchester County based on the residences of WPH Properties and HBL, because a substantial part of the events giving rise to the claim occurred in Westchester County and because HBL and WPH Properties agreed in the Lease that any action or proceeding arising out of the Lease be brought in Westchester County. Lease § 20.1(b).

### FACTS

9. WPH Properties is and was at all relevant times the owner of the real property known as 116-120 Church Street, White Plains, New York (the "Real Property").

10. WPH Properties constructed a brand new, state-of-the-art, 160-bed skilled nursing facility on the Real Property.

### THE LEASE

11. In 2017, WPH Properties, as landlord, and HBL, as tenant, entered into the amended and restated Lease, dated as of November 19, 2015, under which WPH Properties leased to HBL the Real Property and the improvements to be constructed on the Real Property, together with other assets, all as defined in Section 2.1 of the Lease (the "Facility"). A true and accurate copy of the Lease is annexed to this complaint as Exhibit 1 and is incorporated into this complaint by reference.

12. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019.

13. HBL entered into possession of the Facility on September 30, 2019.

14. The Lease provided for a term of 30 years, with three 10-year options to the tenant, unless sooner terminated. Exhibit 1, Lease, § 3.1.

15. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 (the "Fixed Rent"). Exhibit 1, Lease, § 3.2

16. The Lease also obligated HBL to pay WPH Properties other amounts which are defined as "Additional Rent." Fixed Rent and Additional Rent are referred to collectively as "Rent."

17. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Premises during the Term. Exhibit 1, Lease, § 4.1.

18. The Lease obligated HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit 1, Lease, § 4.2.

19. The Lease obligated HBL to keep the Premises in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses relating to the Premises. Exhibit 1, Lease, § 5.2.

20. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit 1, Lease, § 7.1.

21. A true and accurate copy of the Jozefovic Guaranty is annexed to this complaint as **Exhibit 2.**

22. A true and accurate copy of the Neuman Guaranty is annexed to this complaint as **Exhibit 3.**

23. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

24. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Jozefovic without the necessity of any notice of

nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Jozefovic expressly waived

25. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

26. The Neuman Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

27. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an agreement by Capital Funding Group by which Capital Funding Group agreed to allow HBL to draw down on its credit line each month so as to enable Capital Funding Group to pay the Fixed Rent each month directly to WPH Properties on the commencement date and for the following 11 months. Exhibit 1, Lease, § 7.1.

28. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of 53,700,000 to secure the full and timely performance of its obligations under the Lease. Exhibit 1, Lease, § 7.1

29. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, \$1,600,000 as an additional security deposit. Exhibit 1, Lease, § 7.1.

30. The Lease obligated HBL to provide WPH Properties all reports, statements and

inspections as defined in the Lease, including all Medicare, Medicaid and other provider agreements and reimbursement rates for the Facility, updated reimbursement rates, financial reporting and written reports providing an operational overview of significant events and circumstances on a monthly basis. Exhibit 1, Lease, § 7.4.

31. The Lease obligated HBL to maintain working capital accounts in specified amounts. Exhibit 1, Lease, § 7.7.

32. The Lease provides that HBL will be in default of the Lease if, among other things, (i) HBL fails to pay any installment of Rent within five days of the date when Rent was due; (ii) HBL defaults in the prompt and full performance of any other of its obligations and fails to correct that failure within 30 days of receipt of written notice from WPH Properties of the default; (iii) HBL fails to give WPH Properties timely notice or timely deliver copies of documents as required by Section 7.4 of the Lease; (iv) HBL defaults or breaches the provisions of Section 7.4(b); (v) a Guarantor defaults beyond expiration of any applicable cure period; or (vi) any governmental authority assesses a fine or penalty against HBL in an amount in excess of \$75,000. Exhibit 1, Lease, § 16.1.

33. WPH Properties performed all of the conditions on its part required by the Lease.

34. The Lease provides in Section 16.1 that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent.

35. Section 16.1 of the Lease also provides that upon the occurrence of a default, and in addition to all of the other remedies provided for in the Lease, WPH Properties is immediately

entitled to retain the security deposit required by Section 7.1 of the Lease and HBL has no further claim, right, title or interest therein to the extent of WPH Properties' claims.

36. Section 16.1 of the Lease also provides that upon the occurrence of a default and the commencement of an action for Rent or for any other amount due under the Lease, HBL must pay to WPH Properties all of the expenses, including reasonable attorneys' fees, incurred by WPH Properties to enforce the Lease.

37. In addition, under the terms of the Lease, HBL's continuation in occupancy after termination does not constitute a renewal of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

**THE JOZEFOVIC SECURITY AGREEMENT**

38. On August 11, 2017 Jozefovic executed a Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Jozefovic Security Agreement"), assigning to WPH Properties' nominee a first and superior security interest in Jozefovic's interest in Waterview Acquisition I, LLC (the "Jozefovic Waterview Collateral") in order to secure the obligations under the Jozefovic Security Agreement and under the Lease. A true and accurate copy of the Jozefovic Security Agreement is annexed to this complaint as Exhibit 4.

39. The Jozefovic Security Agreement provides that Jozefovic has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of the Jozefovic Waterview Collateral. Exhibit 4, Jozefovic Security Agreement § 3

40. The Jozefovic Security Agreement further provides that Jozefovic agrees not to subsequently further amend or voluntarily permit the amendment of the Waterview Acquisition I,

LLC Operating Agreement that would in any manner materially adversely affect the Jozefovic Security Agreement and/or the rights of WPH Properties, Exhibit 4, Jozefovic Security Agreement § 4

41. On September 15, 2020 WPH Properties duly perfected its security interest with respect to the Jozefovic Waterview Collateral by filing a UCC financing statement.

42. Upon information and belief, in or around December 2019, Jozefovic assigned the Jozefovic Waterview Collateral to Metropolitan Commercial Bank ("MCB") to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

43. Upon information and belief, to effectuate Jozefovic's assignment of the Jozefovic Waterview Collateral to MCB, Jozefovic agreed to and voluntarily permitted the amendment of the Waterview Acquisition I, LLC Operating Agreement.

44. Jozefovic breached his obligations under the Jozefovic Security Agreement by agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and assigning the Jozefovic Waterview Collateral to MCB.

45. Jozefovic further breached the Jozefovic Security Agreement by failing to take all of the necessary steps to add Howard Fensterman, a principal of WPH Properties, as a co-signatory to the JP Morgan Chase accounts identified therein as required by the Jozefovic Security Agreement.

46. Jozefovic and HBL breached their obligation to post the \$1,600,000 additional security deposit required by the Jozefovic Security Agreement and the Lease.

47. Jozefovic's moving of funds into a separate account that he controls does not satisfy the obligation to post the \$1.6 million additional security deposit as required by the Jozefovic

Security Agreement and the Lease.

48. Jozefovic's and HBL's failure to satisfy the obligation to post the \$1.6 million additional security deposit constitutes a breach of the Jozefovic Security Agreement and a breach of the Lease.

49. The Jozefovic Security Agreement provides that Jozefovic pledges, assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member of Waterview Acquisition I, LLC to WPH Properties in order to secure the obligations under the Jozefovic Security Agreement and under the Lease.

50. Pursuant to the remedies granted to WPH Properties under the UCC and the Jozefovic Security Agreement, in the event of a default, WPH Properties is entitled, among other remedies, to dispose of the Jozefovic Waterview Collateral at a public sale.

51. Jozefovic breached the Jozefovic Security Agreement and materially and adversely affected the Jozefovic Waterview Collateral and the rights of WPH Properties by (i) agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement; and (ii) assigning the Jozefovic Waterview Collateral to MCB to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

52. As a result of Jozefovic breaching the Jozefovic Security Agreement by amending the operating agreement and assigning the Jozefovic Waterview Collateral to MCB, any purchaser of the Jozefovic Waterview Collateral at public sale by WPH Properties will purchase the Jozefovic Waterview Collateral subject to MCB's senior security interest in the collateral.

53. Jozefovic's breach of the Jozefovic Security Agreement therefore has caused WPH Properties damages in the amount of \$3,000,000, the amount of Jozefovic's obligation to MCB.

secured by Jozefovic's illicit assignment of the same collateral to MCB.

**HBL BREACHED ITS OBLIGATIONS UNDER THE LEASE**

54. HBL failed to perform its obligations, materially defaulting under the Lease, almost immediately after taking possession of the Premises.

55. HBL failed to pay Rent as required by the Lease.

56. HBL failed to pay real estate taxes as required by the Lease.

57. HBL failed to pay utility deposits as required by the Lease.

58. HBL failed to pay municipal maintenance escrows as required by the Lease

59. HBL failed to pay utility charges as required by the Lease.

60. HBL failed or refused to deliver certificates of insurance as required by the Lease

61. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility, as required by the Lease.

62. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider updated rate sheets, as required by the Lease.

63. HBL failed to deliver to WPH Properties the required financial reporting, as required by the Lease.

64. HBL failed to deliver to WPH Properties the required written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease, as required by the Lease.

65. HBL failed or refused to deliver to WPH Properties the security deposits, as required by the Lease

66. HBL failed to deliver and maintain the required credit line in an amount equal to

12 months' rent, as required by the Lease.

67. HBL failed to have and maintain the working capital account required by the Lease.

68. HBL failed to pay late fees and costs, as required by the Lease.

**THE LETTER OF INTENT**

69. After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease, despite HBL's default.

70. On November 20, 2019, WPH Properties and HBL entered into a Letter of Intent (the "LOI") in which WPH Properties and HBL agreed that WPH Properties would sell the Facility for \$73,000,000 to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties or its designees would have a 22.5 percent interest.

71. A true and accurate copy of the LOI is annexed to this complaint as Exhibit 5.

72. The LOI provides for the Lease to be amended to require that HBL pay the November 2019 rent by November 18, 2019, the December rent by December 5, 2019 and all real estate taxes and utility payments by December 1, 2019, that by December 5, 2019 HBL reimburse WPH Properties for \$65,856 in municipal and utility deposits, that HBL enter into a Deposit Account Control Agreement with MNB requiring MNB to draw on the account first to pay the rent.

73. The LOI further provides for the Lease to be amended so that the \$3,700,000 security deposit required by Section 7.1(a)(ii) is reduced to \$2,000,000, \$1,000,000 of which was required to be paid by HBL on or before December 1, 2019 or the date on which WPH Properties obtained a permanent certificate of occupancy for the Facility (which was granted on November 14, 2019), whichever was later, and the balance of which was required to be paid on April 1, 2020,

which was the Closing date required by the LOI.

74. In addition, the LOI provides for the Lease to be amended so that in lieu of providing the additional \$1,600,000 in security required by Section 7.1(a)(iii) of the Lease, HBL would be required to enter into an agreement with JP Morgan Chase Bank prohibiting liquidation of that account until the second \$1,000,000 in security required by the LOI had been paid.

75. The LOI also provides for the Lease to be amended to require HBL to obtain a single working capital line of credit in the amount of \$8,000,000 by December 1, 2019.

76. HBL defaulted and breached its obligations under the LOI by failing to pay rent, failing to pay the municipal and utility payments to WPH Properties, failing to pay the real estate taxes and utility payments, failing to enter into the Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank, by failing to pay the first \$1,000,000 security deposit as required by the LOI and by failing to obtain the \$8,000,000 working capital credit line, and by failing to meet the required Closing date of April 1, 2020.

77. WPH Properties performed all conditions on its part required by the LOI.

78. Solely as a result of HBL's breach of the LOI, WPH Properties did not sell the property to the Delaware Statutory Trust, causing damage to WPH Properties, and WPH Properties incurred interest and late charges on its loans, all of which are the direct result of HBL's breach of the LOI.

**NOTICE OF DEFAULT, TERMINATION OF THE LEASE AND ACCELERATION OF RENT**

79. On January 7, 2020, while the LOI was in effect, WPH Properties served a "Notice of Default And Landlord's Election To Terminate Lease And Accelerate All Rents Due For The Balance of the Lease Term" upon HBL (the "Notice of Default").

80. A true and accurate copy of the Notice of Default is annexed to this complaint as Exhibit 6 and incorporated into this complaint by reference.

81. The Notice of Default contains a true and accurate accounting of the amounts then due and owing under the Lease and LOE.

82. The Notice of Default gave HBL notice that by reason of HBL's defaults under the Lease, WPH Properties had exercised its right under Section 16.1 of the Lease to terminate the Lease, effective January 13, 2020.

83. The Notice of Default further gave HBL notice that pursuant to Section 16.1 of the Lease all Rent for the balance of the Term was accelerated and HBL became obligated to pay WPH Properties the present value of the accelerated rent, discounted at a rate of 6% per annum.

84. HBL continued, and still continues, to occupy the Premises, despite WPH Properties' termination of the Lease.

85. Because HBL has held over after its default resulted in termination of the Lease, HBL is a tenant month-to-month at a rent equal to 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

86. HBL has failed to perform its obligations as a tenant month-to-month by failing to pay rent in the amount of 300% of the most recent Rent payable by HBL under the Lease, remitting only the base rent which had been payable before WPH Properties terminated the Lease.

87. HBL is in default with respect to its obligations under the Lease and its obligations as a month-to-month tenant following termination of the Lease effective January 13, 2020.

AMOUNTS DUE

88. As a result of HBL's defaults, HBL is obligated to pay to WPH Properties, as of

August 25, 2020, the sum of \$113,832,987.54 (the "Amounts Due"), as follows: (i) holdover rent and rent, \$7,096,182.79; (ii) municipal and utility deposits, \$26,725.35; (iii) security and working capital deposits, \$9,800,000.00; (iv) late fees, default fees, costs and professional fees, \$1,948,753.00; and (v) accelerated rent, \$94,961,326.40.

89. HBL is obligated to pay to WPH Properties the Amounts Due in full, plus any amounts that have accrued since August 25, 2020.

90. HBL has failed or refused to pay the Amounts Due.

91. WPH Properties has fully performed all obligations required to be performed on its part with respect to the Lease, the LOI, HBL's month-to-month tenancy after the termination of the Lease, the Jozefovic Guaranty, the Neuman Guaranty, the HBL Security Agreement, the Jozefovic HBL Security Agreement and the Neuman HBL Security Agreement.

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

92. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "91" with the same force and effect as if fully set forth here.

93. By reason of HBL's material default and breach of its obligations pursuant to the Lease and its obligations as a month-to-month tenant after termination of the lease, WPH Properties is entitled to judgment against HBL for the Amounts Due, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law.

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

94. WPH Properties repeats and re-alleges each and every allegation set forth in

paragraphs "1" through "93" with the same force and effect as if fully set forth here.

95. By reason of HBL's material default and breach of its obligations pursuant to the LOI, WPH Properties is entitled to judgment against HBL in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

96. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "95" with the same force and effect as if fully set forth here.

97. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic for the Amounts Due pursuant to the terms of the Jozefovic Guaranty.

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

98. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "97" with the same force and effect as if fully set forth here.

99. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Neuman for the Amounts Due pursuant to the terms of the Neuman Guaranty.

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

100. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "99" with the same force and effect as if fully set forth here.

101. By reason of Jozefovic's default in the performance of his obligations under the Jozefovic Security Agreement and HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic in the amount of \$3,000,000.00.

WHEREFORE, WPII Properties demands judgment as follows.

1. On its First cause of action, against HBI, in the amount of \$113,832,987.54, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law, and

2. On its Second Cause of Action, against HBI, in an amount to be determined at trial; and

3. On its Third Cause of Action, against Juzefovic in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

4. On its Fourth Cause of Action, against Neuman in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

5. On its Fifth Cause of Action, against Juzefovic in the amount of \$3,000,000.00; and

6. On all causes of action, awarding costs, disbursements and attorneys' fees against HBI, pursuant to the provisions of the Lease and against Juzefovic and Neuman pursuant to the provisions of the Juzefovic Guaranty and the Neuman Guaranty; and

7. Awarding such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
March 19, 2021

DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKUEH, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

By: *Alfred E. Donnellan*  
Alfred E. Donnellan, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO,  
FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the annexed Amended Verified Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

*[Handwritten Signature]*  
William A. Nicholson

Sworn to before me this  
11<sup>th</sup> day of March 2021

*[Handwritten Signature]*  
Notary Public



# Exhibit 4 to Amended Verified Complaint

COLLATERAL ASSIGNMENT AND PLEDGE  
OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT

THIS ASSIGNMENT made as of August 11, 2017, by Lizer Jozefovic, an individual having an address at 53 Mariner Way, Monsey New York 10952 (the "Assignor") to Howard Fensterman as nominee for White Plains Health Care Properties LLC, a Massachusetts Limited Liability Company (the "Assignee") with reference to the following facts.

WHEREAS, HBL-SNF a New York Limited Liability Company ("Operator/Tenant) an entity controlled by Assignor had entered into a development agreement with WHITE PLAINS HEALTHCARE PROPERTIES I, LLC (the "Developer") dated November 19, 2015 (the "Agreement") which was amended by and between the Parties by that certain first Amendment to the Development Agreement (the "Amendment") dated as of July 12, 2017.

WHEREAS, the Development Agreement among other things obligated the Tenant to enter into a Lease with Developer in return for the Developer, developing, designing, financing and Building a 160 Bed Skilled Nursing Home for Tenant in White Plains New York; and

WHEREAS the Development Agreement obligated the Tenant to obtain CON approval to build such 160 Bed Skilled Nursing Home for Tenant in White Plains New York and to deliver to Developer such documents as are reasonably requested by Developers lenders; and

WHEREAS, the Tenant has obtained all CON approvals necessary to construct the Skilled Nursing Home and the Developer has obtained all zoning and building department of approvals and a Construction Loan; and

WHEREAS, in or about November 2015 in consideration of Howard Fensterman and/or CCC Equities assigning all mortgages held by them on property owned by Waterview Acquisition I, LLC agreed that he would pre-pay Two Million Two Hundred Thousand Dollars to White Plains Healthcare Properties and would additionally establish a joint signature account in JP Morgan Bank into which the sum of One Million Six Hundred Thousand Dollars was deposited; and

WHEREAS, The Lease requires the sum of 1.6 Million Dollars to be delivered to Landlord at least 60 days prior to the Commencement date of the Lease as additional security for the Tenants faithful performance of the terms and conditions of the Lease; and

WHEREAS, Section 10.2 of the Loan Agreement by and between Developer and its Construction lender restates the language of the Lease and Developer has undertaken to ensure that the 1.6 Million Dollars on deposit with JP Morgan shall be delivered according to the terms and provisions of the Lease; and

WHEREAS, the Sums in the JP Morgan Account entitled HBL SNF, LLC, Account Number [REDACTED] have been transferred to two JP Morgan Account's entitled Waterview Acquisition I, LLC Account Number [REDACTED] and Account Number [REDACTED] in which Howard Fensterman is not a signatory and the parties want to enter into this agreement by which Howard Fensterman will be added as a signatory to such account under terms and conditions set forth below; and

WHEREAS, Tenant and Assignor have promised to add Howard Fensterman as a signatory to such account so as to ensure that no withdrawals may be made so as to reduce the amount of the account below 1.6 Million and so as to ensure that when required 60 days prior to the commencement date the money in the account or equivalent shall be delivered as additional cash security for the lease; and;

WHEREAS in order to secure the promises made by Assignor concerning such account Assignor has agreed to deliver to Assignee this Assignment; and the Assignor desires to pledge to Assignee all of his membership interest in Waterview Acquisition I, LLC (the "Company"), in order to secure the promises made herein and in the Lease and Security Agreement delivered to the Construction Lender;

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignee and the Assignor hereby agree as follows:

1. As collateral security for the Borrowers' obligations under the Lease, the Security Agreement, the Loan, and the Development Agreement the Assignor hereby pledges and assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member in the Company (the "Collateral").

2. Upon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the interest in the Company assigned to the Assignee pursuant to Paragraph 1 hereof shall be automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect. Notwithstanding the foregoing, the Assignee hereby agrees to execute any document reasonably required for the purpose of evidencing the reassignment of such interest and the termination of this Assignment.

3. The Assignor represents, covenants and warrants that he is the legal and beneficial owner of the Collateral and has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in the Company and that there are no current liens or encumbrances that exist as of the day of the execution of this assignment.

4. The Assignor agrees not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

5. The Assignor covenants and agrees not to voluntarily withdraw as the managing member of the Company without the prior written consent of Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

6. The covenants provided for in this Assignment shall be binding upon the

successors and assignees of the parties hereto.

7. This Assignment shall be governed by the laws of the State of New York.
8. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument in writing duly signed by or on behalf of the Assignor or Assignee.
9. Assignor represents and warrants that he has a 71 % membership interest in the Company and that he is manager thereof.
10. In accordance with the laws of the State of New York and as part of the consideration for the making of the Loan, Assignor consents to the jurisdiction of any local, state or federal court located within New York and further consents that all service of process may be made by registered mail to his address set forth below and service so made shall be deemed completed five (5) days after the same shall have been mailed.
11. Assignor covenants and agrees to execute such additional documents and to take such further actions as may be reasonably required to carry out the provisions and intent of this Assignment including, without limitation, executing a financing statement or statements and continuations thereof. In addition, Assignor grants to Assignee a power of attorney coupled with an interest to effectuate the terms of the foregoing sentence and to file all continuations, renewals or amended financing statements without the signature of Assignor.
13. Should Assignor violate the terms and provisions concerning the maintenance of the account as set forth in the resolution of Waterview Acquisition I, LLC annexed hereto as Exhibit A the Assignee shall have:

(a) The right to sell the Collateral in the State of New York at one or more public or private sales at such price and on such terms as Assignee in its discretion accepts, for cash, upon or for future delivery. Upon any such sale, the Assignee shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral. Such purchaser at any such sale shall hold the Collateral sold absolutely free from any claim or right on the part of the Assignor, and the Assignor hereby waives (to the extent permitted by law) all rights of redemption, stay or appraisal which he has or may have under any rule of law or statute now existing or hereafter adopted. The Assignee shall give the Assignor twenty-one (21) days' written notice by registered or certified mail, postage prepaid, return receipt requested (which Assignor acknowledges is reasonable and sufficient), of the Assignee's intention to make any such public or private sale. Such notice, in the case of public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places in the State of New York as the Assignee may fix in the

notice of such sale. The Assignee shall not be obligated to make any sale of the Collateral if it shall determine not to do so, regardless of the fact that notice of such sale of the Collateral may have been given. The Assignee may, upon one day's written notice, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place within in the State of New York to which the same was so adjourned. In case sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Assignee until the sale price is paid by the purchaser or purchasers thereof, but the Assignee shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold, and, in case of any such failure, such Collateral may be sold again upon like notice. As an alternative to exercising the power of sale herein conferred upon it, the Assignee may proceed by a suit or suits at law or in equity to foreclose this Assignment and to sell the Collateral, or any portion thereof, pursuant to a judgment or decree of a court of competent jurisdiction;

(b) such other rights with respect to the Collateral as shall be afforded to secured parties by the Uniform Commercial Code of the State of New York including, but not limited to, the right to setoff; and/or

(c) to apply any proceeds of any disposition of the Collateral to the payment of the cash security required under the terms and provisions of the lease and reasonable expenses of the Assignee in connection with the exercise of its rights or remedies, including reasonable fees and expense of attorneys, and any balance shall be paid to such party as shall be entitled thereto pursuant to law.

13. The Assignor hereby waives any right to require that the Assignee proceed against any real or personal property or any guaranty given as security for the Note, whether or not existing or hereafter given, before exercising its rights and remedies with respect to the Collateral.

14. This Agreement may be executed in counterparts, each of which, when taken together, shall be construed as one and the same instrument.

15. All notices, demands and other communications provided for herein shall be deemed received upon personal delivery or delivery by national overnight delivery service, or three (3) business days following deposit in the U.S. mail, postage prepaid, first class registered or certified,

to Assignor or assignee at the following addresses:

If to Assignor:  
Liner Jozefovic  
53 Mariner Way  
Monsey, New York

With a copy to:  
Michelman & Robinson, LLP  
800 Third Avenue  
New York, New York  
Attention: Mark H. Zafrin, Esq.

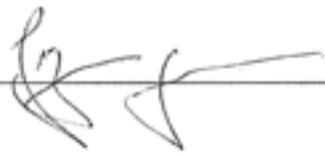
If to Assignee:  
Howard Fensterman  
C/o Abrams, Fensterman et al  
3 Dakota Drive  
Suite 300  
Lake Success, New York 11042

IN WITNESS WHEREOF, Assignor has duly executed this Assignment, as of the day and year first written above.

  
Lizer Jozefovic

The Company hereby acknowledges receipt of this Assignment by Assignor.

WATERVIEW ACQUISITION I, LLC

By: 

# Exhibit 5 to Amended Verified Complaint

HBL-SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

November 20, 2019

White Plains Healthcare Properties, I, LL  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William Nicholson

**Re: Letter of Intent**  
**Premises: 116-120 Church Street**  
**White Plains, New York**

Dear Mr. Nicholson

This Letter of Intent ("LOI") outlines our proposal for White Plains Health Care Properties, I, LLC (the "Contributor") to transfer the premises known as 116-120 Church Street, White Plains New York (the "Premises") to a Delaware Statutory Trust where we would jointly hold the beneficial interests in the Trust on the terms and conditions set forth below. The Building a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Facility") had been constructed pursuant to a Development Agreement dated November 19<sup>th</sup>, 2015 and for which we had simultaneously entered into that certain operating lease by and between you as Landlord and us as Tenant/Operator, (the "Lease").

- 1) **Basic Transaction:** (the "Transaction"): Contributor shall contribute premises 116-120 Church Street White Plains, New York to a newly formed Delaware Statutory Trust (the "Trust") formed by the parties. This transaction shall be memorialized by a contribution agreement in substantially the form annexed hereto as Exhibit A. The Contribution shall be governed by IRC Sec. 721. The agreed upon cost and fair market basis shall be \$67,345,348.00
  - a) Lizer Jozefovic and Mark Neuman will acquire from the Trust by a Purchase Agreement 77.50 Percent of the Beneficial Interests in the Trust and redemption of a portion of the B Beneficiaries' interest for a purchase price of \$52,200,000.00 paid as follows;
    - i) By a down payment (the "Down Payment") not to be held in escrow, but to be made upon the execution and delivery of this LOI of \$2,200,000.00 by wire transfer to the account of White Plains Healthcare Properties I, LLC according to the wire instructions annexed hereto.
    - ii) By the Trust obtaining a new first mortgage of \$51,000,000.00 to pay the balance of the Purchase Price and cover closing costs to be used as follows;

- (1) To pay the first Mortgage held by Security Benefit Life Insurance in the approximate amount of \$39,226,253 plus accrued interest and fees.
  - (2) To pay the loan encumbering the membership interests of the Contributors by Bradford Allen in the approximate amount of \$9,770,963 plus accrued interest and fees;
  - (3) By the Trust making a non-refundable down payment of \$2,200,000.00
  - (4) To pay the costs of the financing.
- b) Lizer Jozefovic and Mark Neuman shall be the A Beneficiaries of the trust holding a 77.50% Beneficial interest, and the present members of the Contributor or their designees shall be the B Beneficiary with a 22.5% equity position.
  - c) The A Beneficiaries shall be the personal guarantors of the new financing in the amount of Fifty-One Million (\$51,000,000.00) Dollars. The Transaction is to close thirty (30) days after Buyer has received approval for the Financing set forth in paragraph 1)a ii)). The Contribution Agreement shall call for a purchase price equal to Transferors cash basis in the property and shall not result in a taxable event for Contributor;
  - d) The Financing shall be an obligation of the Trust secured by a first mortgage loan on the Facility and the Premises.
  - e) Lizer Jozefovic and Mark Neuman shall act as the Personal Guarantors and shall be obligated if necessary, to secure additional personal guarantors to ensure that none of the B beneficiaries shall have any obligation to guarantee the Financing. Any additional guarantors on the Financing shall also execute and deliver a personal guaranty of Tenant's obligations to Landlord on the Lease. All guaranties on the Lease shall be full unlimited personal guarantees.
  - f) The Financing shall bear interest at a constant rate of no more than 7% per annum with Principal and Interest paid on an amortization schedule of 35 years and shall be subject to the reasonable approval of the Contributor, which consent shall not be unreasonably withheld or delivered without cost to the Tenant Borrower.
  - g) Formal Contracts: The Parties intend that additional agreements including the Contribution Agreement, Redemption Agreement and Trust Agreement (the Formal Contracts") shall be complete as of November 22nd, 2019, and absent execution of Formal Contracts this LOI shall govern provided the Down Payment is received in good funds by Contributor upon execution of this LOI, and in no event later than the end of business November 22, 2019. In the event Tenant defaults in the payment of rent on the Lease and such default continues for five (5) days, Contributor shall have the right to terminate this LOI and all Formal Contracts.
  - h) Closing: The Closing of the Transaction ("Closing") will occur at the offices of the First Mortgagee Bank's counsel or such other location within the State of New York as may be agreed upon by the Parties thirty (30) days after receipt by the Trust of approval for

the Financing but no later than April 1st, 2020. If the Tenant has a commitment letter on April 1<sup>st</sup>, 2020 that is in the process of closing or if the closing is delayed by a title issue, the closing date shall be automatically extended for another Ninety-Days. If the closing does not occur by such date, time being of the essence, this LOI and the Formal Contracts shall be terminated and no party shall have any rights with respect thereto. The parties shall remain as Landlord and Tenant pursuant to the existing Lease until such time as the Transaction closes. The Lease may be amended as provided herein but only if and when such amendments are approved by Contributor's existing Lender.

- 2) **Structure of the Trust:** The Contributor and Tenant have agreed to create a Trust as a "statutory trust" in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. 3801 and enter into a Trust Agreement which shall constitute the "governing instrument" of the Trust. Each party will become a Beneficiary and will transfer certain sums of money and/or property to the Trust in exchange for a beneficial interest in the Trust as set forth above;
- a) The Trust shall be a special purpose entity which is being formed solely for the purpose of acquiring the Trust Property from the Contributor and maintaining, improving, building upon, and leasing the Trust Property for use as a skilled nursing facility and all and such other activities incident or appropriate to the preceding
  - b) Simultaneously upon the closing of the transaction, the existing lease shall be modified only as set forth herein.
  - c) The trust shall be permitted to have only the following liens on the Trust Property and no other:
    - i) A Mortgage in the amount of Fifty-One Million (\$51,000,000.00) Dollars (the "First Mortgage") the terms of which shall be acceptable to the Department of Health and the Contributor.
    - ii) The Trust will designate Howard Fensterman and William Nicholson as the Administrative Trustees of the B interests.
      - (1) The Trust Agreement shall provide that Howard Fensterman and William Nicholson as the B beneficiaries Administrative Trustees shall have the sole authority to all issues governing administering and enforcing the terms of the Lease including the collection and distribution of rent.
      - (2) Lizer Jozefovic shall be responsible as the overall Administrative Trustee for all other matters concerning the building including but not limited to repairs, maintenance, and operation of the building. Any Trustee may be removed for cause including misconduct, bad faith, fraud or gross negligence.
      - (3) Except as otherwise provided in a Trust Agreement to be executed and notwithstanding any provision of the Act that otherwise so empowers the Trust, neither the Beneficiaries nor any Trustees nor any other Person shall be authorized or empowered, nor shall they permit the Trust, to take any of the following actions

without the prior unanimous written consent of all of the Beneficiaries:

- (a) Make any arrangements to reduce, modify, or forebear on the payment of rent by the Tenant.
- (b) Guarantee any obligation of any Person, including any Affiliate;
- (c) engage, directly or indirectly, in any business other than the actions required or permitted to be performed hereunder;
- (d) incur, create or assume any indebtedness;
- (e) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person;
- (f) To the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of their Interests subject to obtaining any approvals required under this Trust Agreement other than a sale of the interests to qualified purchasers under a syndicated offering of the B interests. The cost of such syndication shall not be charged to the B Beneficiaries and all monies derived therefrom and due hereunder shall be net of the costs of the syndication.
- (g) allow any business to be conducted on the Property other than the operation of a skilled nursing facility and ancillary uses;
- (h) own any other property or engage in any business other than owning and leasing the Trust Property for use as a skilled nursing facility;
- (i) take any action to consolidate or merge the Trust with or into any Person;
- (j) sell all or any portion of or any interest in the Trust Property;
- (k) grant an option to lease all or any portion of the Trust Property for a term (with all extension periods) ending on or after the 45th Anniversary Date;
- (l) amend, terminate or waive any material provisions of any lease for all or any portion of the Trust Property;
- (m) enter into any agreement with any Person giving any Person any rights with respect to the Trust Property that extend beyond the 45th Anniversary Date or which are not terminable without penalty on less than 90 days' notice;
- (n) encumber the Trust Property with any mortgages or another lien, easement, covenant or restriction other than the First Mortgage, or a HUD Mortgage to refinance the debt contemplated by this Agreement, at such time as HUD regulations shall allow;
- (o) modify the Trust Agreement or the Trust's certificate of trust in any manner, issue additional Interests in the Trust to any Person, or modify the rights and privileges of the Interest owners;
- (p) institute proceedings to have the Trust be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Trust or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequester (or other similar official) of the Trust or a substantial part of its property;
- (q) make any assignment for the benefit of creditors of the Trust;

- (r) admit in writing the Trust's inability to pay its debts generally as they become due;
  - (s) take action in furtherance of any of the foregoing actions; or dissolve or liquidate the Trust.
- iii) The 22.5% of the Trust Owned by the B Beneficiaries interest shall be subject to a Redemption Agreement where the B interests shall be sold to the A interests or their designees, assigns or transferees, over five years for a total price of \$19,800,000.00 in four tranches each representing interests of 5.625% each
- (1) Tranche one on or before August 1, 2020 in the amount of \$3,786,250.00
  - (2) Tranche two on or before August 1, 2021 in the amount of \$3,786,250.00
  - (3) Tranche three on or before August 1, 2022 in the amount of \$3,786,250.00
  - (4) Final Tranche by August 1, 2023 in the amount of \$8,441,250
- iv) Any purchase of the membership interests shall be a purchase of Beneficial Interests from the B Beneficiaries and shall reduce the Priority Return proportionate to the payments as a percentage of the total remaining price of \$19,800,000, which is the balance after payment of the non-refundable Down Payment.
- v) The A Beneficiaries shall prepare at their sole cost and expense of the A Beneficiaries a Private Placement Memorandum for the Sale of Membership interests in the Trust by a Broker Dealer who specializes in sales of marginal interests in Delaware Statutory Trusts to individuals and other entities who have to designate property as target property in connection with 1031 Exchanges of Property. The A Beneficiaries shall have the right to designate a portion of their membership interests as C interests for the purpose of selling them as part of the same syndication, provided that (1) there is no change in control of the A Beneficiaries or the Tenant entity.
- vi) The B Beneficiaries will be entitled to a priority return ( the "Priority Return") equal to all available rental and other income over and above the payment of the P&I on the New First Mortgage which shall in no event be less than \$2,000,000 per year (as adjusted by periodic redemptions) and shall be paid to the B Beneficiaries as a Priority Return until such time as they have been fully redeemed pursuant to the Redemption Agreement.
- vii) The Trustee shall deposit all rents and other funds collected from the operation of the Real Estate in the bank designated by the first mortgagee (the "Operating Account") which shall be subject to both a Deposit Account Control Agreement and Deposit Account Instruction Agreement. The Trust shall maintain books and records of the funds from the Real Estate deposited in such account, interest earned thereon, and withdrawals therefrom. The Trustee shall pay from the Operating Account the operating expenses of the Real Estate (other than those paid by a tenant of the Real Estate as set forth in its lease) and any other payments relative to the Real Estate as required by this the Trust Agreement.

- viii) The Trustee shall be responsible for receiving all cash from the Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust Agreement. The Trustees shall furnish quarterly and annual reports to each of the Beneficiaries as to the amounts of rent received from the Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficiaries.
  - ix) To the extent permitted by the Internal Revenue Code depreciation, which shall be calculated on a straight-line depreciation method shall be allocated as follows: a) first to the B Beneficiary to the extent necessary to shelter the Priority return from taxes and b) second to the beneficiaries, pro rata, in accordance with the ownership interests.
- 3) **Condition of Property and Title:** Contributor shall give, and the Trust and the Trust shall accept, a good and marketable title which any National Title Insurance Company (the "Title Company"), will approve and insure at standard rates, free and clear of all liens, hypothecations, mortgages, easements, and encumbrances, except for the Permitted Exceptions.
- i) The Premises is being contributed subject to the following exceptions to the title (the "Permitted Exceptions"):
    - (1) Zoning and building regulations, restrictions and ordinances now or hereafter adopted or imposed by any governmental or quasi-governmental body having or asserting jurisdiction over the Premises or any part thereof;
    - (2) Future Real Estate taxes, assessments, water charges, sewer rents or other charges not yet due and payable (subject to apportionment as provided herein) and certified, confirmed or ratified assessment liens and pending assessments, if any;
    - (3) The state of facts shown on an updated as built survey prepared originally prepared and revised to be an as built survey, (the "Survey") and such additional state of facts which said survey would show or reveal provided such additional state of facts do not render title unmarketable;
    - (4) Any state of facts a physical inspection of the Premises would reveal;
    - (5) Exceptions permitted by the Title Company (as defined herein) (the "Title Exceptions");
  - 4) All payments made to purchase any portion of the B Beneficiaries 22.5% interest shall also act to proportionally reduce the amount of Priority Return paid to the B beneficiaries under the Trust and the proportionate difference shall be paid to the A Beneficiaries or whoever purchases the B Beneficiaries interests as the case may be.,
    - a) Distributions: Provided that all required payments set forth herein have been made by the Tenant, During the interim period prior to the purchase of the premises Tenant may pay Management Fees so long as (i) the amount of such Management Fees paid in any twelve-month period shall not exceed five percent (5%) of Tenants' gross revenues for such period

and (ii) there shall not then exist, and/or the paying of such Management Fees shall not cause there to exist, a Default or Event of Default under the Lease the first mortgage on the property or the Tenant's Working Capital Loans, (iii) the Initial Payment, the payment of Rent, and all other payments set forth herein have been made by the Buyer/Tenant.. Upon the occurrence of an Event of Default, Tenant shall not pay Management Fees. The Tenant will make no distributions to its shareholders, officers, affiliates, or any related party unless the Down Payment, the payment of Rent is current, and.

- 5) **Confidentiality and Disclosure:** Tenant and Contributor shall each maintain the confidentiality of all confidential and non-public information supplied by the other. If this Transaction is not consummated, each party shall return all documents obtained to the other. Except as required by law, without the prior written consent of the other party, neither Tenant nor Contributor will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this Letter of Intent. If a party is required by law to make any such disclosure, the parties shall consult with each other and seek to agree upon appropriate language for such disclosure. The Tenant acknowledges that Contributor will be unable to furnish any patient health information unless such disclosure complies specifically and completely with all terms, conditions, regulations, and guidelines in HIPAA.
  
- 6) **Interim Operation:** Subject to the approval in writing of Contributor's existing Lender, the parties will enter into an amendment of the Lease as follows to allow for the operation of the facility before the closing.
  - a) **Commencement Date:**The Commencement Date according to the Lease shall be September 30, 2019.
  
  - b) **Rent:** An initial rent payment of \$509,000.00 has been paid receipt of which is on account toward the rental period from September 30, 2019 to October 31, 2019 (the "October 2019 Rent") leaving a balance of \$13,735 for October 2019 Rent. November 1, 2019, to November 30, 2019 (the "November 2019 Rent") shall be postponed until November 18, 2019 and shall be paid by Tenant on that date. The next rental payment shall be the December monthly rent amount outlined in the Lease - \$506,097 which shall be paid on December 5, 2019. Also, the Tenant will reimburse the Landlord for their municipal maintenance escrow and utility deposits of \$5,500 and \$60,356, respectively. Such reimbursement payment shall be made on or before December 5<sup>th</sup>, 2019. Upon receipt of the \$60,356 for the utility deposits from the Tenant, Landlord will direct any refund from the Utility companies to the Tenant, or otherwise pay such refund over to the Tenant forthwith provided Landlord has previously received those funds from the Tenant.
  
  - i) The following amounts are in dispute, and neither party will be obligated to waive their rights and positions by the signing of this agreement. The landlord has demanded the following sums due to their Lender.

- (1) Late and Default Interest costs of \$201,997.34 for September 2019 and October 2019,
  - (2) \$19,000 of Late Fees for November 2019,
  - (3) \$5,061 per day for Default Interest premium during November 2019.
- ii) The A Beneficiaries and the B Beneficiaries shall jointly negotiate with the Contributor's current Lenders to effectuate the best possible settlement of these late costs (the "Late Costs"). The amounts if any remaining after such joint negotiation will be paid by the 77.5% by the Buyer and 22.5% by the Contributor (provided the Initial Payment, the payment of Rent and all other payments set forth herein are made timely) from Financing proceeds. If not available from the Financing proceeds the Tenant shall pay all Late Costs. .
- c) Security Deposit/ Guaranty: Section 7.1(a)(i) the Lease shall be amended to provide that Tenant shall enter into a Deposit Account Control Agreement with Metropolitan National Bank which can only be revoked with the consent of both parties, which shall provide that each month, the Tenant's Lender shall draw on the loan amount first to pay rent to the Landlord, notwithstanding the adequacy of any accounts receivable borrowing base calculations. This Document shall be part of the Closing Documents on the Tenant's first initial Term Loan and shall be delivered in full effect by December 1, 2019.
- d) Section 7.1(a)(ii) of the Lease shall be amended to provide that the obligation for the Security Deposit shall initially be reduced to 2,000,000 dollars.
- i) The sum shall be paid by Tenant as follows: (a) Provided that the Contributor has obtained a permanent Certificate of Occupancy the Tenant shall draw the initial \$1,000,00.00 from its credit line on or no later than December 1, 2019. (b) Landlord shall obtain a release of the lien of its Lender on the FF&E, upon delivery of free and clear title to the FF&E the Tenant will enter into a reverse lease and obtain at least \$1,000,000.00 which shall be paid on account of the Security Deposit no later than April 1, 2020.
  - ii) Also, Tenant shall pay the sum of \$40,000 per month commencing January 1, 2020 to be treated as additional clerk rent until there is a total \$3,700,000 posted as Security Deposit under 7.1(a)(i).
- e) Section 7.1(a)(iii) of the Lease shall be amended to provide that instead of delivering the sum of \$1,600,000 in cash, the parties shall enter into a blocked account agreement wherein and whereby account number [REDACTED] in JP Morgan Chase Bank NA prohibiting any liquidation of that account until the Second Payment is paid. Such account shall be not be posted as collateral security to Landlord's Lender provided the Initial Payment has been made in full, and all payments of Rent are current and the Tenant is not otherwise in Default, except that the Landlord shall have a security interest in such account under a DAISA, which allows the Landlord to demand the liquidation of such account to pay any defaults under the lease.

- f) Working Capital: Section 7.7 of the Lease shall be amended to suspend the requirement for providing the working capital account. The Tenant shall be obtaining a single working capital line for \$8,000,000.00 no later than December 1, 2019.
- g) Right of First Refusal and Option to Purchase: The Tenant's rights with respect to the right of first refusal and option to purchase under Sections 3.7 and 3.7 of the Lease will be suspended pending payment in full of the Security Deposits required by Section 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) of the Lease as amended, the payment of the Initial Payment, the working capital required by Section 7.7 of the Lease and Tenant being in full compliance with the Lease.
- h) Insurance: Tenant shall obtain property insurance, effective as of September 30, 2019, and (2) provide the property insurance, and all other insurances required by the Lease by November 19, 2019, effective retroactively back to September 30, 2019.
- i) Real Estate Taxes: Real estate taxes shall be prorated as of September 30, 2019 and the Tenant's portion shall be paid to the Landlord no later than December 1, 2019, plus any late charges which the City of White Plains may impose.
- j) Utilities: Tenant shall pay actual costs of utilities incurred at the property covering the rental period from September 30, 2019 (pro-rated as the utility company billing periods may require) forthwith upon presentation of invoices for the same from the Landlord, no later than December 1, 2019.
- k) Punchlist: The punch list and all other developer obligations are deemed complete except for.
  - i) The White Plains Outstanding Punchlist November 5, 2019 (the Remaining Punchlist), the value of which is has been determined by the Architect and agreed herein to be \$3,800.
  - ii) The Electric Blinds in rooms (the "Suspended Work") the value of which is agreed herein to be \$35,000.
  - iii) Provided the Initial Payment is made by November 15, 2019 and provided there are no other Defaults by the Tenant, Landlord shall complete the Remaining Punchlist and the Suspended Work to the approval of the Architect, within 45 days from the date of the Contributor's receipt of the Initial Payment. Should Landlord not do so, then the Tenant may credit the agreed values of any uncompleted Punchlist or Suspended Work from the February, 2020 Rent payment, and the Landlord's Work under the Lease and Development Agreement shall be deemed complete.

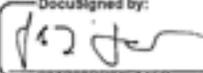
Security: Tenant shall assume all property security obligations as of November 11, 2019.

Upon the closing of the purchase of the premises by the Trust, the Trust shall take an assignment of the lease as amended above.

- 7) **Exclusivity:** In consideration of (1) the Initial Payment, (2) the payment of Rent as set forth herein, and (3) Tenant's efforts in pursuing the Transaction, Contributor agrees that (1) until the termination of this Letter of Intent, or execution of the Formal Contracts and (2) provided the payment of the Initial Payment and the payment of Rent as set forth herein is made, and (3) all other obligations of the Tenant set forth herein,, Contributor will not permit any of its affiliates to, and will not authorize or permit any officer, director, employee, counsel, agent, investment banker, accountant, or other representative of any of them, directly or indirectly, to: (a) initiate contact with any person in an effort to solicit any proposal (other than that contemplated by this Letter of Intent for the acquisition (directly or indirectly , by sale of stock or assets, or by merger or consolidation or otherwise) of the operation of the Real Estate, or any of the Assets, or any other business combination or financing transaction involving such business (a "Proposal); (b) cooperate with, or furnish or cause to be furnished any non-public information concerning the operation of the Real Estate, to, any person in connection with any Proposal; (c) negotiate or enter into discussions with any person with respect to any Proposal; or (d) enter into any agreements or understanding with the intent to effect a Proposal. Contributor will immediately give written notice to Tenant of the details of any Proposal of which Contributor becomes aware. Contributor will, and will cause its officers, directors, affiliates, agents, and representative to, terminate all discussions regarding a Proposal, other than those with Tenant and its representatives concerning the Transaction, and represents that neither it nor any of its officers, directors, affiliates, agents, or representatives have entered into any executory agreements or accepted any commitments concerning any Proposal other than the Transaction provided that (1) this LOI or successor Formal Contracts has not terminated, and (2) the payment of the Initial Payment, the payment of Rent as set forth herein have all been paid and are current, and (3) all other obligations of the Tenant set forth herein are not in Default and are current.
  
- 8) **Waiver of Claims:** Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the Lease, (3) any claims related to the Cost Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.
  
- 9) **Expenses:** Tenant and Contributor shall each be responsible for their respective accounting, legal, advisory, and other costs and expenses in connection with the Transaction. Tenant shall reimburse Contributor for its legal, advisory and other costs and expenses in connection with the Transaction and the Termination of the Lease. Reimbursement for such legal and transaction fees shall not to exceed \$125,000 and may be made from the proceeds of the Closing, provided the Closing occurs and the Contributor's existing 1<sup>st</sup> Mortgage Loan and Mezzanine Loan are paid off from the proceeds of the Financing by March 31, 2020, and (2) the Initial Payment is made as set forth herein above, and (3) the Tenant is not in default under this LOI or the successor Formal Contracts. Otherwise the \$125,000 cap shall expire and the Tenant shall pay the Contributor all such costs incurred after September 30, 2019.

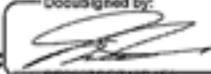
- 10) **Letter of Intent:** This LOI represents a statement of all of the terms, conditions, representations, warranties, indemnities, covenants, and other provisions that would be contained in the definitive documentation for the proposed transactions. This LOI shall constitute a binding agreement upon payment of the or any of their respective affiliates will have any legal obligation under this LOI unless and until one or more subsequent definitive written agreements are mutually executed and delivered by each of Contributor and Buyer. No past, present, or future action, course of conduct, or failure to act relating to the transactions referenced in this LOI or relating to the negotiation of the terms of such transactions will give rise to or serve as the basis for any obligation or other liability on the part of Contributor or Buyer or any of their respective affiliates.[ These changes should be rejected]
  
- 11) **Governing Law:** This Agreement shall be governed by and construed by the internal laws of the State of New York, Venue shall be in Westchester County without application of its conflicts of law rules. If you agree with the preceding, please sign and return one copy of this Letter of Intent.

HBL-SNF, LLC

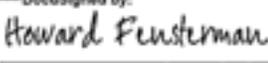
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 Lizer Jozetovic

**ACKNOWLEDGED AND AGREED**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Name: William A. Nicholson  
 Title: Manager

**Accepted and Agreed**

DocuSigned by:  
  
 Howard Fensterman

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**60278/2020 - Westchester County Supreme Court**

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
 Case Type: **Commercial Division**  
 Case Status: **Active**  
 eFiling Status: **Full Participation Recorded**  
 Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

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Document Type:  Filed By:   
 Motion Info:  Filed Date:  thru   
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76	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
77	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Complaint in New York Action</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
78	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Judge Bannon's Interim Order</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
79	<a href="#">AFFIDAVIT OR AFFIRMATION IN REPLY</a> (Motion #3) <i>Reply Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
80	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>NY County Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
81	<a href="#">MEMORANDUM OF LAW IN REPLY</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
82	<a href="#">STIPULATION - DISCOVERY ( REQUEST TO SO</a> <i>ORDER</i> ) (Motion #4)	<a href="#">Giardino, J.</a> Filed: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

STIPULATION (Motion #2)

Stipulation regarding document discovery and motion to dismiss

Received: 03/04/2021

83 STIPULATION - SO ORDERED

Court User  
Filed: 03/11/2021  
Received: 03/11/2021

**Processed**  
[Confirmation Notice](#)

84 DECISION + ORDER ON MOTION (Motion #3)

Court User  
Filed: 03/18/2021  
Received: 03/18/2021

**Processed**  
[Confirmation Notice](#)

85 NOTICE OF ENTRY (Motion #3)

[Lara-Garduno, N.](#)  
Filed: 03/19/2021  
Received: 03/19/2021

**Processed**  
[Confirmation Notice](#)

86 COMPLAINT (AMENDED)

First Amended Verified Complaint

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

87 EXHIBIT(S) - 1

Amended and Restated Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

88 EXHIBIT(S) - 2

Jozefovic Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

89 EXHIBIT(S) - 3

Neuman Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
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90 EXHIBIT(S) - 4

Jozefovic Security Agreement  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

91 EXHIBIT(S) - 5

Letter of Intent  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

92 EXHIBIT(S) - 6

Notice of Default  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

93 LETTER / CORRESPONDENCE TO JUDGE

[Lara-Garduno, N.](#)  
Filed: 03/26/2021  
Received: 03/26/2021

**Processed**  
[Confirmation Notice](#)

94 LETTER / CORRESPONDENCE TO JUDGE

[Donnellan, A.](#)  
Filed: 04/09/2021  
Received: 04/09/2021

**Processed**  
[Confirmation Notice](#)

95 DECISION + ORDER ON MOTION (Motion #4)

Motion withdrawn without prejudice

Court User  
Filed: 04/20/2021  
Received: 04/20/2021

**Processed**  
[Confirmation Notice](#)

96 ANSWER (AMENDED)

[Barnett-Howell, A.](#)  
Filed: 05/21/2021  
Received: 05/21/2021

**Processed**  
[Confirmation Notice](#)

# Document

Filed By

Status

97	<a href="#">EXHIBIT(S)</a> - A <i>Incorporated Complaint from New York County</i>	<a href="#">Barnett-Howell, A.</a> Filed: 05/21/2021 Received: 05/21/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
98	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 05/25/2021 Received: 05/25/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
99	<a href="#">NOTICE TO ADMIT</a>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
100	<a href="#">EXHIBIT(S)</a> - 1 <i>to Notice to Admit - Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
101	<a href="#">EXHIBIT(S)</a> - 2 <i>to Notice to Admit - Development Agreement</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
102	<a href="#">EXHIBIT(S)</a> - 3 <i>to Notice to Admit - Temporary C of O</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
103	<a href="#">EXHIBIT(S)</a> - 4 <i>to Notice to Admit - AJA form 0704</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
104	<a href="#">EXHIBIT(S)</a> - 5 <i>to Notice to Admit - NYSDOH letter</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
105	<a href="#">ORDER - MEDIATION</a>	Court User Filed: 06/03/2021 Received: 06/03/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
106	<a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
107	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
108	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>First Notification of Disposition of Collateral, 10.6.20</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
109	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Second Notification of Disposition of Collateral, 6.9.21</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
110	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Term Sheet, 11.20.15</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
111	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>

# Document

Filed By

Status

112	<a href="#">EXHIBIT(S)</a> - E (Motion #5) <i>November 19 Email and Account Statement</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
113	<a href="#">EXHIBIT(S)</a> - F (Motion #5) <i>August 10 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
114	<a href="#">EXHIBIT(S)</a> - G (Motion #5) <i>August 16 Emails</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
115	<a href="#">EXHIBIT(S)</a> - H (Motion #5) <i>August 17 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
116	<a href="#">EXHIBIT(S)</a> - I (Motion #5) <i>Letter of Intent</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
117	<a href="#">EXHIBIT(S)</a> - J (Motion #5) <i>Security Benefit Letters</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
118	<a href="#">EXHIBIT(S)</a> - K (Motion #5) <i>NYSDOH Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
119	<a href="#">EXHIBIT(S)</a> - L (Motion #5) <i>Certificate of Amendment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
120	<a href="#">EXHIBIT(S)</a> - M (Motion #5) <i>2020 Monthly Invoices</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
121	<a href="#">EXHIBIT(S)</a> - N (Motion #5) <i>September Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
122	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>Proposed UCC Form</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
123	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
124	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' / Third-Party Plainti ...</i> <i>show more</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
125	<a href="#">EXHIBIT(S)</a> - 1 (Motion #5) <i>Exhibit 1 - Bandazian Affidavit</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
126	<a href="#">EXHIBIT(S)</a> - 2 (Motion #5) <i>Exhibit 2 - Prior Order to Show Cause</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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|-----|--|--|---|
| 127 | <a href="#">EXHIBIT(S)</a> - 3 (Motion #5)<br><i>Exhibit 3 - Answer with Cross-Claims</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 128 | <a href="#">EXHIBIT(S)</a> - 4 (Motion #5)<br><i>Exhibit 4 - Decision and Order</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 129 | <a href="#">EXHIBIT(S)</a> - 5 (Motion #5)<br><i>Exhibit 5 - Notice of Sale</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 130 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)<br><i>Third-Party Defendant/Cross-Claimant Metropolitan Commercial Bank's Memorandum of Law in Partial Joi ... show more</i>        | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 131 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Donnellan, A.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 132 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 133 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)<br><i>Affidavit of Lizer Jozefovic</i>   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 134 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5)<br><i>Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' Third-Pa ... show more</i> | <a href="#">Malatak, R.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 135 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 136 | <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5)<br><i>Affidavit of William A. Nicholson</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 137 | <a href="#">EXHIBIT(S)</a> - A (Motion #5)<br><i>Lease</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 138 | <a href="#">EXHIBIT(S)</a> - B (Motion #5)<br><i>Jozefovic Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 139 | <a href="#">EXHIBIT(S)</a> - C (Motion #5)<br><i>Neuman Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 140 | <a href="#">EXHIBIT(S)</a> - D (Motion #5)<br><i>Collateral Assignment and Pledge</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021                         | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

**Redacted** per 22 NYCRR §202.5(e)

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141 [EXHIBIT\(S\)](#) - E (Motion #5)  
*UCC Financing Statement*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

142 [EXHIBIT\(S\)](#) - F (Motion #5)  
*Notice of Defalt*  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

143 [EXHIBIT\(S\)](#) - G (Motion #5)  
*Construction Loan Agreement*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

144 [EXHIBIT\(S\)](#) - H (Motion #5)  
*Note*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

145 [EXHIBIT\(S\)](#) - I (Motion #5)  
*Mortgage*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

146 [EXHIBIT\(S\)](#) - J (Motion #5)  
*Security Benefit Notice of Default*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

147 [EXHIBIT\(S\)](#) - K (Motion #5)  
*Security Benefit Notice of Default*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

148 [EXHIBIT\(S\)](#) - L (Motion #5)  
*Security Benefit Complaint*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

149 [EXHIBIT\(S\)](#) - M (Motion #5)  
*Email*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

150 [EXHIBIT\(S\)](#) - N (Motion #5)  
*Hebrew Hospital Bankruptcy Filing Notice*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

# Exhibit 2 to Amended Verified Complaint

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Lizer Jozofovic ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

**RECITALS**

A. Landlord has been requested by HBL SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Tenant is owned by Guarantor, and Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recover against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease, (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)

an unconditional Letter of Credit, in accordance with the Section 7.1(a)(ii) of the Lease in the amount of \$3,700,000, or (b) \$3,700,000 in cash to secure the full and timely payment and performance of Tenant's obligations under the Lease, (ii) an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached as Exhibit 7.1(a) of the Lease or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months, and (iii) and released to Landlord all funds in the controlled account number [REDACTED] in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held as an additional Security Deposit by Landlord. After the Guaranty Termination Date, Guarantor shall continue to remain personally liable pursuant to the terms of this Guaranty for (i) all obligations of Tenant under the Lease which arose or accrued on or prior to the Guaranty Termination Date and (ii) any liability of Tenant arising out of a breach of any warranty or representation of Tenant under Lease, and all documents executed by Tenant in connection therewith, (iii) and any liability of Guarantor arising out of a breach of any warranty or representation hereunder.

**4. WAIVERS OF GUARANTOR.**

4.1 Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protect, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

4.2 GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

If to Landlord:

White Plains Healthcare Properties I, LLC  
c/oThe Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

8. CONSENT TO JURISDICTION. Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. CERTAIN ADDITIONAL COVENANTS.

**9.1 Financial Deliveries.** Guarantor shall deliver the following information to Landlord:

**9.1.1** As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this **Section 9** from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

**9.2 Assignment; Sale of Assets; Change in Control.** Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under **Section 10.1** of the Lease.

**9.3 Payment Method; Default Interest.** Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

**10. MISCELLANEOUS.**

**10.1** Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

**10.2** Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

**10.3** Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

**10.4** If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

**10.5** The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

**10.6** Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

**10.7** Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

**10.8** The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

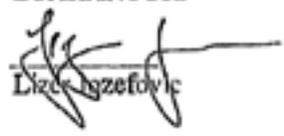
**10.9** The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

**10.10** This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:

  
Liza Agzeovic



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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
Case Type: **Commercial Division**  
Case Status: **Active**  
eFiling Status: **Full Participation Recorded**  
Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

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#	Document	Filed By	Status
76	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
77	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Complaint in New York Action</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
78	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Judge Bannon's Interim Order</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
79	<a href="#">AFFIDAVIT OR AFFIRMATION IN REPLY</a> (Motion #3) <i>Reply Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
80	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>NY County Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
81	<a href="#">MEMORANDUM OF LAW IN REPLY</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
82	<a href="#">STIPULATION - DISCOVERY ( REQUEST TO SO</a> <a href="#">ORDER</a> ) (Motion #4)	<a href="#">Giardino, J.</a> Filed: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

STIPULATION (Motion #2)

Stipulation regarding document discovery and motion to dismiss

Received: 03/04/2021

83 STIPULATION - SO ORDERED

Court User  
Filed: 03/11/2021  
Received: 03/11/2021

**Processed**  
[Confirmation Notice](#)

84 DECISION + ORDER ON MOTION (Motion #3)

Court User  
Filed: 03/18/2021  
Received: 03/18/2021

**Processed**  
[Confirmation Notice](#)

85 NOTICE OF ENTRY (Motion #3)

[Lara-Garduno, N.](#)  
Filed: 03/19/2021  
Received: 03/19/2021

**Processed**  
[Confirmation Notice](#)

86 COMPLAINT (AMENDED)

First Amended Verified Complaint

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

87 EXHIBIT(S) - 1

Amended and Restated Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

88 EXHIBIT(S) - 2

Jozefovic Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

89 EXHIBIT(S) - 3

Neuman Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

90 EXHIBIT(S) - 4

Jozefovic Security Agreement  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

91 EXHIBIT(S) - 5

Letter of Intent  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

92 EXHIBIT(S) - 6

Notice of Default  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

93 LETTER / CORRESPONDENCE TO JUDGE

[Lara-Garduno, N.](#)  
Filed: 03/26/2021  
Received: 03/26/2021

**Processed**  
[Confirmation Notice](#)

94 LETTER / CORRESPONDENCE TO JUDGE

[Donnellan, A.](#)  
Filed: 04/09/2021  
Received: 04/09/2021

**Processed**  
[Confirmation Notice](#)

95 DECISION + ORDER ON MOTION (Motion #4)

Motion withdrawn without prejudice

Court User  
Filed: 04/20/2021  
Received: 04/20/2021

**Processed**  
[Confirmation Notice](#)

96 ANSWER (AMENDED)

[Barnett-Howell, A.](#)  
Filed: 05/21/2021  
Received: 05/21/2021

**Processed**  
[Confirmation Notice](#)

# Document

Filed By

Status

#	Document	Filed By	Status
97	<a href="#">EXHIBIT(S)</a> - A <i>Incorporated Complaint from New York County</i>	<a href="#">Barnett-Howell, A.</a> Filed: 05/21/2021 Received: 05/21/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
98	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 05/25/2021 Received: 05/25/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
99	<a href="#">NOTICE TO ADMIT</a>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
100	<a href="#">EXHIBIT(S)</a> - 1 <i>to Notice to Admit - Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
101	<a href="#">EXHIBIT(S)</a> - 2 <i>to Notice to Admit - Development Agreement</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
102	<a href="#">EXHIBIT(S)</a> - 3 <i>to Notice to Admit - Temporary C of O</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
103	<a href="#">EXHIBIT(S)</a> - 4 <i>to Notice to Admit - AJA form 0704</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
104	<a href="#">EXHIBIT(S)</a> - 5 <i>to Notice to Admit - NYSDOH letter</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
105	<a href="#">ORDER - MEDIATION</a>	Court User Filed: 06/03/2021 Received: 06/03/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
106	<a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
107	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
108	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>First Notification of Disposition of Collateral, 10.6.20</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
109	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Second Notification of Disposition of Collateral, 6.9.21</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
110	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Term Sheet, 11.20.15</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
111	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>

112	<a href="#">EXHIBIT(S)</a> - E (Motion #5) <i>November 19 Email and Account Statement</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
113	<a href="#">EXHIBIT(S)</a> - F (Motion #5) <i>August 10 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
114	<a href="#">EXHIBIT(S)</a> - G (Motion #5) <i>August 16 Emails</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
115	<a href="#">EXHIBIT(S)</a> - H (Motion #5) <i>August 17 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
116	<a href="#">EXHIBIT(S)</a> - I (Motion #5) <i>Letter of Intent</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
117	<a href="#">EXHIBIT(S)</a> - J (Motion #5) <i>Security Benefit Letters</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
118	<a href="#">EXHIBIT(S)</a> - K (Motion #5) <i>NYSDOH Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
119	<a href="#">EXHIBIT(S)</a> - L (Motion #5) <i>Certificate of Amendment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
120	<a href="#">EXHIBIT(S)</a> - M (Motion #5) <i>2020 Monthly Invoices</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
121	<a href="#">EXHIBIT(S)</a> - N (Motion #5) <i>September Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
122	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>Proposed UCC Form</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
123	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
124	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' / Third-Party Plainti ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
125	<a href="#">EXHIBIT(S)</a> - 1 (Motion #5) <i>Exhibit 1 - Bandazian Affidavit</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
126	<a href="#">EXHIBIT(S)</a> - 2 (Motion #5) <i>Exhibit 2 - Prior Order to Show Cause</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

Received: 06/25/2021

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| 127 | <a href="#">EXHIBIT(S)</a> - 3 (Motion #5)<br><i>Exhibit 3 - Answer with Cross-Claims</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 128 | <a href="#">EXHIBIT(S)</a> - 4 (Motion #5)<br><i>Exhibit 4 - Decision and Order</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 129 | <a href="#">EXHIBIT(S)</a> - 5 (Motion #5)<br><i>Exhibit 5 - Notice of Sale</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 130 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)<br><i>Third-Party Defendant/Cross-Claimant Metropolitan Commercial Bank's Memorandum of Law in Partial Joi ... show more</i>        | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 131 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Donnellan, A.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 132 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 133 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)<br><i>Affidavit of Lizer Jozefovic</i>   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 134 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5)<br><i>Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' Third-Pa ... show more</i> | <a href="#">Malatak, R.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 135 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 136 | <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5)<br><i>Affidavit of William A. Nicholson</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 137 | <a href="#">EXHIBIT(S)</a> - A (Motion #5)<br><i>Lease</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 138 | <a href="#">EXHIBIT(S)</a> - B (Motion #5)<br><i>Jozefovic Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 139 | <a href="#">EXHIBIT(S)</a> - C (Motion #5)<br><i>Neuman Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 140 | <a href="#">EXHIBIT(S)</a> - D (Motion #5)<br><i>Collateral Assignment and Pledge</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021                         | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

**Redacted** per 22 NYCRR §202.5(e)

Received: 06/29/2021

- 141 [EXHIBIT\(S\)](#) - E (Motion #5)  
*UCC Financing Statement*
- 142 [EXHIBIT\(S\)](#) - F (Motion #5)  
*Notice of Defalt*  
**Redacted** per 22 NYCRR §202.5(e)
- 143 [EXHIBIT\(S\)](#) - G (Motion #5)  
*Construction Loan Agreement*
- 144 [EXHIBIT\(S\)](#) - H (Motion #5)  
*Note*
- 145 [EXHIBIT\(S\)](#) - I (Motion #5)  
*Mortgage*
- 146 [EXHIBIT\(S\)](#) - J (Motion #5)  
*Security Benefit Notice of Default*
- 147 [EXHIBIT\(S\)](#) - K (Motion #5)  
*Security Benefit Notice of Default*
- 148 [EXHIBIT\(S\)](#) - L (Motion #5)  
*Security Benefit Complaint*
- 149 [EXHIBIT\(S\)](#) - M (Motion #5)  
*Email*
- 150 [EXHIBIT\(S\)](#) - N (Motion #5)  
*Hebrew Hospital Bankruptcy Filing Notice*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

# Exhibit 3 to Amended Verified Complaint

GUARANTY OF LEASE

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Mark Neuman ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

RECITALS

A. Landlord has been requested by HBL SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. DEFINITIONS. Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. COVENANTS OF GUARANTOR.

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recover against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease, (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)

an unconditional Letter of Credit, in accordance with the Section 7.1(a)(ii) of the Lease in the amount of \$3,700,000, or (b) \$3,700,000 in cash to secure the full and timely payment and performance of Tenant's obligations under the Lease, (ii) an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached as Exhibit 7.1(a) of the Lease or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months, and (iii) and released to Landlord all funds in the controlled account number [REDACTED] in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held as an additional Security Deposit by Landlord. After the Guaranty Termination Date, Guarantor shall continue to remain personally liable pursuant to the terms of this Guaranty for (i) all obligations of Tenant under the Lease which arose or accrued on or prior to the Guaranty Termination Date and (ii) any liability of Tenant arising out of a breach of any warranty or representation of Tenant under Lease, and all documents executed by Tenant in connection therewith, (iii) and any liability of Guarantor arising out of a breach of any warranty of representation hereunder.

**4. WAIVERS OF GUARANTOR.**

4.1 Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protect, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

4.2 GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

If to Landlord:

White Plains Healthcare Properties I, LLC  
c/oThe Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Mark Neuman

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

**8. CONSENT TO JURISDICTION.** Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

**9. CERTAIN ADDITIONAL COVENANTS.**

9.1 Financial Deliveries. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. MISCELLANEOUS.

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:



Mark Neuman

# Exhibit 6 to Amended Verified Complaint

**DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP**

Alfred E. Donnellan  
Partner  
aed@ddw-law.com

COUNSELLORS AT LAW  
THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601  
(914) 681-0200  
FACSIMILE (914) 684-0288

Connecticut Office  
1111 SUMMER STREET  
STAMFORD, CT 06905  
(203) 298-0000

January 7, 2020

BY EMAIL [lizerj@watersedgeusa.com](mailto:lizerj@watersedgeusa.com)  
BY FEDERAL EXPRESS

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**NOTICE OF DEFAULT  
AND LANDLORD'S ELECTION TO TERMINATE LEASE AND  
ACCELERATE ALL RENTS DUE FOR THE BALANCE OF THE LEASE TERM**

**PREMISES: 116-120 Church Street, White Plains, New York ("the Leased Premises")**

Mr. Josefovic:

We are attorneys for your Landlord, White Plains Health Care Properties I, LLC.

**PLEASE TAKE NOTICE**, that HBL SNF, LLC ("HBL") is in material violation of the provisions of its November 19, 2015 Lease, for the above referenced premises ("the Lease"), and the November 20, 2019 Letter of Intent (the "LOI"), the terms of which are in full force and effect (the "LOI"), and is in **DEFAULT** thereof, as follows:

1. **Lease Section 3.2, and LOI Para 6) d) ii) – Payment of Rent:** HBL has failed or refused to pay the following Rent:
  - a. Rent due for Sept. 30, 2019 – Dec. 31, 2019, totaling \$10,831.79.
  - b. Additional Rent due for Jan. 01 - 31, 2020, due Jan. 1, 2020, totaling \$40,000.00.
  
2. **Lease Section 4.2, and LOI Para 6) b) - Payment of Real Estate Taxes:** HBL has failed to pay the following Real Estate Tax payments:
  - a. Real Estate Taxes for the period 07/01/19 - 12/31/19, specifically the Tenant's prorated portion thereof, (exclusive of late fees, costs, penalties and interest per municipal regulations and per the Lease), totaling \$61,456.39.
  - b. Real Estate Taxes for the period Jan. 01, 2020 – June 30, 2020 totaling \$121,587.12

HBL SNF, LLC  
Attn: Lizer Josefovic  
January 7, 2020  
Page 2

- 3. LOI Para 6) b), and Lease Section 5.2 – Payment of Utility Deposits and Municipal Maintenance Escrows: HBL has failed to pay the following Utility Deposits and Municipal Maintenance Escrows:
  - a. Utility Deposits totaling \$60,356.10
  - b. Municipal Maintenance Escrows totaling \$5,500.00
  
- 4. Lease Section 4.1, LOI Section 6) j) - Utility Charges: HBL has failed to pay the following Utility Charges:
  - a. ConEdison invoice paid by the Landlord to avoid power shutoff, in the amount of \$2,972.84.
  
- 5. Lease Article VI, including Section 6.2; LOI Para 6) h) – Delivery of Insurance Certificates.
  - a. HBL has failed to deliver certificates of insurance to Landlord in accordance with Article VI and Section 6.2 of the Lease.
  
- 6. Lease Section 7.4 (g) and (j) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility.
  - b. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider updated reimbursement rate sheets for the Facility.
  
- 7. Lease Section 7.4 (a) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required financial reporting required under the Lease.
  
- 8. Lease Section 7.4 (B) (vi) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required written reports providing an operational overview of significant events and circumstances at the Facility during each prior month of the Term of the Lease.
  
- 9. Lease Section 7.1(a)(ii), as amended by LOI Para 6) d) i) – Security Deposit.
  - a. HBL has failed or refused to deliver to the Landlord by December 1, 2019 the security deposit of \$1,000,000.00, to secure full and timely payment and performance of Tenant’s obligations under the Lease.
  
- 10. Lease Section 7.1(a)(iii), as amended by LOI Para 6) e) – Additional Security Deposit.
  - a. HBL has failed to deliver the blocked account agreement prohibiting any liquidation of the of \$1,600,000.00 held by JPMorgan Chase Bank, N.A. in the controlled account number [REDACTED]
  
- 11. Lease Section 4.1, 3.2 (c), and 9.1 (b) – Payment of Late Fees and Costs
  - a. HBL has failed to pay late fees and costs related to the above failures to pay its obligations under the Lease and the LOI in the timeframes required thereunder, as set forth in the attached accounting, totaling \$23,425.09

HBL SNF, LLC  
Attn: Lizer Josefovic  
January 7, 2020  
Page 3

Notice Pg 22 of 34

A true and accurate accounting of the amounts due and owing under the Lease and the LOI is attached herewith.

By reason of the aforementioned material Defaults under the Lease and the LOI, the Landlord, hereby exercises its right under Section 16.1 of the Lease to terminate the Lease as well as Tenant's right of possession of the Leased Premises, effective January 13, 2020 at 5.00 PM NYC time.

**PLEASE TAKE FURTHER NOTICE**, that, in accordance with Section 16.1 of the Lease, all rent for the balance of the term of the Lease is accelerated, and pursuant to said lease provision, HBL is obligated to pay the Landlord \$84,073,989.91, being the present value of such accelerated rent, discounted at the rate of 6% *per annum*.

Landlord reserves all other rights and remedies at law or in equity as against the Tenant, all guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.

Landlord further reserves all rights arising from the Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 ("the Pledge"), including but not limited to all rights to enforce the Pledge through a private or public sale of the assignor's interest in Waterview Acquisition I, LLC or through a judicial foreclosure of the assignee's security interest therein.

Very truly yours,  
  
ALFRED E. DONNELLAN

**AUTHORIZED AND APPROVED:**

White Plains Health Care Properties I, LLC

  
Joshua Roccapriore  
Authorized Representative

cc: By Email (lizerj@watersedgeusa.com) & Federal Express  
Lizer Josefovic, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

HBL SNF, LLC  
Attn: Lizer Josefovic  
January 7, 2020  
Page 4

By Email (markn@epicmgt.com) & Federal Express  
Mark Neuman, Guarantor, Individually  
22 Lyncrest Drive  
Monsey, NY 10952

By Email (mzafrin@mrlp.com) & Federal Express  
Michelman & Robinson  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
*Attn: Mark Zafrin, Esq.*

By Federal Express  
Gerald Neuman, Individually  
c/o HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

**WHITE PLAINS HEALTH CARE PROPERTIES I, LLC**

**c/o THE CONGRESS COMPANIES**

General Contractors, Construction Managers, Property Managers, Development Services  
BOSTON:  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Phone: 978-535-6700  
Fax: 978-535-6701

7-Jan-19

**NOTICE OF AMOUNTS AND DELIVERABLES DUE UNDER LEASE & LOI of 11/20/19**

Gentlemen: Pursuant to the Lease and the LOI dated November 20, 2019, the following are due:

	<u>AMOUNTS PAYABLE</u>	<u>Due Date</u>	<u>Amt Due</u>	<u>Amounts Paid</u>	<u>Amt Past Due</u>
1	Rent January, 2020 (See Note 1 Below)	01/01/20	\$ 546,096.50	\$ 506,096.50	\$ 40,000.00
2	Rent 9/30/19 - 11/30/19	12/01/19	\$ 10,831.79	\$ -	\$ 10,831.79
	<b>SUBTOTAL RENT AND ADDITIONAL RENT:</b>		<b>\$ 556,928.29</b>	<b>\$ 506,096.50</b>	<b>\$ 50,831.79</b>
3	RE Taxes 7/1/19-12/31/19, Tenant portion: 09/30/19-12/31/19	12/01/19	\$ 61,456.39	\$ -	\$ 61,456.39
4	RE Taxes for the period 1/1/20 - 6/30/20	12/01/19	\$ 121,587.12	\$ -	\$ 121,587.12
	<b>SUBTOTAL REAL ESTATE TAXES</b>		<b>\$ 183,043.51</b>	<b>\$ -</b>	<b>\$ 183,043.51</b>
5	Utility Deposits	12/01/19	\$ 60,356.10	\$ -	\$ 60,356.10
6	Municipal Deposits	12/01/19	\$ 5,500.00	\$ -	\$ 5,500.00
7	ConEdison Electric Invoice	12/17/19	\$ 2,972.84	\$ -	\$ 2,972.84
	<b>Subtotal</b>		<b>\$ 68,828.94</b>	<b>\$ -</b>	<b>\$ 68,828.94</b>
	<b>TOTAL RENT, RE TAXES, &amp; OTHER</b>		<b>\$ 808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 302,704.24</b>
8	Security Deposit 1st payment	12/01/19	\$ 1,000,000.00	\$ -	\$ 1,000,000.00
	<b>TOTAL AMTS DUE EXCLUDING LATE FEES &amp; COSTS</b>		<b>\$ 1,808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 1,302,704.24</b>
9	Interest on past due real estate taxes on a per-diem basis:	12/15/19	\$ 3,039.68	\$ -	\$ 3,039.68
10	Late Fees of 5% on Items 1,2,3,5,6,7	12/15/19	\$ 9,055.86	\$ -	\$ 9,055.86
11	Interest on Items 1,2,3,5 & 6 at the Overdue Rate (Prime+5%)	12/15/19	\$ 11,329.55	\$ -	\$ 11,329.55
	<b>TOTAL LATE FEES AND COSTS</b>		<b>\$ 23,425.09</b>	<b>\$ -</b>	<b>\$ 23,425.09</b>
	<b>TOTAL AMOUNTS DUE</b>		<b>\$ 1,832,225.83</b>	<b>\$ 506,096.50</b>	<b>\$ 1,326,129.33</b>

**ADDITIONAL NOTICE OF ITEMS DUE: As required per the Lease and LOI , please provide the following:**

- 1 Notice is hereby made to that Jan. 2020 & all subsequent Rent shall be due in the amount of: \$546,096.50, calculated as: \$506,096.50 rent plus \$40,000.00 additional rent 2nd Notice
- 2 Notice is hereby made to provide all Medicare and Medicaid provider Agreements and rates. 2nd Notice
- 3 Notice is hereby made to provide Annual Budget, Capital Expenditures, Operating Budget, Annual Financial Reporting, monthly financial reporting Financial Reporting, Variance Reporting, Unaudited Financial Reports
- 4 Notice is hereby made to provide per a written report of significant events at the facility including: Copies of all documents, reports, licenses and certificates from NY DOH pertaining to the Operations of the Facility 2nd Notice
- 5 Notice is hereby made to provide: Evidence of Insurance, including all required coverages under the lease, and all additional insureds. 2nd Notice

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INDONESIA (014) 681-0200  
BUNIA WARSIHAW  
99 BELLO DONNELLY MENSARTEN WISE  
1 LENOINGTON AVE

SHIP DATE: 07 JAN 20  
ACTWGT: 0.18 LB  
CAD: 114675706WS03400  
BILL SENDER

WHITE PLAINS, NY 10601  
UNITED STATES US  
MR. MARK NEUMAN  
MR. MARK NEUMAN  
22 LYNCREST DR

MONSEY NY 10952

REF: 0181980.001 MW 1/1/2020

557.DXRF8005A2



TRAK # 7794 9844 8443

WED - 08 JAN 8:00P  
STANDARD OVERNIGHT

EH PSBA

RES 10952  
NY-US SWF



COPY

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 1:37 PM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498448443 Delivered

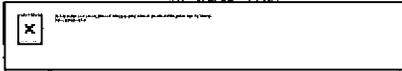
# Your package has been delivered

Tracking # 779498448443

Ship date:  
Tue, 1/7/2020

Delivery date:  
Wed, 1/8/2020 1:34 pm

Marisa Warshaw  
DelBello Donnellan Weingarten  
Wise  
White Plains, NY 10601  
US



Delivered

Mr. Mark Neuman  
Mr. Mark Neuman  
22 LYNCREST DR  
MONSEY, NY 10952  
US

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498448443

**Status:** Delivered: 01/08/2020 1:34 PM  
Signed for By: Signature not required

**Reference:** 0181960-001 MW 1/7/2020

**Signed for by:** Signature not required

**Delivery location:** MONSEY, NY

**Delivered to:** Residence

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday  
Residential Delivery

**Standard transit:** 1/8/2020 by 8:00 pm

Notice Pg 27 of 34

DENISE DINESA (914) 681-0200  
 DANIELA WARSZAW  
 GABRIELA WENGARTEN WISE  
 1011 WASHINGTON AVE  
 WHITE PLAINS, NY 10601  
 UNITED STATES US  
 BILL SENDER  
 SHIP DATE: 07 JAN 20  
 ACTWGT: 8.18 LB  
 CAD: 1140157066WSS03400

MR. LIZER JOSEFOVIC, GUARANTOR, IND  
 MR. LIZER JOSEFOVIC, GUARANTOR, IND  
 53 MARINER WAY

MONSEY NY 10952  
 (914) 681-0200  
 REF: 0181960-001 MW 1:02220

DEPT:  
 DEPT:

5572ADP8005A2



TRAK# 7794 9836 3223  
 12201

WED - 08 JAN 8:00P  
 STANDARD OVERNIGHT  
 RES

EH PSBA

10952  
 NY-US SWF



COPY

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 10:37 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498363223 Delivered

# Your package has been delivered

Tracking # 779498363223

Ship date:  
Tue, 1/7/2020

Delivery date:  
Wed, 1/8/2020 10:35 am

**Marisa Warshaw**  
DelBello Donnellan Weingarten  
Wise  
White Plains, NY 10601  
US



Delivered

**Mr. Lizer Josefovic,**  
**Guarantor, Ind**  
Mr. Lizer Josefovic, Guarantor,  
Ind  
53 Mariner Way  
MONSEY, NY 10952  
US

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498363223

**Status:** Delivered: 01/08/2020 10:35 AM  
Signed for By: Signature not required

**Reference:** 0181960-001 MW 1/7/2020

**Signed for by:** Signature not required

**Delivery location:** Monsey, NY

**Delivered to:** Residence

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday  
Residential Delivery

**Standard transit:** 1/8/2020 by 8:00 pm

Notice Pg 29 of 34

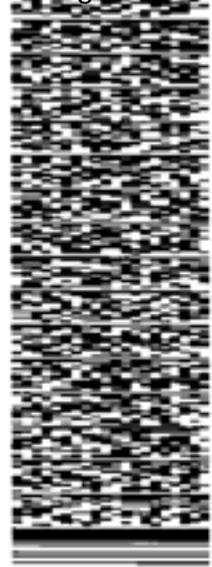
BRUNO DANESA (914) 681-0200  
DOMINICA WASHAW  
901 BELLO DONNELLY MANSION RTEN WISE  
MILFORD WASHINGTON AVE  
WHITE PLAINS, NY 10601

SHIP DATE: 07 JAN 20  
ACTWGHT: 0.18 LB  
CALD: 114675706WWS0000  
BILL SENIOR

MR. LZER JOSEFOVIC  
HBL SNF, LLC  
1280 ALBANY POST RD

CROTON ON HUDSON NY 10520  
REF: 0181960.001 MW 1/8/2020

567.ZXDF8005A2

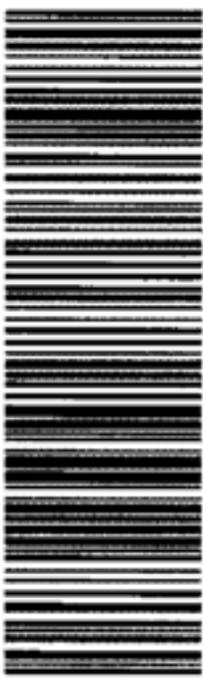


7794 9823 5404

WED - 08 JAN 3:00P  
STANDARD OVERNIGHT

EH ANIA

10520  
NY-US SWF



COPY

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:33 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498235404 Delivered

# Your package has been delivered

Tracking # 779498235404

Ship date:  
Tue, 1/7/2020

Delivery date:  
Wed, 1/8/2020 9:27 am

Marisa Warshaw  
DelBello Donnellan Weingarten  
Wise  
White Plains, NY 10601  
US



Delivered

Mr. Lizer Josefovich  
HBL SNF, LLC  
1280 ALBANY POST RD  
CROTON ON HUDSON, NY  
10520  
US

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498235404

**Status:** Delivered: 01/08/2020 09:27 AM  
Signed for By: Signature Release on file

**Reference:** 0181960-001 MW 1/7/2020

**Signed for by:** Signature Release on file

**Delivery location:** CROTON ON HUDSON, NY

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 3:00 pm

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 8:32 AM CST on 01/08/2020.

All weights are estimated.

ORIGIN ID: NESA (514) 681-0200  
MARISA WAPSHAW  
DELBELLO DONNELLAN WEINGARTEN WISE  
1 N LEXINGTON AVE  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 07JAN20  
ACTWGT: 0.19 LB  
CAD: 114675706WSKD400  
BILL SENDER

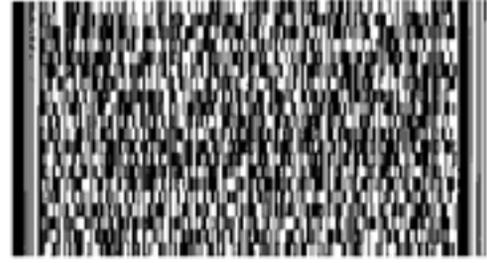
TO MR. GERALD NEUMAN  
CIO HBL SNF, LLC  
1280 ALBANY POST RD

EGP\_JAN18ED-05AC

CROTON ON HUDSON NY 10520

(514) 681-0200 REF: 0181960-001 MW 1/7/2020  
IN:  
PO: DEPT:

COPY



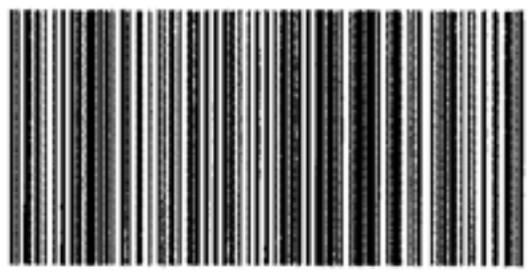
WED - 08 JAN 3:00P

STANDARD OVERNIGHT

TRK# 7794 9862 7521  
0201

EH ANIA

10520  
NY-US SWF



**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498627521 Delivered

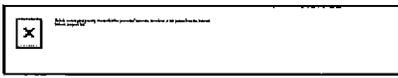
# Your package has been delivered

Tracking # 779498627521

Ship date:  
Tue, 1/7/2020

Delivery date:  
Wed, 1/8/2020 9:27 am

**Marisa Warshaw**  
DelBello Donnellan Weingarten  
Wise  
White Plains, NY 10601  
US



**Delivered**

**Mr. Gerald Neuman**  
c/o HBL SNF, LLC  
1280 ALBANY POST RD  
CROTON ON HUDSON, NY  
10520  
US

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498627521

**Status:** Delivered: 01/08/2020 09:27 AM  
Signed for By: Signature Release on file

**Reference:** 0181960-001 MW 1/7/2020

**Signed for by:** Signature Release on file

**Delivery location:** CROTON ON HUDSON, NY

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 3:00 pm

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 8:32 AM CST on 01/08/2020.

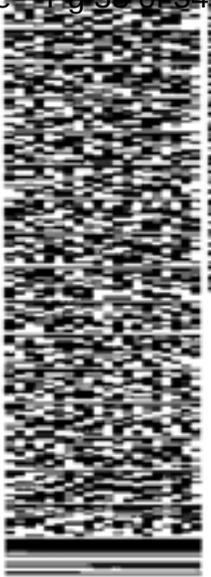
All weights are estimated.

MARK ZAFRIN, ESQ.  
MICHELLEMAN & ROBINSON  
800 3RD AVE  
24TH FLOOR  
NEW YORK NY 10022

SHIP DATE: 07 JAN 20  
ACTWGHT: 0.19 LB  
CAD: 114675706WVS03400  
BILL SENDER

MARK ZAFRIN, ESQ.  
MICHELLEMAN & ROBINSON  
800 3RD AVE  
24TH FLOOR  
NEW YORK NY 10022

SHIP DATE: 07 JAN 20  
ACTWGHT: 0.19 LB  
CAD: 114675706WVS03400  
BILL SENDER

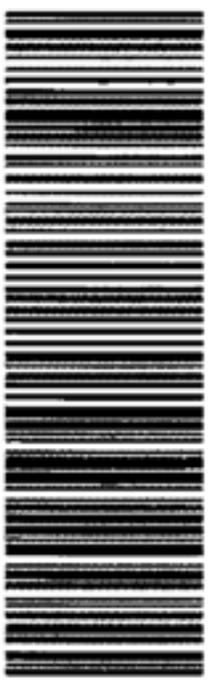


7794 9853 9658

WED - 08 JAN 3:00P  
STANDARD OVERNIGHT

E3 JRBA

10022  
NY-US EWR



COPY

**Marisa Warsaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warsaw  
**Subject:** FedEx Shipment 779498539658 Delivered



# Your package has been delivered

Tracking # 779498539658

Ship date:  
Tue, 1/7/2020

Delivery date:  
Wed, 1/8/2020 9:27 am

**Marisa Warsaw**  
DelBello Donnellan Weingarten  
Wise  
White Plains, NY 10601  
US



**Delivered**

**Mark Zafrin, Esq.**  
Michelman & Robinson  
24th Floor  
800 3RD AVE  
NEW YORK, NY 10022  
US

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498539658

**Status:** Delivered: 01/08/2020 09:27 AM  
Signed for By: E.ELAINE

**Reference:** 0181960-001 MW 1/7/2020

**Signed for by:** E.ELAINE

**Delivery location:** NEW YORK, NY

**Delivered to:** Receptionist/Front Desk

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 3:00 pm

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 8:32 AM CST on 01/08/2020.

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
Case Type: **Commercial Division**  
Case Status: **Active**  
eFiling Status: **Full Participation Recorded**  
Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

[Display Document List with Motion Folders](#)

Sort By:

#	Document	Filed By	Status
76	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
77	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Complaint in New York Action</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
78	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Judge Bannon's Interim Order</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
79	<a href="#">AFFIDAVIT OR AFFIRMATION IN REPLY</a> (Motion #3) <i>Reply Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
80	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>NY County Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
81	<a href="#">MEMORANDUM OF LAW IN REPLY</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
82	<a href="#">STIPULATION - DISCOVERY ( REQUEST TO SO</a> <a href="#">ORDER</a> ) (Motion #4)	<a href="#">Giardino, J.</a> Filed: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

STIPULATION (Motion #2)

Stipulation regarding document discovery and motion to dismiss

Received: 03/04/2021

83 STIPULATION - SO ORDERED

Court User  
Filed: 03/11/2021  
Received: 03/11/2021

**Processed**  
[Confirmation Notice](#)

84 DECISION + ORDER ON MOTION (Motion #3)

Court User  
Filed: 03/18/2021  
Received: 03/18/2021

**Processed**  
[Confirmation Notice](#)

85 NOTICE OF ENTRY (Motion #3)

[Lara-Garduno, N.](#)  
Filed: 03/19/2021  
Received: 03/19/2021

**Processed**  
[Confirmation Notice](#)

86 COMPLAINT (AMENDED)

First Amended Verified Complaint

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

87 EXHIBIT(S) - 1

Amended and Restated Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

88 EXHIBIT(S) - 2

Jozefovic Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

89 EXHIBIT(S) - 3

Neuman Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

90 EXHIBIT(S) - 4

Jozefovic Security Agreement  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

91 EXHIBIT(S) - 5

Letter of Intent  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

92 EXHIBIT(S) - 6

Notice of Default  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

93 LETTER / CORRESPONDENCE TO JUDGE

[Lara-Garduno, N.](#)  
Filed: 03/26/2021  
Received: 03/26/2021

**Processed**  
[Confirmation Notice](#)

94 LETTER / CORRESPONDENCE TO JUDGE

[Donnellan, A.](#)  
Filed: 04/09/2021  
Received: 04/09/2021

**Processed**  
[Confirmation Notice](#)

95 DECISION + ORDER ON MOTION (Motion #4)

Motion withdrawn without prejudice

Court User  
Filed: 04/20/2021  
Received: 04/20/2021

**Processed**  
[Confirmation Notice](#)

96 ANSWER (AMENDED)

[Barnett-Howell, A.](#)  
Filed: 05/21/2021  
Received: 05/21/2021

**Processed**  
[Confirmation Notice](#)

# Document

Filed By

Status

97	<a href="#">EXHIBIT(S)</a> - A <i>Incorporated Complaint from New York County</i>	<a href="#">Barnett-Howell, A.</a> Filed: 05/21/2021 Received: 05/21/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
98	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 05/25/2021 Received: 05/25/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
99	<a href="#">NOTICE TO ADMIT</a>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
100	<a href="#">EXHIBIT(S)</a> - 1 <i>to Notice to Admit - Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
101	<a href="#">EXHIBIT(S)</a> - 2 <i>to Notice to Admit - Development Agreement</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
102	<a href="#">EXHIBIT(S)</a> - 3 <i>to Notice to Admit - Temporary C of O</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
103	<a href="#">EXHIBIT(S)</a> - 4 <i>to Notice to Admit - AJA form 0704</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
104	<a href="#">EXHIBIT(S)</a> - 5 <i>to Notice to Admit - NYSDOH letter</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
105	<a href="#">ORDER - MEDIATION</a>	Court User Filed: 06/03/2021 Received: 06/03/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
106	<a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
107	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
108	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>First Notification of Disposition of Collateral, 10.6.20</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
109	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Second Notification of Disposition of Collateral, 6.9.21</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
110	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Term Sheet, 11.20.15</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
111	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>

# Document

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112	<a href="#">EXHIBIT(S)</a> - E (Motion #5) <i>November 19 Email and Account Statement</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
113	<a href="#">EXHIBIT(S)</a> - F (Motion #5) <i>August 10 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
114	<a href="#">EXHIBIT(S)</a> - G (Motion #5) <i>August 16 Emails</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
115	<a href="#">EXHIBIT(S)</a> - H (Motion #5) <i>August 17 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
116	<a href="#">EXHIBIT(S)</a> - I (Motion #5) <i>Letter of Intent</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
117	<a href="#">EXHIBIT(S)</a> - J (Motion #5) <i>Security Benefit Letters</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
118	<a href="#">EXHIBIT(S)</a> - K (Motion #5) <i>NYSDOH Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
119	<a href="#">EXHIBIT(S)</a> - L (Motion #5) <i>Certificate of Amendment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
120	<a href="#">EXHIBIT(S)</a> - M (Motion #5) <i>2020 Monthly Invoices</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
121	<a href="#">EXHIBIT(S)</a> - N (Motion #5) <i>September Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
122	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>Proposed UCC Form</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
123	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
124	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' / Third-Party Plainti ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
125	<a href="#">EXHIBIT(S)</a> - 1 (Motion #5) <i>Exhibit 1 - Bandazian Affidavit</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
126	<a href="#">EXHIBIT(S)</a> - 2 (Motion #5) <i>Exhibit 2 - Prior Order to Show Cause</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

Received: 06/25/2021

- |     |  |  |   |
|-----|--|--|---|
| 127 | <a href="#">EXHIBIT(S)</a> - 3 (Motion #5)<br><i>Exhibit 3 - Answer with Cross-Claims</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 128 | <a href="#">EXHIBIT(S)</a> - 4 (Motion #5)<br><i>Exhibit 4 - Decision and Order</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 129 | <a href="#">EXHIBIT(S)</a> - 5 (Motion #5)<br><i>Exhibit 5 - Notice of Sale</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 130 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)<br><i>Third-Party Defendant/Cross-Claimant Metropolitan Commercial Bank's Memorandum of Law in Partial Joi ... show more</i>        | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 131 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Donnellan, A.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 132 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 133 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)<br><i>Affidavit of Lizer Jozefovic</i>   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 134 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5)<br><i>Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' Third-Pa ... show more</i> | <a href="#">Malatak, R.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 135 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 136 | <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5)<br><i>Affidavit of William A. Nicholson</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 137 | <a href="#">EXHIBIT(S)</a> - A (Motion #5)<br><i>Lease</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 138 | <a href="#">EXHIBIT(S)</a> - B (Motion #5)<br><i>Jozefovic Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 139 | <a href="#">EXHIBIT(S)</a> - C (Motion #5)<br><i>Neuman Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 140 | <a href="#">EXHIBIT(S)</a> - D (Motion #5)<br><i>Collateral Assignment and Pledge</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021                         | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

**Redacted** per 22 NYCRR §202.5(e)

Received: 06/29/2021 **Notice** Pg 6 of 92

141 [EXHIBIT\(S\)](#) - E (Motion #5)  
*UCC Financing Statement*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

142 [EXHIBIT\(S\)](#) - F (Motion #5)  
*Notice of Defalt*  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

143 [EXHIBIT\(S\)](#) - G (Motion #5)  
*Construction Loan Agreement*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

144 [EXHIBIT\(S\)](#) - H (Motion #5)  
*Note*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

145 [EXHIBIT\(S\)](#) - I (Motion #5)  
*Mortgage*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

146 [EXHIBIT\(S\)](#) - J (Motion #5)  
*Security Benefit Notice of Default*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

147 [EXHIBIT\(S\)](#) - K (Motion #5)  
*Security Benefit Notice of Default*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

148 [EXHIBIT\(S\)](#) - L (Motion #5)  
*Security Benefit Complaint*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

149 [EXHIBIT\(S\)](#) - M (Motion #5)  
*Email*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

150 [EXHIBIT\(S\)](#) - N (Motion #5)  
*Hebrew Hospital Bankruptcy Filing Notice*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

**WISE & WIEDERKEHR, LLP**

COUNSELLORS AT LAW

THE GATEWAY BUILDING  
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STAMFORD, CT 06905  
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**Alfred E. Donnellan**  
**Partner**  
aed@ddw-law.com

March 26, 2021

**VIA ECF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King Blvd.  
White Plains, New York 10601

***Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al***  
***Index No. 60278/2020***

Dear Justice Walsh:

This firm represents plaintiff, White Plains Healthcare Properties I, and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson, in the above action.

The parties have conferred and would like to schedule a court conference to discuss outstanding discovery issues. Counsel for all parties are available next week as follows: Monday, March 29 after 1:30 PM; Tuesday, March 30 after 11:30 AM, or Wednesday, March 31 after 11:30 AM.

Respectfully,  
/s/ Alfred E. Donnellan  
Alfred E. Donnellan

cc: Alex Barnett-Howell, Esq.  
(via ECF)

**WISE & WIEDERKEHR, LLP**

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**Alfred E. Donnellan**  
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April 9, 2021

**VIA NYSCEF**

Honorable Gretchen M. Walsh  
Westchester County Supreme Court  
111 Dr. Martin Luther King Blvd.  
White Plains, New York 10601

**Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.,  
Westchester County Supreme Court Index No. 60278/2020**

Dear Justice Walsh:

This firm represents plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”) and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson, in connection with the above referenced action. We write to inform the Court that Justice Nancy Bannon issued today a decision and order in the related matter pending in Supreme Court, New York County, granting WHP’s motion to consolidate the New York County action with the action pending in this Court and denying Lizer Jozefovic’s motion for an injunction without prejudice to renewal of the motion in this Court. See attached Decision and Order.

Respectfully submitted,

/s/ Alfred E. Donnellan  
Alfred E. Donnellan

cc:  
John Giardino, Esq. (By NYSCEF)  
Alexander Barnett-Howell, Esq. (By NYSCEF)

**Enclosure**

### SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

-----X

LIZER JOZEFOVIC,

Plaintiff,

- v -

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK

Defendants.

-----X

INDEX NO. 655549/2020

MOTION DATE 01/04/2021,  
01/04/2021

MOTION SEQ. NO. 001 002

#### DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 86 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 7, 8, 9, 10, 11, 12, 13, 61, 62, 63, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 89 were read on this motion to/for CHANGE VENUE.

In this action seeking a declaratory judgment and damages in connection with claims sounding in, *inter alia*, breach of contract, fraud, defamation, breach of fiduciary duty, and legal malpractice, the plaintiff moves pursuant to CPLR 6301 for a preliminary injunction enjoining the defendants and their agents from publishing and distributing false statements about the plaintiff and from taking any action to transfer, assign, convey, or sell the plaintiff's membership interest in Waterview Acquisition I, LLC ("Waterview") (SEQ 001). The defendants White Plains Healthcare Properties I, LLC ("WPH Properties"), and Howard Fensterman ("Fensterman") oppose the motion and separately move pursuant to CPLR 511 and 602 to transfer this action to Westchester County and consolidate it with an action pending there entitled White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020 (the "Westchester Action") (SEQ 002). The plaintiff opposes the moving defendants' application. For the following reasons, the moving defendants' motion is granted and the plaintiff's motion is denied without prejudice.

WPH Properties is the developer and owner of a new skilled nursing facility located in Westchester County, New York (the “Facility”). The Facility is operated by HBL SNF, LLC (“HBL”), an entity controlled by the plaintiff. WPH Properties and HBL are parties to an operating lease dated November 19, 2015 (the “Lease”), under which WPH Properties leases the Facility to HBL, as tenant. The plaintiff and nonparty Marc Neuman, as principals of HBL, are HBL’s guarantors under the Lease.

Section 7.1(a)(iii) of the Lease provides that HBL was to pay an additional security deposit in the amount of \$1.6 Million 60 days prior to the start of the lease period. As security for that payment, the plaintiff and WPH Properties entered into a collateral assignment agreement (the “Collateral Assignment Agreement”). Pursuant to the Collateral Assignment Agreement, the plaintiff assigned to WPH Properties his 71% membership interest in Waterview, an entity that owns another skilled nursing home in Westchester County (the “Waterview Interest”). The plaintiff also agreed to list Howard Fensterman, attorney for WPH Properties, as a signatory to a Waterview account with JP Morgan (the “Waterview account”) where the \$1.6 Million was currently being held. The Collateral Assignment Agreement provided that:

“[u]pon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the [Waterview account] in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the [Waterview Interest] assigned to [WPH Properties] ...shall be automatically reassigned by [WPH Properties] to [the plaintiff] without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect.”

The “Landlords Rent Security Account” is not a defined term in the Lease or the Collateral Assignment Agreement. The Collateral Assignment Agreement further provides that the exercise of WPH Properties’ rights to sell the Waterview Interest as assignee is authorized upon the plaintiff’s violation of the “terms and provisions concerning the maintenance of the [Waterview account]...”

The plaintiff avers that he satisfied his obligations under the Collateral Assignment Agreement and that as a result, the assignment terminated. In 2019, the plaintiff assigned the Waterview Interest to defendant Metropolitan Commercial Bank (“MCB”) in connection with a \$3 Million loan as part of a financing arrangement to provide working capital to benefit the Facility, including through the payment of rent to WPH Properties.

On September 18, 2020, WPH Properties commenced the Westchester Action, in which it contends, *inter alia*, that HBL breached the Lease by failing to pay rent, municipal and utility deposits, real estate taxes, and other fees associated with the Facility, including the \$1.6 Million security deposit required by Section 7.1(a)(iii). On October 6, 2020, WPH Properties noticed a public sale of the Waterview Interest based upon the plaintiff's alleged default under the Collateral Assignment Agreement. On October 22, 2020, this action ensued.

"Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, 'unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right.'" Raboy v McCrory Corp., 210 AD2d 145 (1<sup>st</sup> Dept. 1994) (quoting Amtorg Trading Corp. v Broadway & 56th St. Assoc., 191 AD2d 212, 213 [1<sup>st</sup> Dept. 1993]). The movants correctly argue that consolidation is warranted here because this action and the Westchester Action share common questions of law and fact. See CPLR 602; DeSilva v Plot Realty, LLC, 85 AD3d 422 (1<sup>st</sup> Dept. 2011); Kern v Shandell, Blitz, Blitz & Bookson, 58 AD3d 487 (1<sup>st</sup> Dept. 2009).

The plaintiff opposes consolidation, observing that while the Westchester Action involves claims regarding HBL's performance of its obligations under the Lease and the plaintiff's performance under the guarantee he signed, the instant action involves claims regarding ownership of the Waterview Interest pursuant to the separate Collateral Assignment Agreement. However, this characterization of the actions ignores the fact that both (a) WPH Properties' claim in the Westchester Action that the additional security was not paid and (b) the plaintiff's central claim in this action that the Collateral Assignment Agreement automatically terminated turn on the same question: whether Section 7.1(a)(iii) of the Lease was effectuated. Allowing this question to proceed in two separate courts risks inconsistent results. Moreover, WPH Properties avers in its moving papers that it has amended its complaint in the Westchester Action to include a claim sounding in violation of the Collateral Assignment Agreement against the plaintiff. Finally, the plaintiff, who is a resident of Westchester County and a party to the Westchester Action, which was commenced prior to the instant action, would not suffer prejudice to any substantial right as a result of consolidation and transfer.

The court notes that transfer is also appropriate because it appears that venue is improper in New York County. CPLR 503 provides that "[e]xcept where otherwise prescribed by

law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff.” Here, the only entity residing in New York County is MCB, which the plaintiff has included as a defendant but against which the plaintiff has not asserted any claim. Conversely, several parties, including the plaintiff, reside in Westchester County. Since venue properly lies in Westchester County, the court declines to retain venue on the basis of MCB, a nominal defendant against whom there is no claim. See Espinoza v Concordia Intl. Forwarding Corp., 39 AD3d 258 (1<sup>st</sup> Dept. 2007).

The plaintiff’s motion for preliminary injunctive relief is denied without prejudice to renewal upon transfer and consolidation in Westchester County.

Accordingly, it is

ORDERED that the plaintiff’s motion pursuant to CPLR 6301 for a preliminary injunction (SEQ 001) is denied without prejudice to renewal upon the transfer and consolidation of this action in Westchester County; and it is further

ORDERED that the motion of White Plains Healthcare Properties I, LLC, and Howard Fensterman pursuant to CPLR 511 and 602 to transfer this action to Westchester County and consolidate it with an action pending there entitled White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020, (SEQ 002) is granted; and it is further

ORDERED this action, Lizer Jozefovic v White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank, Index No. 655549/2020, pending in the Supreme Court, New York County, shall be consolidated in the Supreme Court, Westchester County, with White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020; and it is further,

ORDERED that the consolidation shall take place under Westchester County Index No. 60278/2020; and it is further,

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, Westchester County, for consolidation and shall mark his records to reflect such transfer; and it is further,

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Westchester County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

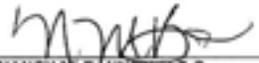
ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the moving defendants shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer and consolidation; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the Decision and Order of the court.

4/8/2021  
DATE

  
NANCY M. BANNON, J.S.C.  
HON. NANCY M. BANNON

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION	
SEQ 001	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
SEQ 002	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
					<input type="checkbox"/>	REFERENCE

FILED: WESTCHESTER COUNTY CLERK 02/03/2021 05:06 PM

NYSCEF DOC. NO. 62

RECEIVED NYSCEF 02/04/2021

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

Motion  
Withdrawn  
without  
prejudice  
as stated  
on the  
record of  
the conference  
held on  
4/19/21 based  
on Plaintiff's  
filing of an  
Amended  
Complaint.

*Gretchen Walsh*

J.S.C.

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
- against -  
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZEFOVIC and MARK NEUMAN,  
Defendants and Third-Party Plaintiff,  
- against -  
CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,  
Third-Party Defendants.

Index No. 60278/2020  
NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affirmation of Alfred E. Donnellan Esq. dated February 3, 2021, the memorandum of law dated February 3, 2021, and the exhibits annexed thereto, plaintiff, White Plains Healthcare Properties I, LLC, will move this Court, located at 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, in the Commercial Division, before the Honorable Gretchen Walsh, on February 19, 2021, at 9:30 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to CPLR § 3211(a)(5) and 3211(a)(7) dismissing the counterclaims and third-party complaint asserted by defendants/third-party plaintiffs, HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, and granting such further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that opposition papers shall be served upon the undersigned at least two (2) days prior to the return date of this motion pursuant to CPLR § 2214(b).

Dated: White Plains, New York  
February 4, 2021

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains  
Healthcare Properties I, LLC*

By: /s/ Alfred E. Donnellan  
Alfred E. Donnellan, Esq.  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Tel.: (914) 681-0200

-and-

ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, FORMATO, FERRARA, WOLF &  
CARONE, LLP  
*Co-Counsel for Plaintiff White Plains  
Healthcare Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
Tel: (914) 607-7010  
  
*Attorneys for White Plains Healthcare  
Properties I, LLC*

To: Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10022

**WISE & WIEDERKEHR, LLP**

COUNSELLORS AT LAW

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**Alfred E. Donnellan**  
**Partner**  
aed@ddw-law.com

March 26, 2021

**VIA ECF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King Blvd.  
White Plains, New York 10601

***Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al***  
***Index No. 60278/2020***

Dear Justice Walsh:

This firm represents plaintiff, White Plains Healthcare Properties I, and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson, in the above action.

The parties have conferred and would like to schedule a court conference to discuss outstanding discovery issues. Counsel for all parties are available next week as follows: Monday, March 29 after 1:30 PM; Tuesday, March 30 after 11:30 AM, or Wednesday, March 31 after 11:30 AM.

Respectfully,  
/s/ Alfred E. Donnellan  
Alfred E. Donnellan

cc: Alex Barnett-Howell, Esq.  
(via ECF)

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LIZER JOZEFOVIC,

Plaintiff,

-vs-

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.  
-----X

**SUMMONS**

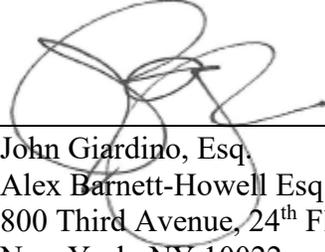
TO THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if the summons is not personally delivered to you within the State of New York). If you fail to appear or answer, judgment will be taken against you by default of the relief demanded herein.

The Plaintiff designates New York County as the place of trial.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_  
John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
(212) 730-7700  
jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Plaintiff*

Defendants' Addresses:

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC

2 Bourbon Street

Peabody, Massachusetts 01960

HOWARD FENSTERMAN

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP

3 Dakota Dr., Suite 300

Lake Success, NY 11042

METROPOLITAN COMMERCIAL BANK

99 Park Avenue, Fourth Floor

New York, New York 10016

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LIZER JOZEFOVIC,

Plaintiff,

Index No.

-vs-

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.

-----X

**COMPLAINT**

Plaintiff Lizer Jozefovic (“Plaintiff”), by his attorneys Michelman & Robinson, LLP, brings his complaint against Defendants White Plains Healthcare Properties I, LLC (“WPHP”), Howard Fensterman (“Mr. Fensterman”), and Metropolitan Commercial Bank (“MCB”), alleging upon information and belief the following:

**INTRODUCTION**

1. This is an action to halt the dissemination of false and harmful statements as well as to prevent the fraudulent sale and to clarify the ownership of a limited liability company.
2. Plaintiff is the majority owner of Waterview Acquisition I, LLC.
3. Plaintiff previously entered into a collateral assignment, which established a rent security account for the White Plains Skilled Nursing Facility.
4. Plaintiff performed all obligations under the collateral assignment, which was acknowledged and documented by Mr. Fensterman.
5. Plaintiff subsequently assigned his interest in Waterview Acquisition I, LLC to MCB, as part of a financing arrangement, which both WPHP and Mr. Fensterman were aware of.

6. On October 6, 2020, WPHP and Mr. Fensterman issued a purported Notification of Disposition of Collateral, which stated that Plaintiff was a “debtor” and announced that Plaintiff’s interest in Waterview Acquisition I, LLC would be sold at “public auction” on October 30, 2020 (the “Notification”).

7. The Notification is entirely false: Plaintiff is not now, and has never been, indebted to WPHP or Mr. Fensterman, and WPHP and Mr. Fensterman have no right or ability to sell the Plaintiff’s interest in Waterview Acquisition I, LLC. Any attempt to do so is false, improper, and in breach of the collateral assignment.

8. Moreover, the Notification was designed to inflict maximum damage, as it was widely broadcast to Plaintiff’s business partners and other interested parties, harming Plaintiff’s reputation and ability to operate his facilities.

9. Moreover, Mr. Fensterman has represented Plaintiff previously, and continues to represent Plaintiff in a variety of matters, making his decision to act directly against Plaintiff’s interests bizarre, improper, and actionable.

10. Moreover, if WPHP and Mr. Fensterman continue with a fraudulent sale, as stated in the Notification, it will harm Plaintiff’s business and operations, as well as potential third parties who improperly attempt to purchase Plaintiff’s interest.

**THE PARTIES**

- 11. Plaintiff Lizer Jozefovic is a resident of the State of New York.
- 12. Defendant White Plains Healthcare Properties I, LLC is a foreign limited liability company that regularly conducts business in the State of New York.
- 13. Defendant Howard Fensterman is a resident of the State of New York and regularly conducts business in the State of New York.

14. Defendant Metropolitan Commercial Bank is a commercial bank with its headquarters located at 99 Park Ave, New York, NY 10016 and regularly conducts business in the State of New York.

15. This Court has jurisdiction over all causes of action asserted herein because all causes of action asserted herein arise out of conduct undertaken by defendants in the State of New York.

16. Each defendant has sufficient minimum contacts with the State of New York and has otherwise intentionally availed himself/itself of the State of New York so as to render the exercise of jurisdiction over it by the State of New York court consistent with traditional notions of fair play and substantial justice.

**FACTUAL ALLEGATIONS**

**The Collateral Assignment**

17. Plaintiff has a 70% share of Waterview Acquisition I, LLC (the “Membership Interest”), making him the majority owner.

18. Plaintiff previously entered into a collateral assignment, which established a rent security account for the White Plains Skilled Nursing Facility (the “Collateral Assignment”).

19. The Collateral Assignment states, in relevant part:

- a. Under Paragraph 2, upon the deposit of \$1,600,000 into the rent security account, the “assignment shall automatically terminate and be void and of no further effect”;
- b. Under Section 13, the exercise of the White Plains Health Care Properties LLC’s (the “Assignee”) rights is limited to a violation of the “terms and provisions concerning the maintenance of the account...”; and

c. Under Section 13(c), any proceeds derived from the disposition of the collateral must be applied to the rent security account.

20. In November 2015, Plaintiff deposited \$1,595,031.44 into Chase Account ending in xxxx-xxx-xxxx-7272 to establish the rent security (the “Rent Security”).

21. The funds for the Rent Security were derived from the refinancing of the Waterview real property.

22. At that time, both Gerald Billow, Esq an attorney at Posternak, Blankstein & Lund LLP, in Boston and Greg Stollar, Esq. of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (“Abrams, Fensterman LLP”), attorneys for WPHP and Mr. Fensterman, were directly informed that the Rent Security had been established, satisfying the Collateral Assignment requirements.

23. Moreover, Mr. Fensterman was personally aware of the Rent Security and that the Collateral Assignment had been satisfied, as he and his legal counsel were informed of the creation of the account, and the money to fund the account was wired from Abrams, Fensterman LLP after Plaintiff established the account and made arrangements for Mr. Fensterman to be a signatory.

24. On December 14, 2015, Mr. Fensterman signed the Business Account Signature Form.

25. In 2017, the Rent Security was transferred to the Chase account ending in xxxx-xxx-xxxx-0885 by resolution of Waterview Acquisition I, LLC.

26. The resolution and account holder certification form were tendered to Mr. Fensterman.

27. As a result of Plaintiff's performance, all relevant obligations under the Collateral Assignment were completely satisfied by the provision of the Rent Security, automatically terminating the Collateral Assignment and rendering it void pursuant to its own provisions.

**Assignment of the Membership Interest to MCB**

28. At the time of the Collateral Assignment, the Operating Agreement of Waterview Acquisition I, LLC did not permit its members to assign their membership interests.

29. At that time, the Operating Agreement of Waterview Acquisition I, LLC stated, in relevant part:

- a. Articles 5 and 6 did not provide for any assignment of the Membership Interest;
- b. Article 12 specifically prohibited an assignment of the Membership Interest to Mr. Fensterman as Nominee of White Plains Healthcare Properties LLC.

30. Mr. Fensterman is aware of these facts, as well as the limitations on transferring and assigning the Membership Interest, as Mr. Fensterman and his firm Abrams, Fensterman LLP acted as counsel to Waterview Acquisition I, LLC in its formation and execution of its operating agreement.

31. However, the Operating Agreement of Waterview was subsequently amended in order to authorize Plaintiff, as the majority member, to assign his interest.

32. In December 2019, Plaintiff assigned the Membership Interest to MCB in connection with a \$3,000,000.00 loan as part of a financing arrangement to provide working capital to benefit the White Plains project, most of which was paid in the form of rent to Defendants WPHP and Mr. Fensterman.

33. Currently, MCB has perfected its security interest in the Membership Interest and maintains physical possession of the membership certificates evidencing Plaintiff's ownership of interests in Waterview Acquisition I, LLC.

34. Mr. Fensterman knew of the approved of the loan from and assignment to MCB, as the proceeds have been used to pay rent on the White Plains Nursing Home.

35. Moreover, Mr. Fensterman has continued to represent Waterview Acquisition I, LLC to the present date, and has recently tendered bills and asked for payment for certain litigation matters.

36. Moreover, Mr. Fensterman previously acted as Plaintiff's personal counsel, during which time he represented Plaintiff in matters related to the corporate compliance and collection matters for all of Plaintiff's nursing homes.

#### **Distribution of the Notification and Resulting Harm**

37. On October 6, 2020, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP ("DDW LLP") issued a purported Notification of Disposition of Collateral, dated October 6, 2020, which announced the intention to sell the Membership Interest at "public auction" (the "Notification").

38. The Notification was first sent on October 6, 2020 by Mr. Fensterman "as nominee for White Plains Health Care Properties, LLC."

39. The Notification claims to be based upon the Collateral Assignment.

40. The Notification states that Plaintiff is a "debtor" and that the Membership Interest will be sold "to the highest qualified public bidder in public" at 10:00 am on Friday, October 30, 2020 at DDW LLP.

41. Since then, Defendants WPHP and Mr. Fensterman have distributed the notice to multiple hospital operators across the state, as well as Plaintiff’s current and potential colleagues and business partners.

42. Plaintiff has received multiple calls inquiring about the alleged “debt” claimed in the Notification.

43. Plaintiff has never received any funds from WPHP or Mr. Fensterman. Therefore, neither Waterview Acquisition I, LLC nor Plaintiff owes any money to WPHP as there is no debt, and Plaintiff is not and cannot be a debtor.

44. Moreover, since 2015, Plaintiff has given WPHP and Mr. Fensterman over \$4.6 million in a combination of loans, unallocated payments, and a down-payment for the purchase of a building.

45. Moreover, since September 2019, Plaintiff has paid rent of over \$6 million.

46. In Plaintiff’s business, the public allegation of unpaid debts is very serious and damaging and has negatively impacted Plaintiff’s standing in the business and banking communities.

47. On October 16, 2020, Plaintiff, through counsel, attempted to contact Alfred E. Donnellan, Esq. (“Mr. Donnellan), the Managing Partner at DDW LLP, to confirm by October 20, 2020 that the Notification has been withdrawn and that there will be no attempts to proceed against the Membership Interest.

48. Neither Mr. Donnellan nor Mr. Fensterman have responded.

49. Plaintiff has been irreparably harmed by the Notification and any purported sale of the Membership Interest, and this harm will continue until the Notification is withdrawn and a correction is issued.

50. The wide dissemination of the false claims in the Notification has damaged Plaintiff's reputation and standing within the nursing home community.

51. Moreover, Plaintiff has been questioned by lenders and other interested parties as to the viability of his business concerns.

52. Moreover, the publication of the Notification has materially affected admissions to Plaintiff's facilities.

53. Moreover, if WPHP and Mr. Fensterman continue with a wrongful and fraudulent sale of the Membership Interest, it will disastrously and irreparably harm Plaintiff and potential third-parties who attempt to purchase the Membership Interest based upon a non-existent debt and without the ability to do so.

54. This action is brought to seek redress for WPHP and Mr. Fenster's harmful conduct, and to clarify ownership of the Membership Interest as to MCB.

**FIRST CAUSE OF ACTION**  
**Declaratory Judgment**  
**(All Defendants)**

55. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

56. The Collateral Assignment states that it is automatically terminated upon the establishment of the Rent Security.

57. Plaintiff properly established the Rent Security, pursuant to the requirements of the Collateral Assignment.

58. Defendants have personal knowledge that the Collateral Assignment was satisfied and is therefore null and void.

59. Plaintiff properly assigned the Membership Interest to MCB.

60. Defendants have personal knowledge that the Membership Interest has been assigned to MCB.

61. Plaintiff requests that the Court issue a declaratory judgment finding that: the Collateral Assignment is null and void following the establishment of the Rent Security; that the Membership Interest has been assigned to MCB; that Plaintiff is not indebted to WPHP or Mr. Fensterman; and consequently that WPHP and Mr. Fensterman have no right or claim to the Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest.

**SECOND CAUSE OF ACTION**  
**Breach of Contract**  
**(WPHP and Mr. Fensterman)**

62. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

63. Plaintiff and WPHP entered into the Collateral Assignment

64. Plaintiff has performed all conditions, covenants, and promises required to be performed by Plaintiff in accordance with the terms of the Collateral Assignment alleged herein.

65. Specifically, Plaintiff established the Rent Security pursuant to the terms of the Collateral Assignment, resulting in the termination of the Collateral Assignment and rendering it void pursuant to its own provisions.

66. Defendants have personal knowledge that the Rent Security has been established, and that the Collateral Assignment has been terminated.

67. WPHP and Mr. Fensterman issued the Notification in breach of the Collateral Assignment.

68. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

69. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**THIRD CAUSE OF ACTION**

**Fraud  
(WPHP and Mr. Fensterman)**

70. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

71. WPHP and Mr. Fensterman have made multiple false statements regarding the Plaintiff and the Membership Interest.

72. Specifically, WPHP and Mr. Fensterman issued the Notification claiming that Plaintiff was a debtor, and that the Membership Interest would be sold to satisfy the debt.

73. However, Plaintiff is not indebted to WPHP and Mr. Fensterman, and WPHP and Mr. Fensterman have no right to sell the Membership Interest.

74. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

75. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**THIRD CAUSE OF ACTION**  
**Defamation**  
**(WPHP and Mr. Fensterman)**

76. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

77. On October 6, 2020, WPHP and Mr. Fensterman caused the Notification to be issued.

78. The Notification claims that Plaintiff is a “debtor,” and that WPHP, Mr. Fensterman, and DDW LLP will sell the Membership Interest at a public auction to satisfy Plaintiff’s debts. These statements are false.

79. WPHP and Mr. Fensterman knew that the statements in the Notification were false at the time the Notification was issued.

80. The Notification was widely distributed to Plaintiff’s current and potential colleagues and business partners.

81. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

82. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**FOURTH CAUSE OF ACTION**  
**Breach of Fiduciary Duty**  
**(Mr. Fensterman)**

83. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

84. At all relevant times, as Plaintiff's former and current legal representative, Mr. Fensterman owed fiduciary duties to Plaintiff, including the duties of loyalty, good faith, and care.

85. Mr. Fensterman breached his fiduciary duties to Plaintiff by issuing the Notification.

86. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

87. Mr. Fensterman's conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**FIFTH CAUSE OF ACTION**  
**Legal Malpractice**  
**(Mr. Fensterman)**

88. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

89. Mr. Fensterman acted as legal counsel to Plaintiff, both during and after the Collateral Assignment.

90. Mr. Fensterman was required to represent Plaintiff's interests without conflict.

91. Mr. Fensterman abused his position as Plaintiff's legal counsel and acted in direct opposition to Plaintiff's interests by issuing the Notification.

92. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

93. Mr. Fensterman's conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**SIXTH CAUSE OF ACTION**  
**Judiciary Law Section 487**  
**(Mr. Fensterman)**

94. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

95. Mr. Fensterman acted as legal counsel to Plaintiff, both during and after the Collateral Assignment.

96. Mr. Fensterman acted deceitfully by issuing the Notification in an attempt to fraudulently sell the Membership Interest and to harm Plaintiff, his own client.

97. Mr. Fensterman intends to receive compensation from other parties, including WPHP, by acting against Plaintiff's interests.

98. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

99. Mr. Fensterman's conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

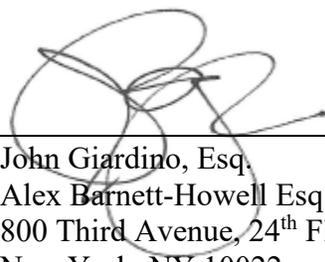
**PRAYER FOR RELIEF**

Wherefore, Plaintiff Lizer Jozefovic prays for judgment against Defendants White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank as follows:

1. On the First Cause of Action, an order declaring that:
  - a. The Collateral Assignment is null and void following the establishment of the Rent Security;
  - b. The Membership Interest has been properly assigned to MCB;
  - c. Plaintiff is not indebted to WPHP or Mr. Fensterman; and
  - d. WPHP and Mr. Fensterman have no right or claim to the Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest;
2. On the Second, Third, and Fourth, Fifth, and Sixth Causes of Action herein, for compensatory and consequential damages in in an amount subject to proof at trial;
3. For punitive damages;
4. For recovery of attorney's fees as provided by law, contract, or statute;
5. For pre-judgment interest at the maximum rate permitted by law;
6. For costs incurred; and
7. For any other and further relief as the court may deem proper.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_

John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
(212) 730-7700  
jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Plaintiff Lizer Jozefovic*

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all issues so triable in this action.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_  
John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
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**Alfred E. Donnellan**  
**Partner**  
aed@ddw-law.com

May 25, 2021

**VIA NYSCEF**

Honorable Gretchen M. Walsh  
Westchester County Supreme Court  
111 Dr. Martin Luther King Blvd.  
White Plains, New York 10601

**Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.,  
Westchester County Supreme Court Index No. 60278/2020**

Dear Justice Walsh:

This firm represents plaintiff, White Plains Healthcare Properties I, LLC and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson, in connection with the above referenced action.

We write to inform the Court that the parties have conferred regarding mediation and have agreed to select Frank Spano to act as mediator in this matter. We, therefore, respectfully request that the Court enter an Order of Reference for Mediation.

Respectfully submitted,

/s/ Alfred E. Donnellan

Alfred E. Donnellan

cc:

John Giardino, Esq. (By NYSCEF)  
Alexander Barnett-Howell, Esq. (By NYSCEF)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

against

HBL SNF, LLC, LIZER JOZEOFVIC A/K/A LIZER  
JOZEOFVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiffs.

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Index No. 60278-2020

**NOTICE TO ADMIT**

PLEASE TAKE NOTICE, that pursuant to CPLR § 3123, defendants third-party plaintiffs, HBL SNF, LLC, Lizer Jozefovic a/k/a Lizer Jozofovic and Mark Neuman (collectively, "Defendants") are deemed to admit the statements set forth below unless, within twenty (20) days after service of this Notice to Admit, Defendants serve upon the undersigned a sworn statement specifically denying the matters of which an admission is requested or setting forth in detail the reason why Defendants cannot truthfully either admit or deny those matters.

**DEFINITIONS**

1. "WPH Properties" shall mean plaintiff White Plains Healthcare Properties I, LLC.
2. "HBL" shall mean defendant HBL SNF, LLC.

3. The "Lease" shall mean the amended and restated operating lease dated as of November 19, 2015 (and amended and restated in 2017) under which WPH Properties leased to HBL a 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York. A true and correct copy of the Lease is annexed as exhibit 1.

4. The "Facility" shall mean the 160-bed skilled nursing facility that WPH Properties constructed, which is located at 116-120 Church Street, White Plains, New York and that is the subject of the Lease.

5. The "Development Agreement" shall mean the development agreement dated as of November 20, 2015 entered into between HBL and WPH Properties simultaneously with the Lease, under which HBL requested WPH Properties to design and construct the Facility. A true and correct copy of the Development Agreement is annexed as exhibit 2.

6. "Accelerated Rent" shall have the meaning set forth § 16.1 of the Lease.

7. "Additional Rent" shall have the meaning set forth in § 3.2(c) of the Lease.

8. "Certificates of Insurance" shall have the meaning set forth in § 6.2 of the Lease.

9. "Commencement Date" shall have the meaning set forth in § 3.1(a) of the Lease.

10. "Financial Reporting" shall have the meaning set forth in § 7.4(a)(ii) of the Lease.

11. "Fixed Rent" shall meaning set forth in § 3.2(a) of the Lease.

12. "Increased Rent" shall mean the month-to-month rate of 300% of Rent as set forth in § 20.13 of the Lease.

13. "Letter of Credit" shall have the meaning set forth in § 7.1(b) of the Lease.

14. "Real Estate Taxes" shall have the meaning set forth in § 4.2 of the Lease.

15. "Rent" shall have the meaning set forth in § 3.2(c) of the Lease.

- 16. "Security Deposit" shall have the meaning set forth in § 7.1(a)(ii) and (iii) of the Lease.
- 17. "Utilities" shall have the meaning set forth in § 4.1 of the Lease.
- 18. "Working Capital" shall have the meaning set forth in § 7.7 of the Lease.

**ADMISSIONS**

- 1. HBL entered into possession of the Facility on September 30, 2019.
- 2. The Lease commenced on September 30, 2019.
- 3. HBL did not pay Fixed Rent when due for September 30, 2019 through December 31, 2019.
- 4. HBL did not pay Additional Rent when due for January 1, 2020 through January 30, 2020.
- 5. On and after January 13, 2020, HBL continued to occupy the Facility.
- 6. HBL has continuously occupied the Facility during the period from January 13, 2020 through the date of this Notice to Admit.
- 7. HBL did not pay Accelerated Rent at any time after January 13, 2020.
- 8. HBL did not pay Increased Rent at any time after January 13, 2020.
- 9. HBL did not pay Real Estate Taxes when due for the period July 1, 2019 through December 1, 2019.
- 10. HBL did not pay Real Estate Taxes when due for the period January 1, 2020 through June 30, 2020.
- 11. HBL did not pay charges for Utilities when due.
- 12. HBL did not deliver the Certificates of Insurance to WPH Properties.
- 13. HBL did not deliver to WPH Properties 60 days before the Commencement Date

the agreement, referenced in § 7.1(a)(i) of the Lease, by Capital Funding Group, allowing HBL to draw down on its credit line and enable Capital Funding Group to directly pay WPH Properties the sum of \$506,096.50 per month commencing on the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months.

14. HBL did not ever deliver to WPH Properties the agreement by Capital Funding Group referenced in § 7.1(a)(i) of the Lease.

15. HBL did not deliver to WPH Properties 60 days prior to the Commencement Date the unconditional Letter of Credit in the amount of \$3,700,000 referenced in § 7.1(a)(ii) of the Lease.

16. HBL did not ever deliver to WPH Properties the unconditional Letter of Credit in the amount of \$3,700,000 referenced in § 7.1(a)(ii) of the Lease.

17. HBL did not deliver to WPH Properties 60 days prior to the Commencement Date the \$3,700,000 in cash as a Security Deposit referenced in § 7.1(a)(ii) of the Lease.

18. HBL did not ever deliver to WPH Properties the \$3,700,000 in cash as a Security Deposit referenced in § 7.1(a)(ii) of the Lease.

19. HBL did not deliver to WPH Properties 60 days prior to the Commencement Date funds in the controlled account number \*\*\*\*\*7272 in JPMorgan Chase Bank, N.A. in the amount of not less than \$1,600,000 to be held by WPH Properties as the additional Security Deposit referenced in § 7.1(a)(iii) of the Lease.

20. HBL did not ever deliver to WPH Properties funds in the controlled account number \*\*\*\*\*7272 in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held by WPH Properties as the additional Security Deposit referenced in § 7.1(a)(iii) of the Lease.

21. HBL did not keep and maintain the Financial Reporting referenced in § 7.4(a)(ii)

of the Lease.

22. HBL did not submit to WPH Properties each of the following, which are referenced in § 7.4(a)(iii) of the Lease:

- a. unaudited monthly financial statements,
- b. census and revenue information,
- c. aged accounts receivable reports,
- d. unaudited quarterly financial statements,
- e. quarterly census revenue information,
- f. audited annual financial statements,
- g. audited schedule reconciling HBL's net operating income to net cash flow.

23. HBL did not submit to WPH Properties the following, which are referenced in §7.4(a)(vi) of the Lease:

- a. a written report providing an operational overview of significant events and circumstances at the Facility, and
- b. a copy of all HBL's federal income tax returns.

24. HBL did not deliver to WPH Properties the annual Medicaid and Medicare provider agreements for the Facility referenced in § 7.4(g) of the Lease.

25. HBL did not deliver to WPH Properties the annual Medicaid and Medicare reimbursement rate sheets for the Facility referenced in § 7.4(g) of the Lease.

26. HBL did not deliver to WPH Properties the new, revised or amended Medicaid and Medicare reimbursement rate sheets issued subsequent to the annual reimbursement rate sheets for the Facility referenced in § 7.4(j) of the Lease.

27. HBL did not have and maintain Working Capital.

28. The document attached as exhibit 3 is a true and correct copy of the temporary certificate of occupancy for the Facility issued on October 31, 2019.

29. The document attached as exhibit 4 is a true and correct copy of the AJA Form 0704 referenced in Article VIII of the Development Agreement certifying the September 30, 2019 date of substantial completion of the Facility.

30. The document attached as exhibit 5 is a true and accurate copy of a communication from the New York State Department of Health dated December 2, 2019 confirming approval of the Facility as constructed to accept patients effective November 14, 2019.

Dated: White Plains, New York  
June 2, 2021

DEI BELLO DONNELLAN WEINGARTEN  
WISE & WEINBERGER, LLP  
*Lead Counsel for Plaintiff White Plains  
Healthcare Properties I, LLC*

By:   
Alfred E. Donnellan, Esq.  
Nelida Lara, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
Tel.: (914) 681-0200

-and-

ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, FORMALO, FERRARA, WOLF &  
CARONE, LLP  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
Tel: (914) 607-7010  
*Attorneys for White Plains Healthcare  
Properties I, LLC*

To:  
Alex Barnett-Howell, Esq.  
John Giardino, Esq.  
Michelman & Robinson, LLP  
800 Third Avenue, 24th floor  
New York, New York 10022  
Phone: (212) 730-7700

# Exhibit 2 to Notice to Admit

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") dated as of November 18, 2015 by and between HBL SNF, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (hereinafter referred to as the "Operator/Tenant") and WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 200, Peabody, MA 01960 ("WPHCP") (hereinafter referred to as the "Developer") (collectively the "Parties");

WHEREAS, the Operator/Tenant has requested the Developer to design and construct a 160 Bed Skilled Nursing Facility at 116-120 Church Street, White Plains, New York; and

WHEREAS, the parties have simultaneously herewith entered into that certain operating lease by and between Developer as Landlord and Tenant/Operator, as Tenant dated as of the date hereof for a 160 bed skilled nursing facility at 116-120 Church Street, White Plains, New York (the "Lease"); and

WHEREAS, the Developer desires to design and construct said facility upon the conditions set forth herein;

NOW, THEREFORE, in consideration of one (\$1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, the Operator/Tenant and the Developer hereby mutually covenant and agree as follows:

ARTICLE I  
DESCRIPTION OF THE DEVELOPMENT

The Project to be developed, designed and constructed shall consist of a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Project") at 116-120 Church Street, White Plains, New York (the "Church Street Location") bounded and described and more particularly set forth in Exhibit A annexed hereto (the "Land"). Developer reserves the right to change the site, subject only to the prior approval of the DOH should it become impracticable or commercially unfeasible to construct the Project on the Church Street Location.

A. The Developer has caused The Architectural Team, 50 Commandant's Way, at Admirals Hill, Chelsea, MA 02150 (the "Architect") to prepared outline drawings and specifications for the development of the Project (the "Outline Plans and Specifications 3<sup>rd</sup> Edition") which satisfies the design standards of the New York State Department of Health ("DOH"). The Operator/Tenant has reviewed and approved the Outline Plans and Specifications 3<sup>rd</sup> Edition. The Developer has submitted the Outline Plans and Specifications 3<sup>rd</sup> Edition to DOH for approval.

B. The Parties acknowledge and agree the 1<sup>st</sup> and 2<sup>nd</sup> Editions of the Outline Plans and Specifications have been provided by Developer, approved by Operator/Tenant, and

submitted to DOH as required. The parties acknowledge that all municipal entitlements have been received for the Land, based upon the approved 2<sup>nd</sup> Edition of the Outline Plans and Specifications, except that a building permit and trade permits have yet to be applied for as of the date of this Agreement. The Operator/Tenant acknowledges that Developer has received approvals of the Outline Plans and Specifications 2<sup>nd</sup> Edition for 179 beds from all other federal, state, municipal and other governmental authorities having jurisdiction thereof (collectively, the "Approving Authorities") and requests that Developer resubmit to the Approving Authorities the Outline Plans and Specifications 3<sup>rd</sup> Edition for 160 beds.

C. After the Outline Plans and Specifications 3d Edition have been approved (the "Plans and Specifications"), no material amendments to the Plans and Specifications will be made without the prior written consent of Developer, Operator/Tenant and the Approving Authorities. The Developer will not be required to make proposed changes which do not comply with the provisions of this section. In the event of disputes as to whether changes proposed by Operator/Tenant constitute impermissible deviations from the criteria described above, the matter will be submitted for determination to Developer's Architect, whose decision will be final. Except as provided in Article IV hereof, the Project shall be constructed in accordance with the Plans and Specifications.

**ARTICLE II  
PERMITS AND APPROVALS**

A. The Operator/Tenant is the applicant under that certain Certificate of Need Project No. 092058B, entitled Westchester Health Care Properties, LLC, which was contingently approved by the DOH and The Public Health and Planning Council on October 11, 2012 (the "CON"), to establish and construct a 160 bed skilled nursing care facility at Church Street Location (the "Contingent Approval").

B. Developer shall be responsible for using commercially reasonable efforts to obtain, based on the Outline Plans and Specifications 3<sup>rd</sup> Edition, all permits and approvals without limitation, from all governmental and regulatory agencies other than the DOH, exercising jurisdiction over the development of the Project (collectively the "Approvals"). Operator/Tenant shall cooperate and sign all necessary applications and other documents as may be required from the Operator/Tenant in order to obtain the Approvals. All fees and costs incurred by the Developer in obtaining the Approvals shall be included in the Project Cost (as hereinafter defined).

C. The Operator/Tenant shall be solely responsible for obtaining, at its sole cost, all necessary DOH approvals regarding the Project, including the CON, and any amendments or modifications thereto, (all such approvals collectively the "DOH Approvals"), provided that the Developer shall cooperate with Operator/Tenant, and interface with DOH as necessary, with respect to obtaining the DOH approvals of the Outline Plans and Specifications 3<sup>rd</sup> Edition.

**ARTICLE III  
DEVELOPER AND TENANT/OPERATOR RESPONSIBILITIES**

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A. The Operator/Tenant shall satisfy each and every requirement contained in the Contingent Approval including without limitation:

- (1) Payment of the DOH fees of at least \$309,760,
- (2) Submission and DOH approval of the Outline Plans and Specifications 3rd Edition,
- (3) Evidence of Operator / Tenant's Working Capital Loan (hereinafter defined),
- (4) Signed agreements for the so-called bad rights (requires payment of at least \$345,000).

The payment for items III A. (1) and (4) shall be included in disbursements to be made to Developer from the proceeds of the Waterville/Salem Financing (defined below).

B. The Operator/Tenant shall at its sole expense do all things necessary to assure and confirm its ownership of the so-called bad rights necessary for the CON and the Project.

C. Upon the satisfaction of all contingencies set forth in Article VII (unless otherwise agreed to by Developer, in writing), the requirements contained in the Contingent Approval and in Section 3(c), the Developer shall promptly initiate development of the Project in accordance with the Plans and Specifications. The quality of the materials and workmanship on the Project shall meet or exceed all applicable governmental and building industry standards, including all DOH standards for occupancy.

D. Developer shall use commercially reasonable efforts to cause the Project to be substantially completed and ready for occupancy within 22 months following the receipt of all Approvals and DOH Approvals and financing necessary for the Project. Developer shall be responsible to start and finish the Project within the guidelines and the dates set forth by DOH in the final approval letter, as may be adjusted in accordance with DOH regulations.

E. Except for the DOH Approvals, the Developer shall be responsible for all for all development costs including, but not limited to, obtaining the site plan approval, sewer and water hookups and approvals, Department of Transportation, Land Acquisition, Demolition, Cleanup, "Land Carry" (Real estate taxes and insurances prior to C of O), Zoning, Legal, Estimating and Construction Management Fees, Architects, Engineers, Designers and other engineering professionals, Testing, Borings, Hazmat Surveys, Site Surveys, Industrial Hygienists, Reproductions, Signage, printing, fences, Building Permits, and Construction Costs.

F. The Developer will maintain at its onsite office, the outline Plans and Specifications, any amendments thereto and any other drawings relating to the development and make the same available to Operator/Tenant for inspection and will furnish them copies thereof, if requested. Upon written request, the Developer will provide Operator/Tenant with copies of all certificates and requisitions (together with appropriate backup documentation) of Developer and of its architects, engineers and subcontractors pertaining to the Project and will also provide Operator/Tenant with copies of all certificates and requisitions of Developer delivered to the construction lender.

G. The Developer shall (1) enter into a construction contract (the "Construction Contract") acceptable to the Construction Lender with Congress Building Corp. ("Congress") or

an entity controlled by Congress, located at 2 Bourbon Street, Peabody, MA 01960 and (2) require that Congress will provide 100% Performance & Payment bonds from a Surety on the accredited list of the U. S Treasury, (which list is published annually by the Federal Register), to guarantee the undertakings, covenants, terms, conditions and agreements of the Construction Contract, and such bond will include the Developer and the Construction Lender (if required by lender) as obligees. Developer shall provide such guarantees of completion as may be required by the Construction Lender.

H. The Project will be a "turnkey job" as said term is commonly used in the construction trade except that Operator/Tenant shall purchase or lease its own minor movable equipment, expendables, computers, business equipment, maintenance tools and supplies. Operator/Tenant shall purchase the FF&E from Developer for \$1,500,000.00, the payment for which shall be disbursed to Developer from the Waterville/Salem Financing.

I. Except as provided in the Lease, on the Substantial Completion Date the Tenant/Operator shall (i) be deemed to have taken occupancy and accepted possession of the Project, (ii) have agreed that the Project has been completed in accordance with the Plans and Specifications, and (iii) have agreed that the Developer has fulfilled all of its responsibilities hereunder to the satisfaction of Tenant/Operator.

J. Operator/Tenant/Tenant shall grant to Developer a perfected security interest in all assets of Operator/Tenant including the CON, and an executed lease for the Project, personally guaranteed by the principals of the Operator/Tenant. The lease, security and underlying security agreement shall provide that in the event that the Operator/Tenant defaults, Developer may assume control of the CON and/or any licenses owned or controlled by Operator/Tenant ("Licenses"), and or other collateral, and is authorized to proceed with the Project as it deems necessary using the CON and/or Licenses, and/or the other collateral provided.

K. An affiliate of Operator Tenant, owned and controlled by Lizer Jozelovic, is in the process of refinancing a nursing facility located in Westchester County, N.Y. referred to herein as "Waterville/Salem". Operator Tenant and Lizer Jozelovic shall cause Waterville/Salem to deliver the proceeds of the refinancing of Waterville/Salem (the "Waterville/Salem Financing") in the amount of at least \$3,900,000 to Operator/Tenant and Developer.

L. If the Working Capital Loan (defined below) is not already committed by either the Mezzanine Lender or the Construction Lender as a separate loan, at least six months prior to the proposed Substantial Completion Date, the Operator/Tenant shall make diligent, truthful and proper applications to Institutional Lenders as such term is defined in Article 12-D of the NYS Banking Law, for working capital financing for the operation of the project in the amount of not less than reasonably required by Developer and the Construction Lender ("Working Capital Loan") and to furnish, without delay, such verifications of bank accounts and employment, or any other instruments or information as may be required by the Institutional Lenders in the processing of the Operator/Tenant's applications. The Working Capital Loan shall be secured by a lien against Operator/Tenant's accounts receivable and other assets. For the avoidance of

\_\_\_\_\_  
Operator/Tenant

doubt, the Working Capital Loan shall be in addition to, and not in lieu of, the working capital/initial operating deficit/rent payment reserves which shall be required by the Construction Lender.

M. Operator/Tenant shall inform the Institutional Lenders that the Construction Lender and holder of the Permanent Financing has or will have a first lien against all assets of Operator/Tenant (to the extent permitted by applicable law) and that an Intercreditor agreement shall be required of the Institutional Lender.

N. Operator/Tenant represents and warrants that its principals understand and agree that a personal guaranty of the Lease shall be required from them.

**ARTICLE IV  
TOTAL DEVELOPMENT COST  
CHANGES IN DESIGN OR DEVELOPMENT COST**

A. As of the date hereof, the total project cost approved by DOH is \_\_\_\_\_ (the "Approved Project Cost"). The Parties acknowledge and agree that the actual total cost of the Project ("Project Cost") as of the date hereof is approximately \$60.0 million, is not possible to exactly ascertain as of the date of this Agreement due to circumstances beyond the control of all parties to this Agreement, and is projected to be greater than the Approved Project Cost. From time to time, the Developer will advise the Tenant/Operator of Developer's then best estimate of the Project Cost. The Tenant/Operator shall file and diligently pursue with DOH all applications required to increase the Approved Project Cost such that it equals the then best estimate of the Project Costs. The Developer shall provide to the Operator/Tenant prompt notice of, and substantiation for any increases in Project Cost, at the earliest possible date (and if practicable within 90 days of such increase), for submission to DOH pursuant to the applicable Sections of DOH regulations.

B. The Operator/Tenant may desire changes in the Plans and Specifications for the Project consisting of additions, deletions or other revisions for the Project ("Contract Change"). All requests for Contract Changes for the Project shall be authorized by a change order submitted on standard change order form prepared by Developer (the "Change Order"). Subject to paragraph C. below, any Change Order, requested by Operator/Tenant, shall not be effective, nor shall the Developer be required to proceed with any such Change Order, until the Operator/Tenant obtains the approval of the DOH for an increase in Project Cost resulting from such Change. Developer shall cooperate with the Operator/Tenant to obtain any such DOH approvals.

C. Notwithstanding anything to the contrary, if Operator/Tenant requests that Developer proceed with a Contract Change based on a Change Order that has not been approved by DOH, any increase in the Project Cost resulting from such Change Order requested by

Operator/Tenant ("Operator/Tenant Required Cost") will be the responsibility of Operator/Tenant. At the sole option of Developer, any Operator/Tenant Required Cost will be either (i) paid in full by Operator/Tenant to Developer within 30 days of invoice to Operator/Tenant, or (ii) added to the Fixed Rent (as defined in the Lease) pursuant to Section 3.2(IV) thereof.

ARTICLE V  
AUTHORIZED REPRESENTATIVES

A. Operator/Tenant's Representative. Operator/Tenant shall designate an individual to represent it on all matters regarding the Project (the "Operator/Tenant's Representative"). Operator/Tenant's Representative shall be reasonably available at all times during which development activities are taking place. The Operator/Tenant's Representative shall have the authority, on behalf of Operator/Tenant, to approve changes in the scope of this Agreement and the Project, render decisions with respect to the Project and approve all Contract Changes and Change Orders, as provided hereinabove. Any changes in this Agreement and Contract Changes or Change Orders authorized by the Operator/Tenant's Representative shall be binding upon Operator/Tenant. Operator/Tenant hereby designates Lizer Jozefovic as its Operator/Tenant's Representative, and he will remain as such until Operator/Tenant gives Developer forty-eight (48) hours prior written notice that a change in its Developer's Representative.

B. Developer's Representative. Developer hereby designates William Nicholson as its representative on all matters regarding the development of the Project, and he shall remain as such until Developer gives Operator/Tenant forty-eight (48) hours prior written notice of a change in its Developer's representative.

ARTICLE VI  
DEVELOPER FINANCING

Developer Financing. The Developer, at its sole cost and expense, shall use commercially reasonable efforts (including providing a sufficient balance sheet and such personal financials as reasonably required by the Construction Lender), and shall be responsible for procuring all development financing for the Project (the "Construction Loan"). The Operator/Tenant shall be responsible for and hereby covenants to cooperate with the Developer in the prompt preparation and delivery of any and all financial projections, business plans, market studies, discharge capture plans, and any other such information, data, or projections concerning the operations, personal financial statements of the Operator/Tenant and its principals, as the Lender or Developer may request from time to time. The Operator/Tenant further covenants and agrees to file and or apply at the request of the Developer and/or its designated Health Care Consultant or attorney any and all applications, modifications or other requests for a change in the approval or its terms (as defined herein) or an increase in the Approved Project Cost.

ARTICLE VII  
CONTINGENCIES

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A. The Developer shall have obtained all Approvals for the development of the Project based upon the Outline Plans and Specifications, 3d Edition, 160 Beds. The Parties acknowledge that all necessary land use approvals for the development of the Project have been previously obtained based upon the approved Outline Plans and Specifications, 2<sup>nd</sup> Edition, 179 Beds. The Operator/Tenant agrees to assist and fully cooperate with Developer in connection with obtaining the Approvals.

B. The Developer shall have obtained a Construction Loan or other financing acceptable to the Developer and the DOH which upon completion shall convert to permanent mortgage financing (the "Permanent Financing") in an amount which is at least 75% of the Project Cost.

C. The Operator/Tenant shall have obtained all DOH Approvals.

With regard to each of the foregoing contingencies (the "Contingencies") each Party agrees to exert, vigorously and expeditiously, all necessary efforts on its behalf to initiate or assist in the satisfaction of each of the Contingencies. Each Party agrees to do nothing that would be detrimental to the satisfaction of the Contingencies.

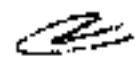
**ARTICLE VIII  
SUBSTANTIAL COMPLETION DATE**

The "Substantial Completion Date" shall mean the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Architect, that the Project was substantially completed and in substantial compliance with the Plans and Specifications for the Project, (ii) the date Developer delivers a Temporary Certificate of Occupancy (the "TCO") for the Project, and (iii) the date the DOH approves the Project as constructed (but not necessarily the Operator/Tenant's operations) to accept patients, provided, however, if the Developer is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Operator/Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (i); Developer will give Operator/Tenant thirty (30) days' notice of the date Developer expects to be the Substantial Completion Date.

**ARTICLE IX  
HOLD HARMLESS**

A. Developer agrees to indemnify and hold harmless Operator/Tenant, and its managers, officers and employees from and against any and all claims, including reasonable legal fees, liability costs and expenses to the extent arising out of Developer's breach of this Agreement or in connection with, the work undertaken in the Project by the Developer.

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B. Operator/Tenant agrees to indemnify and hold harmless Developer and its managers, officers and employees from and against any and all claims, including reasonable legal fees, liability costs and expenses, to the extent arising out of Operator/Tenant's breach of this Agreement or the negligence or willful acts of the Operator/Tenant or any of its employees or agents.

**ARTICLE XI  
PUNCH LIST PREPARATION**

On or prior to the Substantial Completion Date, the Operator/Tenant, the Developer and the Architect, whose decision will be final with respect to all construction matters, shall jointly prepare a list of the items for the Project that remain to be completed or corrected, assign a dollar value for the cost to complete the work and estimate a reasonable time for its completion or correction (collectively the "Punch List"). The Developer shall cause the Construction Lender to withhold 125% of such value. Upon approval of the Architect, and Construction Lender, as any items are completed on the Punch List, those monies withheld by the Construction Lender on account of such uncompleted Punch List items shall be released to Developer.

**ARTICLE XII  
REPRESENTATIONS AND WARRANTIES OF OPERATOR/TENANT**

Operator/Tenant represents and warrants to Developer that:

- A. It is a New York limited liability company and in good standing under the laws of New York State.
- B. It has obtained all necessary consents to enter into this Agreement and perform its obligations hereunder.
- C. This Agreement will not violate the terms of any other agreement by which the Operator/Tenant may be bound.

**ARTICLE XIII  
REPRESENTATIONS AND WARRANTIES  
OF DEVELOPER**

Developer represents and warrants to Operator/Tenant that:

- A. It is a Massachusetts limited liability company and in good standing under the laws of the Commonwealth of Massachusetts.
- B. It has obtained all necessary Limited Liability Company consents to enter into this

~~CONFIDENTIAL - THIS DOCUMENT CONTAINS TRADE SECRETS AND PROPRIETARY INFORMATION OF THE COMPANY AND IS NOT TO BE DISCLOSED TO ANY OTHER PARTY WITHOUT THE WRITTEN CONSENT OF THE COMPANY~~



Agreement and perform its obligations hereunder.

C. It has obtained all necessary limited liability company authorizations to enter into this Agreement.

#### ARTICLE XIV PAYMENTS BY DEVELOPER

Developer shall pay in a commercially reasonable manner all labor, materials and all liabilities incurred in the performance of its obligations under this Agreement.

#### ARTICLE XV WARRANTY

All Warranties shall be provided and enforceable solely in the Lease.

#### ARTICLE XVI MISCELLANEOUS

A. Applicable Law. This Agreement has been entered into, and shall be governed by, the laws of the State of New York.

B. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. This Agreement is assignable by Developer to any joint venture, partnership or limited liability company in which William Nicholson, or an entity controlled, directly or indirectly by him, is a principal thereof, and to any lender or lenders of Developer. Upon such assignment and assumption by the assignee of all obligations of Developer under this Agreement, the existing Developer shall be relieved of all obligations hereunder.

C. Survival of Representations and Warranties. All representations and warranties in this Agreement shall survive the Substantial Completion Date.

D. Further Action. The Parties agree to execute and deliver all documents, provide all information and take, or refrain from taking, all such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

E. Notices and Addresses. Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be deemed to have been given, served and delivered if delivered by recognized national overnight carrier, or mailed by United States registered or certified mail, addressed to the party entitled to receive the same at his address set forth below, or sent by fax (with a copy sent by first class mail). Each party hereto may change his mailing address by giving to each other party hereto,

written notice of such new address in the manner provided above. Except wherever specified in this Agreement, any notice shall be deemed to have been served and delivered on the date on which such notice is faxed (provided a copy is sent by first class mail), hand delivered, or two (2) days following the date it is mailed.

If to Developer:  
White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:  
Postmark Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Ahrens Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Operator/Tenant:  
HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:  
Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafra, Esq.

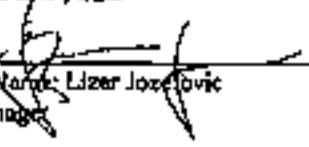
(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

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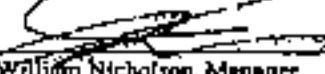
Signature Page for Development Agreement

IN WITNESS WHEREOF, the Parties have hereunto caused this Agreement to be executed the day and year first above written.

OPERATOR/TENANT:  
HBL SNF, LLC

By:   
Name: Lizer Jozefovic  
Manager

DEVELOPER:  
White Plains Healthcare Properties I, LLC

By:   
William Nicholson, Manager



**FIRST AMENDMENT DEVELOPMENT AGREEMENT**

This First Amendment Development Agreement (the "Amendment") dated as of July 12, 2017 by and between HBL SNF, LLC ("Operator/Tenant") and WHITE PLAINS HEALTHCARE PROPERTIES I, LLC (the "Developer") amends that certain Development Agreement dated November 19, 2015 (the "Agreement") by and between the Parties.

WHEREAS, the Parties have entered into the Agreement; and

WHEREAS, the Parties wish to amend the Agreement.

NOW, THEREFORE, in consideration of one (\$1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, Operator/Tenant and Developer hereby mutually covenant and agree as follows:

1. Capitalized words not otherwise defined herein shall have the meaning giving them in the Agreement.

2. Section G of Article III is amended by deleting it in its entirety and substituting therefore the following:

G. Developer shall (1) enter into a construction contract (the "Construction Contract") acceptable to the Construction Lender with Congress Building Corp. ("Congress") or an entity controlled by Congress, located at 2 Bourbon Street, Peabody, MA 01960 and (2) require that contractor will provide Subcontractor Default Insurance. Developer shall provide such guarantees of completion as may be required by the Construction Lender.

3. Except as specifically modified and amended herein, all of the terms, provisions and covenants of the Agreement shall remain unmodified and amended and continue in full force and effect. In the event that any terms of this Amendment shall be inconsistent or in conflict with the terms, provisions and covenants of the Agreement, the terms of this Amendment shall control.

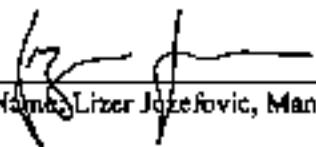
*Signatures On Next Page*



Signature Page First Amendment to Development Agreement

IN WITNESS WHEREOF, the Parties have hereunto caused this Amendment to be executed the day and year first above written.

OPERATOR/TENANT:  
HBL SNF, LLC

By:   
Name: Lizer Jozefovic, Manager

DEVELOPER:  
White Plains Healthcare Properties I, LLC,

By: \_\_\_\_\_  
William Nicholson, Manager

Signature Page First Amendment to Development Agreement

IN WITNESS WHEREOF, the Parties have hereunto caused this Amendment to be executed the day and year first above written.

OPERATOR/TENANT:  
HBL SNF, LLC

By: \_\_\_\_\_  
Name: Lizer Jozefovic, Manager

DEVELOPER:  
White Plains Healthcare Properties I, LLC.

By: \_\_\_\_\_  
William Nicholson, Manager

# Exhibit 3 to Notice to Admit



**TEMPORARY**  
**CERTIFICATE OF OCCUPANCY**  
**DEPARTMENT OF BUILDING**  
**THE CITY OF WHITE PLAINS, NEW YORK**

Certificate No: 19-15394  
RE: Application No: 2016-0589BLDG Date of Issue: 10/31/2019  
Permit No: 2016-0589BLDG

**THIS CERTIFIES THAT THE BUILDING(or portion of the building as noted below) located at:**  
**120 CHURCH ST**  
City of White Plains, NY 10601  
SBL: 125.67-3-1

May be used subject to the following conditions:

Date of Occupancy: 10/31/2019 through 1/29/2020  
Type of Use Authorized: 438  
Portion of Building to be Occupied:

Land/Use Conditions: All affidavits and final inspections to be conducted and approved prior to issuance of final Certificate of Occupancy.

This T C O is to occupy the building.  
**The C of O is in process of being issued.**

The Owner of these premises by acceptance of this document hereby agrees to proceed expeditiously with all remaining work required to qualify the building for a final Certificate of Occupancy or Compliance and to call for all inspections relating thereto. Said owner is also required to maintain all portions of their premises in a safe condition, and to provide adequate safeguards to prevent all tenants and the public from entering into any active construction areas.

At the end of the time period specified above, this Temporary Certificate of Occupancy or Compliance will automatically expire. In order to continue occupancy of the building, either an extension of this Certificate or a Final Certificate of Occupancy or Compliance must be obtained from the Commissioner of Building.

This Certificate does not in any way relieve the owners, or any other person or person in possession or control of the building or any part thereof, from obtaining such other permits or licenses as may be prescribed by law for the uses or purposes for which the building is designated or intended; nor from complying with any lawful order issued with the object of maintaining the building in a safe condition.

**THIS CERTIFICATE IS ISSUED TO**  
**WHITE PLAINS HEALTHCARE**

Owner: **WHITE PLAINS HEALTHCARE**  
**PROPERTIES 1, LLC - JOSH ROCCAPRIORE**  
**2 BOURBON STREET, SUITE 200**  
**PEABODY MA 01960**

DAMON A. AMADIO, P.E. - COMMISSIONER OF BUILDING

# Exhibit 4 to Notice to Admit

# AIA Document G704™ – 2017

## Certificate of Substantial Completion

<b>PROJECT:</b> <i>(name and address)</i> White Plains Institute for Rehabilitation and Healthcare 120 Church Street White Plains, NY	<b>CONTRACT INFORMATION:</b> Contract For: General Construction  Date: June 12, 2017	<b>CERTIFICATE INFORMATION:</b> Certificate Number: 001  Date: October 4, 2019
<b>OWNER:</b> <i>(name and address)</i> White Plains Health Care Properties I, LLC  West Peabody Executive Center Suite 300 Peabody, MA 01960	<b>ARCHITECT:</b> <i>(name and address)</i> The Architectural Team, Inc. 50 Commandant's Way Chelsea, MA 02150	<b>CONTRACTOR:</b> <i>(name and address)</i> Congress/Consigli Joint Venture C/O The Congress Companies West Peabody Executive Center Suite 200 2 Bourbon Street Peabody, MA

The Work identified below has been reviewed and found, to the Architect's best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate.  
*(Identify the Work, or portion thereof, that is substantially complete.)*  
 This certificate applies to the entire job.

The Architectural Team, Inc.		Gary M. Kane	September 30, 2019
<b>ARCHITECT</b> <i>(Firm Name)</i>	<b>SIGNATURE</b>	<b>PRINTED NAME AND TITLE</b>	<b>DATE OF SUBSTANTIAL COMPLETION</b>

**WARRANTIES**  
 The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:  
*(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)*  
 Not Applicable

**WORK TO BE COMPLETED OR CORRECTED**  
 A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:  
*(Identify the list of Work to be completed or corrected.)*  
 See attached mottized Punch List dated October 4, 2019.

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first. The Contractor will complete or correct the Work on the list of items attached hereto within thirty (30) days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: 

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:  
*(Note: Owner's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)*  
 Shall be in accordance with the Owner/Contractor agreement.

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion.

Congress/Consigli Join  
Venture C/O The Congress  
Companies

CONTRACTOR (Firm  
Name)

White Plains Health Care  
Properties I, LLC

OWNER (Firm Name)

SIGNATURE

PRINTED NAME AND TITLE

DATE

SIGNATURE

PRINTED NAME AND TITLE

DATE

# Exhibit 5 to Notice to Admit



**Department of Health**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

December 2, 2019

Andrew Blatt  
Consultant  
Pinnacle Health Consultants, LLC  
1890 Palmer Avenue  
Suite 204  
Larchmont, NY 10538

**Re: CON #092058**  
**Establish and construct a 160 bed RHCF; HBL SNF, LLC d/b/a The**  
**Rehabilitation and Nursing Center of White Plains**

Dear Mr. Blatt:

Based on the pre-opening survey conducted on September 19, 2019, the facility was found to be in substantial compliance with the applicable provisions of 10 NYCRR.

As a result of this inspection, approval is granted to use the areas that were renovated and/or constructed as part of the above-mentioned CON project. This approval is effective November 14, 2019.

If you have any questions regarding this letter, please contact Chris Chow at (631) 851-3612, [chris.chow@health.ny.gov](mailto:chris.chow@health.ny.gov). Written correspondence should be sent to the New York State Department of Health, Courthouse Corporate Center, 320 Carleton Avenue, Suite 5000, Central Islip, NY 11722.

Sincerely,

Chris Chow  
Principal Sanitarian  
Division of Nursing Homes and  
Intermediate Care Facilities/HID

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

PRESENT: HON. GRETCHEN WALSH

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

PLAINTIFF,

Index/Docket No. 60278/2020

- AGAINST -

ORDER OF REFERENCE  
TO MEDIATION

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC AND MARK NEUMAN,  
DEFENDANTS AND THIRD-PARTY PLAINTIFF,

- AGAINST -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, AND WILLIAM  
NICHOLSON,

THIRD-PARTY DEFENDANTS.

- 
1. On Consent of the Parties, the above-captioned proceeding qualifies for referral to Mediation which shall be conducted in accordance with the 9th JD Presumptive Mediation Program Rules and the Rules of the Commercial Division Alternative Dispute Resolution Program.
  2. By conference on June 3, 2021, the Court was advised that the parties had agreed to the designation of Frank Spano, Esq., as Mediator.
  3. The parties shall initiate a conference call with the Mediator to confirm the Mediator's acceptance of this case, select a meeting date for the initial session and make arrangements for any submissions to be forwarded to the Mediator.
  4. The initial session must be held within thirty (30) days of the date the Mediator confirms acceptance of the case and the Mediation shall be completed within forty-five (45) days of the date of this Order, unless otherwise permitted by the Court or Part.
  5. The Parties shall notify the County ADR Coordinator of the date the Mediator accepted this case and the date of the initial session.

6. Parties shall exchange mandatory information based on the type of case to be mediated, as specified in the Mediation Disclosure Protocols for the particular Part, if any.

7. Upon completion of the Mediation, the parties and counsel shall submit a mediation evaluation form to the County ADR Coordinator.

9. The attorneys for the parties herein are as follows:

For Plaintiff:

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP  
By: William V. Comer, Esq.  
81 Main Street, Suite 205,  
White Plains, NY 10601

For Defendants:

Michelman & Robinson, LLP  
By: John J. Giardino, Esq.  
800 3rd Avenue 24th Floor  
New York, NY 10022

Delbello Donnellan Weingarten Wise & Wiederkehr, LLP  
By: Peter S. Dawson, Esq.  
1 N Lexington Ave Floor 11  
White Plains, NY 10601

10. By signing below, the parties and/or their counsel agree that they shall comply with the 9th JD Presumptive Mediation Program Rules, including those provisions regarding confidentiality and immunity, the Mediation Fee Agreement which is incorporated by reference, and any applicable Court or Part ADR Rules. Parties and/or their counsel further understand and agree that no attorney-client relationship exists between the Mediator and the parties, and that the Mediator may not provide legal advice to the parties.

\_\_\_\_\_  
Signature of Counsel for Plaintiff/Third Party

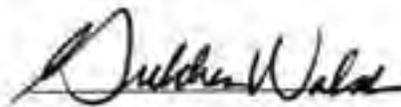
Defendants

\_\_\_\_\_  
Signature of Counsel for Defendants

SO ORDERED:

Dated: White Plains, New York

June 3, 2021



Hon. Gretchen Walsh, J.S.C.

At I.A.S. Part \_\_\_\_, of the Supreme Court of the State of New York, held in and for the County of Westchester, at the Courthouse located at 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the \_\_\_\_ day of June, 2021.

PRESENT:

Hon. Gretchen Walsh  
Justice Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,	:	
	:	
Plaintiff,	:	Index No. 60278/2020
	:	
-against-	:	
	:	
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC, and MARK NEUMAN,	:	
	:	
Defendants and Third-Party Plaintiffs,	:	
	:	
-against-	:	
	:	
CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK	:	
	:	
Third-Party Defendants	:	
	:	

-----X

**ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION  
AND TEMPORARY RESTRAINING ORDER**

UPON the annexed First Amended Verified Amended Answer with Affirmative Defenses, Counterclaims, and Third-Party Complaint dated May 21, 2021, the Complaint dated October 22, 2020 from the consolidated action *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et*

*al.*, No. 655549/2020, the Affirmation of John Giardino dated June 22, 2021, the Memorandum of Law dated June 22, 2021, and upon each of the exhibits and all of the papers and proceedings heretofore had herein, and sufficient cause being alleged therefore:

LET THE PLAINTIFF WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, and THIRD-PARTY DEFENDANTS CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK, show cause before this Court located at IAS Part \_\_\_\_\_, Room \_\_\_\_\_, 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the \_\_\_\_\_ day of June, 2021 \_\_\_\_\_ a.m./p.m., or as soon thereafter as counsel may be heard;

WHY a preliminary order pursuant to Article 63 of the Civil Practice Law and Rules should not be entered, pending determination of this action, enjoining (1) Plaintiff and Third-Party Defendants and their agents from taking any action to transfer, assign, convey, or sell Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC during the pendency of this action; (2) Defendants and Third-Party Plaintiffs and their agents from reducing the Rent Security below \$1.6 million during the pendency of this action; and (3) Granting such other relief as the Court deems just and proper.

IT BEING alleged in the Amended Answer and Third-Party Complaint, the Complaint, and the Affirmations that temporary relief is necessary to prevent irreparable harm to Defendants and Third-Party Plaintiffs pending the hearing and determination of the motion for a preliminary injunction, and it appearing that Defendants and Third-Party Plaintiffs are entitled to a preliminary injunction pursuant to CPLR § 6301 to enjoin Plaintiff and Third-Party Defendants as stated above; it is:

ORDERED, that pending the hearing and determination of Defendants and Third-Party Plaintiffs' motion for a preliminary injunction, (1) Plaintiff and Third-Party Defendants are temporarily enjoined and restrained from taking any action to transfer, assign, convey or sell Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC; and (2) Defendants and Third-Party Plaintiffs are temporarily enjoined and restrained from taking any action to reduce the Rent Security below \$1.6 million.

AND IT IS FURTHER ORDERED that Plaintiff and Third-Party Defendants' response to this motion, if any, shall be hand delivered or emailed to Defendants and Third-Party Plaintiffs' counsel and filed with the Court on or before \_\_\_\_\_, 2021;

AND IT IS FURTHER ORDERED that Defendants and Third-Party Plaintiffs reply, if any, should be delivered or emailed to Plaintiff and Third-Party Defendants' counsel and filed with the Court on or before \_\_\_\_\_, 2021;

SUFFICIENT CAUSE BEING ALLEGED THEREFORE, IT IS ORDERED THAT service of this order and the papers upon which it is granted be deemed due, timely and sufficient if made as follows:

- a) By overnight mail service upon Plaintiff White Plains Healthcare Properties I, LLC, on or before the \_\_\_\_ day of June, 2021, or by electronic service of said papers;
- b) By overnight mail service upon Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson on or before the \_\_\_\_ day of June, 2021, or by electronic service of said papers; and

- c) By overnight mail service upon Third-Party Defendant Metropolitan Commercial Bank, on or before the \_\_\_\_\_ day of June, 2021, or by electronic service of said papers.

E N T E R:

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Hon. Gretchen Walsh  
JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 : Index No. 60278/2020  
 Plaintiff, :  
 :  
 -against- :  
 :  
 HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, WILLIAM :  
 NICHOLSON, and METROPOLITAN :  
 COMMERCIAL BANK :  
 :  
 Third-Party Defendants  
 -----X

**AFFIRMATION OF JOHN GIARDINO  
 IN SUPPORT OF ORDER TO SHOW CAUSE**

JOHN GIARDINO, ESQ., an attorney duly admitted to practice law in the State of New York, affirms the following to be true under the penalties of perjury:

1. I am a partner at the law firm of Michelman & Robinson, LLP, attorneys for the Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic (“Jozefovic”), and Mark Neuman (collectively, “Petitioners”).
2. I respectfully submit this affirmation in support of Petitioners’ Motion for an Order to Show Cause.
3. This Affirmation is based upon my personal knowledge and upon files maintained by my firm in relation to this action.

4. Petitioners' motion seeks an order preliminary enjoining (1) the Plaintiff and Third-Party Defendants from taking any action to transfer, assign, convey or sell Petitioners' membership interest in Waterview Acquisition I, LLC; and (2) Epic Healthcare Management ("Epic") and Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman from taking any action to reduce the Rent Security below \$1.6 million.

5. Jozefovic is the majority member of Waterview Acquisition I, LLC (the "Membership Interest"), owning a seventy percent (70%) interest.

6. A Notification of Disposition of Collateral was first sent on October 6, 2020 (the "First Notification").

7. The First Notification stated that Petitioners were indebted and that the Membership Interest would be sold "to the highest qualified public bidder in public" at 10:00 am on Friday, October 30, 2020.

8. A true and correct copy of the First Notification is attached as Exhibit A.

9. The First Notification was negated by the entry of a Preliminary Injunction and Temporary Restraining Order by Judge Bannon in the action captioned *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, No. 655549/2020.

10. On or about June 10, 2021, I received a purported Notification of Disposition of Collateral, dated June 9, 2020 (the "Second Notification"), which announced the intention to sell at "public auction" the Membership Interest.

11. A true and correct copy of the Second Notification is attached as Exhibit B.

12. Since then, White Plains and Third-Party Defendants Howard Fensterman, ("Fensterman"), William Nicholson, CCC Equities LLC ("CCCE"), Project Equity Construction,

and The Congress Companies (collectively, “White Plains”) has distributed the notice to multiple hospital operators and other business and individuals across the state.

13. Petitioners have received calls from interested and concerned parties inquiring about the purported sale.

14. The continued publication of the Second Notification and any purported sale will irreparably harm Petitioners and jeopardize their operations.

15. In August 2009, Petitioners proposed the development of a new, state-of-the-art 160-bed skilled nursing facility in White Plains, New York (the “Facility”) to the New York State Department of Health (“NYSDOH”).

16. On or about this time, White Plains proposed to Petitioners that they act as turn-key developers for the new Facility and provide all necessary financing and construction for the project.

17. White Plains submitted a development proposal to Petitioners and NYSDOH with (1) a total Project cost of \$56,631,759; (2) a thirty-year, \$42,240,000 HUD-insured mortgage with an interest rate of 5.5%; and (3) \$9,863,246 in project equity contributed by CCCE.

18. In October 2012, White Plains submitted the application to NYSDOH and represented that the Project would be completed in 20 months, after which Petitioners would pay \$360,000 per month in rent.

19. On November 15, 2015, Petitioners executed a development agreement (the “Development Agreement”) and lease (the “Lease”) with White Plains which constitutes an integrated agreement.

20. Pursuant to the Development Agreement, White Plains was required to deliver a “turn-key” facility, *i.e.*, the Facility was to be (1) fully constructed; (2) authorized to operate as a

skilled nursing facility; (3) with permanent financing in place; and (4) all financing and construction was to be completed in accordance with the approval granted by NYSDOH.

21. White Plains lacked the necessary capital to complete the Project.

22. To overcome the capital shortfall, White Plains induced Petitioners to withdraw its equity in Waterview, an entirely separate nursing facility, and contribute that equity to the Project.

23. As memorialized in a term sheet dated November 20, 2015, Petitioners provided the following capital contributions to the Project: (1) \$2,200,000 paid to White Plains to be used by Congress for pre-development costs; (2) \$197,072 to CCCE to be used in the discretion of Fensterman; and (3) \$1,595,368.32 into a control account as rent security in the name of Petitioners (the “Term Sheet”). These funds constituted a loan to be repaid to Petitioners.

24. A true and correct copy of the Term Sheet is attached Exhibit C.

25. White Plains agreed to repay a portion of the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the “FF&E”) for payment in the amount of \$1,500,000 for the Project and by giving a future credit against Lease payments in the amount of \$700,000.

26. To date, White Plains has refused to convey title to the FF&E, to provide an accounting of the use of these predevelopment and discretionary funds.

27. To date, White Plains has refused to provide evidence of purchases of the required FF&E, or to credit \$700,000 against Petitioner’s Lease payments.

28. The \$700,000 can be credited as an advance on the rent security as these funds are already in the White Plains’ possession.

29. To date, interest accrued on this \$2,200,000 loan would be equal to more than \$450,000. Consequently, the Landlord is in receipt of funds in the amount of \$1,140,000.

30. The Second Notification claims to be based upon a collateral assignment, which established a rent security account for the White Plains Skilled Nursing Facility (the “Collateral Assignment”).

31. The Collateral Assignment states, in relevant part:

- a. Under Paragraph 2, upon the deposit of \$1,600,000 into the rent security account, the “assignment shall automatically terminate and be void and of no further effect”;
- b. Under Section 13, the exercise of the White Plains Health Care Properties LLC’s (the “Assignee”) rights is limited to a violation of the “terms and provisions concerning the maintenance of the account...”; and
- c. Under Section 13(c), any proceeds derived from the disposition of the collateral must be applied to the rent security account.

32. A true and correct copy of the Collateral Assignment is attached as Exhibit D.

33. On November 19, 2015, an email was sent to Third-Party Defendant Howard Fensterman (“Fensterman”) and Petitioners (the “November 19 Email”). The email states, in relevant part: “\$1,595,368.32 is going to be held until such time as we give them instructions to deposit in an Account in the Name of HBL-SNF to be opened at Chase Private Banking.”

34. In November 2015, pursuant to the November 19 Email, \$1,595,031.44 was deposited into Chase Account ending in xxxx-xxx-xxxx-7272 (the “First Account”) to establish the rent security (the “Rent Security”) on behalf of Petitioners.

35. At that time, both Gerald Billow, Esq an attorney at Posternak Blankstein & Lund LLP, in Boston and Greg Stollar, Esq. of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (“Abrams, Fensterman LLP”) attorneys for White Plains were both

informed that the Rent Security had been established and of the First Account, satisfying the Collateral Assignment requirements.

36. Fensterman was personally aware of the Rent Security, the First Account, and that the Collateral Assignment had been satisfied, as he was directly informed of the creation of the account, the money to fund the account was wired from the Abrams, Fensterman LLP account, and Fensterman was made a signatory.

37. On December 14, 2015, Fensterman signed the Business Account Signature Form.

38. True and correct copies of the November 19 Email, the account statement, and the signature form are attached as Exhibit E.

39. On August 10, 2017, an email was sent to Fensterman (the “August 10 Email”). The August 10 Email states, in relevant part, that the following “reflects what we agreed to. Please confirm...[and] do the paperwork to finalize this. If you have any issues with what I did please call me on cell.” The August 10 Email continues to state that “[w]ith respect to the Waterview account: 1. Howard Fensterman and Lizer Jozefovic shall be co-signatories to the Waterview account....”

40. A true and correct copy of the August 10 Email is attached as Exhibit F.

41. On August 16, 2017, Fensterman was sent an email (the “August 16 Emails”). The August 16 Emails state, in relevant part, “[e]nclosed please find the Chase Certification that we received today; Please note that the Certification requires that the Resolution that we prepared be annexed as an exhibit. What I need from Howard is original signature cards from Howard with wet ink signatures-Lizer should have all of the resolutions and certifications signed this evening.”

42. True and correct copies of the August 16 Emails are attached as Exhibit G.

43. On August 17, 2017, an email was sent to Fensterman (the “August 17 Email”). The August 17 Email states, in relevant part, that “I need [Fensterman’s] signature on the last page.”

44. The purpose of the August 17 Email was to transfer the Rent Security to a new account pursuant to a resolution of Waterview Acquisition I, LLC

45. In 2017, the Rent Security was transferred to the Chase account ending in xxxx-xxx-xxxx-0885 (the “Second Account”).

46. Once completed, the resolution and account holder certification form were tendered to Fensterman.

47. All of Petitioners’ obligations under the Collateral Assignment were fully satisfied by the provision of the Rent Security, resulting in the automatic termination of the Collateral Assignment.

48. Fensterman simply had to sign the forms provided and submit them in order to become a signatory on the Second Account.

49. Following the August 17 Email, White Plains took no actions to become a signatory and never discussed the matter with Petitioners until the recent events leading up to this action.

50. True and correct copies of the August 17 Email, account information form, resolution, and account holder form are attached as Exhibit H.

51. The Development Agreement required the Project be completed no later than September 2017.

52. However, the Project was not completed until December 2019, resulting in Petitioners commencing operations at the onset of the COVID-19 pandemic.

53. The Development Agreement required that the Project be delivered at the NYSDOH-approved budget of \$57 million, and Petitioners would only be responsible for additional costs caused by authorized change orders.

54. Petitioners did not authorize any change orders, yet the total costs exceeded the approved budget by more than \$5 million.

55. As a result of these cost overruns, Petitioners are unable to obtain full reimbursement of its monthly rent payments as originally intended.

56. White Plains was obligated to provide permanent financing for the Project in the form of the HUD-insured loan approved by NYSDOH.

57. White Plains breached the Development Agreement and the Lease by failing to provide permanent financing.

58. As a result of this breach, Petitioners are currently losing \$68,000 per month on NYSDOH reimbursements for an annualized loss of \$816,000.

59. On November 20, 2019, Petitioners entered into a letter of intent with White Plains (the “LOI”) to address these defaults.

60. A true and correct copy of the LOI is attached as Exhibit I.

61. The LOI resolved certain disputes pursuant to a \$2.2 million payment from Petitioners to White Plains, and in exchange White Plains would transfer the property to “a newly formed Delaware Statutory Trust.”

62. To date, Petitioners alone performed their obligations under the LOI.

63. Petitioners have paid and continues to pay rent to White Plains on time every month.

64. Since December of 2019, Petitioners' monthly rent payments of \$506,096.50 have totaled more than \$12 million.

65. White Plains was supposed to use the rent payments to pay the mortgage, owned by Security Benefit Life Insurance Company ("Security Benefit").

66. Security Benefit has declared White Plains to be in default of its mortgage for having failed to make necessary mortgage payments, charges, interest, and other required fees.

67. In a notice dated April 16, 2020, Security Benefit states that White Plains has breached the terms of the mortgage and White Plains is solely at fault.

68. On May 22, 2020, Security Benefit sent a second letter to White Plains, reiterating that White Plains remains in default and raising additional breaches.

69. Security Benefit makes no reference to Petitioners' obligations.

70. True and correct copies of the Security Benefit letters are attached as Exhibit J.

71. On May 1, 2021, Security Benefit brought a foreclosure action against White Plains for nonpayment of rent in the action captioned *Security Benefit Life Insurance Company, et al. v. White Plains Healthcare Properties I, LLC et al.*, No. 55883/2021.

72. Security Benefit temporarily discontinued the action on May 28, 2021, but upon renewal will likely foreclose on the mortgage, jeopardizing Petitioners' tenancy and continued operations.

73. Publicity about the foreclosure has created uncertainty about the Facility's future in the marketplace.

74. On or about March 2021, White Plains contacted NYSDOH and claimed that the appointment of an emergency receiver for Petitioners was necessary.

75. White Plains failed to inform the Court or Petitioners of this request.

76. Petitioners were contacted by NYSDOH Director Marthe JB Ngwashi who requested further information about the situation.

77. When Petitioners contacted White Plains regarding this request, White Plains' counsel responded by claiming that White Plains was pursuing its rights under the Lease.

78. The only section of the Lease which references receivership is Article XVI, Section 16.1.

79. Once Petitioners was given the opportunity to meaningfully respond, NYSDOH took no further steps to appoint a receiver.

80. A true and correct copy of the letter from Petitioners' counsel to NYSDOH regarding White Plains' request for receivership is attached as Exhibit K.

81. White Plains is not in possession of Petitioners' membership interest certificates.

82. At the time of the Collateral Assignment, the Operating Agreement of Waterview Acquisition I, LLC did not permit its members to assign their membership interests.

83. At the time, the Operating Agreement of Waterview Acquisition I, LLC stated, in relevant part:

- a. Articles 5 and 6 did not provide for any such assignment of the Membership Interest;
- b. Article 12 specifically prohibited an assignment of the Membership Interest to Fensterman as Nominee of White Plains Healthcare Properties LLC.

84. Fensterman is aware of these facts, as well as the limitations on transfer and assignment of the Membership Interest, as Fensterman and Abrams, Fensterman LLP acted as counsel to Waterview Acquisition I, LLC in its formation and execution of its operating agreement.

85. Fensterman previously acted as Petitioners' personal counsel, during which time he represented Petitioners in matters related to all of Petitioners' nursing homes, including Waterview and Abrams, Fensterman LLP continues to handle all of Petitioners' corporate compliance and regulatory matters.

86. By way of example, on October 11, 2005, Abrams, Fensterman LLP filed a Certificate of Amendment of the Articles of Organization for Waterview Acquisition I, LLC (the "Certificate of Amendment").

87. A true and correct copy of the Certificate of Amendment is attached as Exhibit L.

88. In fact, Fensterman and Abrams, Fensterman LLP have continued to represent Waterview Acquisition I, LLC to the present date, and have recently tendered bills and asked for payment for certain litigation matters that they handled.

89. By way of example, Abrams, Fensterman LLP has submitted substantial invoices for legal work performed on behalf of Petitioners every month, from January to August 2020 (the "2020 Monthly Invoices").

90. True and correct copies of the 2020 Monthly Invoices are attached as Exhibit M.

91. By way of further example, on September 11, 2020, Abrams, Fensterman LLP sent Petitioners a letter listing six matters where they are currently representing Petitioners (the "September 11 Letter").

92. A true and correct copy of the September 11 Letter is attached as Exhibit N.

93. To permit this assignment, the Operating Agreement of Waterview was amended so as to authorize Petitioners, as the Majority Member, to assign the Membership Interest.

94. In December 2019, Petitioners, in connection with a \$3,000,000.00 loan, assigned the Membership Interest to Metropolitan Commercial Bank ("MCB") as part of a financing

arrangement to provide working capital to benefit the White Plains project, most of which was paid in the form of rent to the Defendants.

95. Currently, MCB has perfected its security interest in Membership Interest and has physical possession of the membership certificates evidencing my ownership of interests in Waterview Acquisition I, LLC, and Fensterman knew of an approved of the loan from MCB and the Pledge since the proceeds have been used to pay rent on the White Plains Nursing Home.

96. On December 23, 2019, Petitioners granted MCB a security interest in the Membership Interest, and MCB perfected its security interest by taking possession of the related certifications and filing a Uniform Commercial Code Financing Statement.

97. As a show of good faith, Petitioners prepared to offer White Plains a \$1.6 million security interest in the Rent Security to resolve this dispute.

98. Petitioners' have provided a proposed UCC Financing Statement to that effect. A true and correct copy of the draft UCC Filing Statement is attached as Exhibit O.

99. Petitioners' motion seeks an Order to Show Cause for a preliminary injunction to (1) enjoin White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank from taking any action to transfer, assign, convey or sell Jozefovic's membership interest in Waterview Acquisition I, LLC; and (2) enjoin Epic and Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman from taking any action to reduce the Rent Security below \$1.6 million.

100. Because White Plains is distributing false and damaging statements and will attempt to sell the Membership Interest, Petitioners will be irreparably harmed if the relief requested is not granted.

Dated: New York, New York  
June 22, 2021

By:   
\_\_\_\_\_  
JOHN GIARDINO, ESQ.

# EXHIBIT A

NOTIFICATION OF DISPOSITION OF COLLATERAL

October 6, 2020

To: Lizer Josefovic (Debtor)  
53 Mariner Way  
Monsey, New York 10952-1248

Metropolitan Commercial Bank  
99 Park Avenue, 4th floor  
New York, New York 10016

Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Attn: Michele Arbeeny, Esq.

From: Howard Fensterman as nominee for White Plains Healthcare Properties, LLC,  
2 Bourbon Street, Peabody, Massachusetts 01960 (Secured Party)

Re: Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Pledge"), dated August 11, 2017, made by and between Lizer Josefovic ("Assignor") and Howard Fensterman, as nominee for White Plains Health Care Properties, LLC ("Assignee") as such agreement may have been further amended or modified from time to time.

We will sell the Collateral described in Exhibit A hereto and made a part hereof to the highest qualified bidder in public as follows:

**Day and Date:** Friday, October 30, 2020  
**Time:** 10:00 a.m.  
**Place:** DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, phone: 914-681-0200.

You are entitled to, at no charge, an accounting of the unpaid indebtedness secured by the collateral that we intend to sell. You may request an accounting by contacting Alfred E. Donnellan DelBello Donnellan Weingarten Wise & Wiederkehr, LLP One North Lexington Ave. White Plains, NY 10601, Phone: 914-681-0200.

Very truly yours,

/s/ Howard Fensterman  
Howard Fensterman as nominee for  
White Plains Health Care Properties, LLC

# EXHIBIT C

**November 20, 2015**  
**TERM SHEET**  
**REGARDING**  
**WHITE PLAINS INSTITUTE FOR REHABILITATION AND HEALTH CARE**  
**USE OF PROCEEDS FROM REFINANCE OF WATERVIEW AND SALEM AND**  
**CCC EQUITIES PAYOFFS**

This Term Sheet is intended to clarify the pertinent information shared at the meeting of 04/22/2015, attended by Howard Fensterman, as Manager of CCC Equities I, LLC (“CCC”), William Nicholson as Manager of White Plain Healthcare Properties I, LLC (“WPHCP”), Lizer Jozefovic as Manager of HBL/SNF, LLC (“HBL/SNF”) the Tenant, and Mark Zafrin as counsel to HBL/SNF, and to further outline the action items required in order to break ground in the Spring of 2016.

**1) ASSIGNMENT OF CCC EQUITIES MORTGAGES:**

- a) CCC Mortgage: CCC shall assign the series of notes issued by Mokray Acquisitions I, LLC to CCC and the mortgages related thereto, listed on Exhibit 1 attached hereto, to M&T Realty Capital upon payment in full of the amounts set forth in the payoff letter, dated November 20, 2015. The assignment and payoff is not to be construed as a reduction of the equity holdings of CCC in WPHCP, but a “release” of the loans for the purposes of the proceeds being used to fund HBL/SNF and the project.
- b) Disbursement of Proceeds: The proceeds from the CCC Mortgage payoff shall be paid to Madison Title Agency, LLC to be further disbursed as follows:
  - i) \$2,200,000.00 to an account in the name of WPHCP designated by Congress Construction Company to be used for the related pre-development costs of the project , as set for in Paragraph 3 of the “Partners Term Sheet” dated May 26, 2015, as further provided below.
  - ii) \$197,072.00 to CCC or order for the purpose of further distribution in the discretion of Howard Fensterman, as Manager of CCC.
  - iii) The Balance \$1,595,368.32 to an account designated by HBL/SNF (the “**Control Account**”), and, until the closing of a construction loan with Lancaster Pollard (or equivalent), any withdrawals or disbursements from the Control Account shall be subject to the dual signatures of an authorized officer or representative of HBL/SNF and WPHCP. Subsequent to such a closing with Lancaster Pollard (or equivalent), any withdrawals or disbursements from the Control Account shall be subject to any restrictions or limitations as determined by Lancaster Pollard (or equivalent). The funds in the Control Account may be invested in instruments of not greater risk than 90 day treasury notes and not to be further disbursed until (a) the closing of the Lancaster Pollard loan and/or (b) a further agreement between HBL/SNF and WPHCP.

c) Guarantees: Simultaneously with the assignment of the Mokray notes and mortgages and the satisfaction of the payoff letter, Lizer Jozefovic and William Nicholson shall jointly and severally issue a guaranty in favor of WPHCP, pursuant to which they shall guarantee any deficiency between the amount of CCC's investment in WPHCP and the proceeds realized from the collateral (Project, Beds, Entitlements, Land, Plans, Control Account, Etc.,) in event the project's assets needs to be sold because Lancaster Pollard (or equivalent) does not provide construction funding and/or Mezzanine financing or as a result of any breach of HBL/SNF's or Lizer Jozefovic's obligations.

hereunder.

d) Use of Proceeds: The proceeds from the CCC Mortgage payoff are intended to be used as follows;

- (a) \$1,595,368.32 shall be used to capitalize HBL/SNF;
- (b) \$2,200,000.00 from the accounts of WPHCP, generally, for :
  - (i) \$990,000.00 (approximately) to be used for Architect's and Engineer's fees;
  - (ii) \$50,000 (approximately) to be used Interior, Food Service, and other Designers' fees;
  - (iii) \$343,000.00 as additional down payment to Hebrew Hospital as per contract (Operating Agreement version 8 or latest version), to be released to Hebrew Hospital upon execution of the HBL/SNF Operating Agreement,
  - (iv) \$309,750.00 to be paid to the New York State Department of Health ("DOH") for the application fee as per the November 15, 2012 NY DOH Conditional Approval Letter;
  - (v) Balance of \$507,250.00 to be held by WPHCP and disbursed as WPHCP determines, for the following preconstruction costs,
    - 1. Application or other fees to Lancaster Pollard,
    - 2. Taxes, Insurances and other ongoing property/maintenance/safety costs,
    - 3. Other fees,
    - 4. Other pre-construction professional fees and other fees and costs,
    - 5. Survey, environmental, Market Study, Appraisal, and other 3rd party fees for the loan.

e) \$2,200,000.00 disbursement to WPHCP is to be characterized as a non interest bearing loan and repaid to HBL/SNF as follows;

- 1. \$1,500,000.00 is to be deemed as an advance payment for FF&E for the project and repayable only by delivery of title to the FF&E. HBL/SNF will show the FF&E as an asset on its balance sheet; HBL/SNF is to own and be responsible for replacing FF&E. Tenant shall also have ownership of replacement reserve for FF&E.

2. \$700,000.00 shall be repaid as a deduction from the rent over an above payments for P&I, Taxes and Reserves at the rate of \$2,700.00 per month for a term of 420 months .

f) Prior to the assignment of the notes and mortgages, WPHCP shall be granted a security interest in all of the assets of HBL/SNF, including without limitation, the Control Account, and all of the HBL/SNF's rights in and to the beds (including without limitation HBL/SNF's rights, title and interest in and to the purchase and sale agreements pertaining to the beds) and DOH approvals to secure the agreements of Lizer Jozefovic and HBL/SNF hereunder.

II) HBL/SNF and Lizer Jozefovic shall cooperate and deliver all items required by Lancaster Pollard (or other construction lender) in order to most expeditiously close the construction loan.

III) HBL/SNF shall be responsible to fund all of its costs and expenses, as tenant, relating to the development, and fill up of White Plains Institute For Rehabilitation And Health Care, including without limitation expenses payable to DOH, amounts in excess of the funds provided herein for the beds, and professional and consulting fees. Funding for such costs and expenses shall not be made from the Control Account.

IV) HBL/SNF and WPHCP shall enter into a lease (the "Lease"), substantially in the form attached hereto as Exhibit A, which includes, among other things:

a) HBL/SNF shall deposit in the Control Account an amount not less than the requirements of the construction lender's working capital and reserve requirements, including without limitation any shortfall amount as between the construction lender's requirements and the amount in the Control Account.

b) If WPHCP sells the real property to a bona fide third party purchaser prior to the twelfth lease year under the Lease, WPHCP may purchase the HBL/SNF right of first refusal for an amount equal to ten percent (10%) of the excess of the sale price (less costs and fees, including broker's fees) over the TPC (defined below); provided, however, commencing on the twelfth year of the Lease after the commencement date under the Lease and continuing until December 31<sup>st</sup> of the fifteenth year after the commencement date under the Lease, HBL/SNF shall have a right to purchase the real property from WPHCP for a price equal to the sum of (a) the actual total project cost ("TPC"), plus (b) the following amounts:

- i) For Year 12, TPC plus \$1,500,000.
- ii) For Year 13, TPC plus \$1,650,000.
- iii) For Year 14, TPC plus \$1,800,000.

iv) For Year 15, TPC plus \$1,950,000.

c) HBL/SNF will be responsible for funding the initial operating deficit so as not to delay the loan closing, in the amounts and according to the terms as may be required by the construction lender.

(V) HBL/SNF and WPHCP shall enter into a Development Agreement, substantially in the form attached hereto as Exhibit B.

(Signature Page to Follow)

Agreed and accepted this 20<sup>th</sup> day of November 2015

CCC Equities I, LLC

By: \_\_\_\_\_

Howard Fensterman, Managing Member

HBL SNF, LLC

By:  \_\_\_\_\_  
Jozefovic, Managing Member

White Plains Healthcare Properties 1, LLC

BY: \_\_\_\_\_

William Nicholson, Manager

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
Case Type: **Commercial Division**  
Case Status: **Active**  
eFiling Status: **Full Participation Recorded**  
Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

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Motion Info:  Filed Date:  thru

Document Number:

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76	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
77	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Complaint in New York Action</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
78	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Judge Bannon's Interim Order</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
79	<a href="#">AFFIDAVIT OR AFFIRMATION IN REPLY</a> (Motion #3) <i>Reply Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
80	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>NY County Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
81	<a href="#">MEMORANDUM OF LAW IN REPLY</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
82	<a href="#">STIPULATION - DISCOVERY ( REQUEST TO SO</a> <a href="#">ORDER</a> ) (Motion #4)	<a href="#">Giardino, J.</a> Filed: 03/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

STIPULATION (MOTION #2)

Stipulation regarding document discovery and motion to dismiss

Received: 03/04/2021

83 STIPULATION - SO ORDERED

Court User  
Filed: 03/11/2021  
Received: 03/11/2021

**Processed**  
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84 DECISION + ORDER ON MOTION (Motion #3)

Court User  
Filed: 03/18/2021  
Received: 03/18/2021

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85 NOTICE OF ENTRY (Motion #3)

[Lara-Garduno, N.](#)  
Filed: 03/19/2021  
Received: 03/19/2021

**Processed**  
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86 COMPLAINT (AMENDED)

First Amended Verified Complaint

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
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87 EXHIBIT(S) - 1

Amended and Restated Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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88 EXHIBIT(S) - 2

Jozefovic Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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89 EXHIBIT(S) - 3

Neuman Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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90 EXHIBIT(S) - 4

Jozefovic Security Agreement  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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91 EXHIBIT(S) - 5

Letter of Intent  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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92 EXHIBIT(S) - 6

Notice of Default  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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93 LETTER / CORRESPONDENCE TO JUDGE

[Lara-Garduno, N.](#)  
Filed: 03/26/2021  
Received: 03/26/2021

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94 LETTER / CORRESPONDENCE TO JUDGE

[Donnellan, A.](#)  
Filed: 04/09/2021  
Received: 04/09/2021

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95 DECISION + ORDER ON MOTION (Motion #4)

Motion withdrawn without prejudice

Court User  
Filed: 04/20/2021  
Received: 04/20/2021

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96 ANSWER (AMENDED)

[Barnett-Howell, A.](#)  
Filed: 05/21/2021  
Received: 05/21/2021

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# Document

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97	<a href="#">EXHIBIT(S)</a> - A <i>Incorporated Complaint from New York County</i>	<a href="#">Barnett-Howell, A.</a> Filed: 05/21/2021 Received: 05/21/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
98	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 05/25/2021 Received: 05/25/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
99	<a href="#">NOTICE TO ADMIT</a>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
100	<a href="#">EXHIBIT(S)</a> - 1 <i>to Notice to Admit - Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
101	<a href="#">EXHIBIT(S)</a> - 2 <i>to Notice to Admit - Development Agreement</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
102	<a href="#">EXHIBIT(S)</a> - 3 <i>to Notice to Admit - Temporary C of O</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
103	<a href="#">EXHIBIT(S)</a> - 4 <i>to Notice to Admit - AJA form 0704</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
104	<a href="#">EXHIBIT(S)</a> - 5 <i>to Notice to Admit - NYSDOH letter</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
105	<a href="#">ORDER - MEDIATION</a>	Court User Filed: 06/03/2021 Received: 06/03/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
106	<a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
107	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
108	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>First Notification of Disposition of Collateral, 10.6.20</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
109	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Second Notification of Disposition of Collateral, 6.9.21</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
110	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Term Sheet, 11.20.15</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
111	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>

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| 112 | <a href="#">EXHIBIT(S)</a> - E (Motion #5)<br><i>November 19 Email and Account Statement</i>  | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 113 | <a href="#">EXHIBIT(S)</a> - F (Motion #5)<br><i>August 10 Email</i>  | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 114 | <a href="#">EXHIBIT(S)</a> - G (Motion #5)<br><i>August 16 Emails</i>   | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 115 | <a href="#">EXHIBIT(S)</a> - H (Motion #5)<br><i>August 17 Email</i>  | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 116 | <a href="#">EXHIBIT(S)</a> - I (Motion #5)<br><i>Letter of Intent</i>   | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 117 | <a href="#">EXHIBIT(S)</a> - J (Motion #5)<br><i>Security Benefit Letters</i>   | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 118 | <a href="#">EXHIBIT(S)</a> - K (Motion #5)<br><i>NYSDOH Letter</i>  | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 119 | <a href="#">EXHIBIT(S)</a> - L (Motion #5)<br><i>Certificate of Amendment</i>   | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 120 | <a href="#">EXHIBIT(S)</a> - M (Motion #5)<br><i>2020 Monthly Invoices</i>  | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 121 | <a href="#">EXHIBIT(S)</a> - N (Motion #5)<br><i>September Letter</i>   | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 122 | <a href="#">EXHIBIT(S)</a> - O (Motion #5)<br><i>Proposed UCC Form</i>  | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 123 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)  | <a href="#">Barnett-Howell, A.</a><br>Filed: 06/22/2021<br>Received: 06/22/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 124 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5)<br><i>Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' / Third-Party Plainti ...</i><br><a href="#">show more</a> | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021        | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 125 | <a href="#">EXHIBIT(S)</a> - 1 (Motion #5)<br><i>Exhibit 1 - Bandazian Affidavit</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021        | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 126 | <a href="#">EXHIBIT(S)</a> - 2 (Motion #5)<br><i>Exhibit 2 - Prior Order to Show Cause</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021                                | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

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| 127 | <a href="#">EXHIBIT(S)</a> - 3 (Motion #5)<br><i>Exhibit 3 - Answer with Cross-Claims</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 128 | <a href="#">EXHIBIT(S)</a> - 4 (Motion #5)<br><i>Exhibit 4 - Decision and Order</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 129 | <a href="#">EXHIBIT(S)</a> - 5 (Motion #5)<br><i>Exhibit 5 - Notice of Sale</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 130 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)<br><i>Third-Party Defendant/Cross-Claimant Metropolitan Commercial Bank's Memorandum of Law in Partial Joi ... show more</i>        | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 131 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Donnellan, A.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 132 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 133 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)<br><i>Affidavit of Lizer Jozefovic</i>   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 134 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5)<br><i>Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' Third-Pa ... show more</i> | <a href="#">Malatak, R.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 135 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 136 | <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5)<br><i>Affidavit of William A. Nicholson</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 137 | <a href="#">EXHIBIT(S)</a> - A (Motion #5)<br><i>Lease</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 138 | <a href="#">EXHIBIT(S)</a> - B (Motion #5)<br><i>Jozefovic Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 139 | <a href="#">EXHIBIT(S)</a> - C (Motion #5)<br><i>Neuman Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 140 | <a href="#">EXHIBIT(S)</a> - D (Motion #5)<br><i>Collateral Assignment and Pledge</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021                         | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

**Redacted** per 22 NYCRR §202.5(e)

Received: 06/29/2021

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*UCC Financing Statement*
- 142 [EXHIBIT\(S\)](#) - F (Motion #5)  
*Notice of Defalt*  
**Redacted** per 22 NYCRR §202.5(e)
- 143 [EXHIBIT\(S\)](#) - G (Motion #5)  
*Construction Loan Agreement*
- 144 [EXHIBIT\(S\)](#) - H (Motion #5)  
*Note*
- 145 [EXHIBIT\(S\)](#) - I (Motion #5)  
*Mortgage*
- 146 [EXHIBIT\(S\)](#) - J (Motion #5)  
*Security Benefit Notice of Default*
- 147 [EXHIBIT\(S\)](#) - K (Motion #5)  
*Security Benefit Notice of Default*
- 148 [EXHIBIT\(S\)](#) - L (Motion #5)  
*Security Benefit Complaint*
- 149 [EXHIBIT\(S\)](#) - M (Motion #5)  
*Email*
- 150 [EXHIBIT\(S\)](#) - N (Motion #5)  
*Hebrew Hospital Bankruptcy Filing Notice*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

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# EXHIBIT D

COLLATERAL ASSIGNMENT AND PLEDGE OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT

THIS ASSIGNMENT made as of August 11, 2017, by Lizer Jozefovic, an individual having an address at 53 Mariner Way, Monsey New York 10952 (the "Assignor") to Howard Fensterman as nominee for White Plains Health Care Properties LLC, a Massachusetts Limited Liability Company (the "Assignee") with reference to the following facts.

WHEREAS, HBL-SNF a New York Limited Liability Company ("Operator/Tenant) an entity controlled by Assignor had entered into a development agreement with WHITE PLAINS HEALTHCARE PROPERTIES I, LLC (the "Developer") dated November 19, 2015 (the "Agreement") which was amended by and between the Parties by that certain first Amendment to the Development Agreement (the "Amendment") dated as of July 12, 2017.

WHEREAS, the Development Agreement among other things obligated the Tenant to enter into a Lease with Developer in return for the Developer, developing, designing, financing and Building a 160 Bed Skilled Nursing Home for Tenant in White Plains New York; and

WHEREAS the Development Agreement obligated the Tenant to obtain CON approval to build such 160 Bed Skilled Nursing Home for Tenant in White Plains New York and to deliver to Developer such documents as are reasonably requested by Developers lenders; and

WHEREAS, the Tenant has obtained all CON approvals necessary to construct the Skilled Nursing Home and the Developer has obtained all zoning and building department of approvals and a Construction Loan; and

WHEREAS, in or about November 2015 in consideration of Howard Fensterman and/or CCC Equities assigning all mortgages held by them on property owned by Waterview Acquisition I, LLC agreed that he would pre-pay Two Million Two Hundred Thousand Dollars to White Plains Healthcare Properties and would additionally establish a joint signature account in JP Morgan Bank into which the sum of One Million Six Hundred Thousand Dollars was deposited; and

WHEREAS, The Lease requires the sum of 1.6 Million Dollars to be delivered to Landlord at least 60 days prior to the Commencement date of the Lease as additional security for the Tenants faithful performance of the terms and conditions of the Lease; and

WHEREAS, Section 10.2 of the Loan Agreement by and between Developer and its Construction lender restates the language of the Lease and Developer has undertaken to ensure that the 1.6 Million Dollars on deposit with JP Morgan shall be delivered according to the terms and provisions of the Lease; and

WHEREAS, the Sums in the JP Morgan Account entitled HBL SNF, LLC, Account Number [REDACTED] 7272 have been transferred to two JP Morgan Account's entitled Waterview Acquisition I, LLC Account Number [REDACTED] 7002 and Account Number [REDACTED] 0885 in which Howard Fenstennan is not a signatory and the parties want to enter into this agreement by which Howard Fensterman will be added as a signatory to such account under terms and conditions set forth below; and

WHEREAS, Tenant and Assignor have promised to add Howard Fensterman as a signatory to such account so as to ensure that no withdrawals may be made so as to reduce the amount of the account below 1.6 Million and so as to ensure that when required 60 days prior to the commencement date the money in the account or equivalent shall be delivered as additional cash security for the lease; and;

WHEREAS in order to secure the promises made by Assignor concerning such account Assignor has agreed to deliver to Assignee this Assignment; and the Assignor desires to pledge to Assignee all of his membership interest in Waterview Acquisition I, LLC (the "Company"), in order to secure the promises made herein and in the Lease and Security Agreement delivered to the Construction Lender;

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignee and the Assignor hereby agree as follows:

1. As collateral security for the Borrowers' obligations under the Lease, the Security Agreement, the Loan, and the Development Agreement the Assignor hereby pledges and assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member in the Company (the "Collateral").

2. Upon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the interest in the Company assigned to the Assignee pursuant to Paragraph 1 hereof shall be automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect. Notwithstanding the foregoing, the Assignee hereby agrees to execute any document reasonably required for the purpose of evidencing the reassignment of such interest and the termination of this Assignment.

3. The Assignor represents, covenants and warrants that he is the legal and beneficial owner of the Collateral and has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in the Company and that there are no current liens or encumbrances that exist as of the day of the execution of this assignment.

4. The Assignor agrees not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

5. The Assignor covenants and agrees not to voluntarily withdraw as the managing member of the Company without the prior written consent of Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

6. The covenants provided for in this Assignment shall be binding upon the

successors and assignees of the parties hereto.

7. This Assignment shall be governed by the laws of the State of New York.

8. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument in writing duly signed by or on behalf of the Assignor or Assignee.

9. Assignor represents and warrants that he has a 71 % membership interest in the Company and that he is manager thereof.

10. In accordance with the laws of the State of New York and as part of the consideration for the making of the Loan, Assignor consents to the jurisdiction of any local, state or federal court located within New York and further consents that all service of process may be made by registered mail to his address set forth below and service so made shall be deemed completed five (5) days after the same shall have been mailed.

11. Assignor covenants and agrees to execute such additional documents and to take such further actions as may be reasonably required to carry out the provisions and intent of this Assignment including, without limitation, executing a financing statement or statements and continuations thereof. In addition, Assignor grants to Assignee a power of attorney coupled with an interest to effectuate the terms of the foregoing sentence and to file all continuations, renewals or amended financing statements without the signature of Assignor.

13. Should Assignor violate the terms and provisions concerning the maintenance of the account as set forth in the resolution of Waterview Acquisition I, LLC annexed hereto as Exhibit A the Assignee shall have:

(a) The right to sell the Collateral in the State of New York at one or more public or private sales at such price and on such terms as Assignee in its discretion accepts, for cash, upon or for future delivery. Upon any such sale, the Assignee shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral. Such purchaser at any such sale shall hold the Collateral sold absolutely free from any claim or right on the part of the Assignor, and the Assignor hereby waives (to the extent permitted by law) all rights of redemption, stay or appraisal which he has or may have under any rule of law or statute now existing or hereafter adopted. The Assignee shall give the Assignor twenty-one (21) days' written notice by registered or certified mail, postage prepaid, return receipt requested (which Assignor acknowledges is reasonable and sufficient), of the Assignee's intention to make any such public or private sale. Such notice, in the case of public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places in the State of New York as the Assignee may fix in the

notice of such sale. The Assignee shall not be obligated to make any sale of the Collateral if it shall determine not to do so, regardless of the fact that notice of such sale of the Collateral may have been given. The Assignee may, upon one day's written notice, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place within in the State of New York to which the same was so adjourned. In case sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Assignee until the sale price is paid by the purchaser or purchasers thereof, but the Assignee shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold, and, in case of any such failure, such Collateral may be sold again upon like notice. As an alternative to exercising the power of sale herein conferred upon it, the Assignee may proceed by a suit or suits at law or in equity to foreclose this Assignment and to sell the Collateral, or any portion thereof, pursuant to a judgment or decree of a court of competent jurisdiction;

(b) such other rights with respect to the Collateral as shall be afforded to secured parties by the Uniform Commercial Code of the State of New York including, but not limited to, the right to setoff; and/or

(c) to apply any proceeds of any disposition of the Collateral to the payment of the cash security required under the terms and provisions of the lease and reasonable expenses of the Assignee in connection with the exercise of its rights or remedies, including reasonable fees and expense of attorneys, and any balance shall be paid to such party as shall be entitled thereto pursuant to law.

13. The Assignor hereby waives any right to require that the Assignee proceed against any real or personal property or any guaranty given as security for the Note, whether or not existing or hereafter given, before exercising its rights and remedies with respect to the Collateral.

14. This Agreement may be executed in counterparts, each of which, when taken together, shall be construed as one and the same instrument.

15. All notices, demands and other communications provided for herein shall be deemed received upon personal delivery or delivery by national overnight delivery service, or three (3) business days following deposit in the U.S. mail, postage prepaid, first class registered or certified,

to Assignor or assignee at the following addresses:

If to Assignor:  
Liner Jozefovic  
53 Mariner Way  
Monsey, New York

With a copy to:  
Michelman & Robinson, LLP  
800 Third Avenue  
New York, New York  
Attention: Mark H. Zafrin, Esq.

If to Assignee:  
Howard Fensterman  
C/o Abrams, Fensterman et al  
3 Dakota Drive  
Suite 300  
Lake Success, New York 11042

IN WITNESS WHEREOF, Assignor has duly executed this Assignment, as of the day and year first written above.

  
Lizer Jozefovic

The Company hereby acknowledges receipt of this Assignment by Assignor.

WATERVIEW ACQUISITION I, LLC

By: 

# EXHIBIT E

**Mark H. Zafrin (NY)**

**From:** Mark H. Zafrin (NY)  
**Sent:** Thursday, November 19, 2015 1:12 PM  
**To:** Greg Stoller; Mark Frimmel (NY); William Nicholson; Gerald Billow; 'Howard Fensterman (hfensterman@abramslaw.com)'; Lizer Jozefovic  
**Subject:** FW: WP  
**Attachments:** Wire instructions for WPHCP.xlsx

Enclosed please find wire instructions for White Plains Healthcare Properties-there are three transfers that need to go out;

1. \$2,200,000.00 is to be sent to WPHCP-wire instructions annexed
2. \$197,071.00 should be wired to CCC or designee
3. \$1,595,368.32 is going to be held until such time as we give them instructions to deposit in an Account in the Name of HBL-SNF to be opened at Chase Private Banking where we intend to have it invested in 90 day or longer Treasury's-at that level we get to buy at the Bank's cost usually and since Lizer's father in law's Brokerage Company is heavy at Chase we can get that courtesy

**From:** Edward Tabor [mailto:ETabor@congressconstruction.com]  
**Sent:** Thursday, November 19, 2015 5:03 AM  
**To:** Mark H. Zafrin (NY) <mzafrin@mrlip.com>  
**Cc:** William Nicholson <WNicholson@congressconstruction.com>  
**Subject:** RE: WP

Good morning Mark,

The wire instructions are attached.

Ed

Edward O. Tabor  
CFO

The Congress Companies  
 West Peabody Executive Center, Suite 200  
 2 Bourbon Street  
 Peabody, MA 01960

Telephone: 978-535-6700 extension 115  
 Fax: 978-535-6701  
 Email: [etabor@congressconstruction.com](mailto:etabor@congressconstruction.com)  
 Website: [www.congresscompanies.com](http://www.congresscompanies.com)

*The information contained in this message may be privileged and confidential and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us.*





December 03, 2015 through December 31, 2015  
 Account Number: [REDACTED] 7272

**SAVINGS SUMMARY** Chase Business Select High Yield Savings

	INSTANCES	AMOUNT
Beginning Balance		\$0.00
Deposits and Additions	2	1,595,031.44
Ending Balance	2	\$1,595,031.44
Annual Percentage Yield Earned This Period		0.08%
Interest Earned This Period		\$31.44
Interest Paid Year-to-Date		\$31.44

**TRANSACTION DETAIL**

DATE	DESCRIPTION	AMOUNT	BALANCE
	Beginning Balance		\$0.00
12/23	Transfer From Chk Xxxxx1055	1,595,000.00	1,595,000.00
12/31	Interest Payment	31.44	1,595,031.44
	Ending Balance		\$1,595,031.44

You earned a higher interest rate on your Chase Business Select High Yield Savings account during this statement period because you had a qualifying Chase Platinum Business Checking account.

30 deposited items are provided with your account each month. There is a \$0.20 fee for each additional deposited item.

**IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS:** Call or write us at the phone number or address on the front of this statement (non-personal accounts contact Customer Service) if you think your statement or receipt is incorrect or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared. Be prepared to give us the following information:

- Your name and account number
- The dollar amount of the suspected error
- A description of the error or transfer you are unsure of, why you believe it is an error, or why you need more information.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (or 20 business days for new accounts) to do this, we will credit your account for the amount you think is in error so that you will have use of the money during the time it takes us to complete our investigation.

**IN CASE OF ERRORS OR QUESTIONS ABOUT NON-ELECTRONIC TRANSACTIONS:** Contact the bank immediately if your statement is incorrect or if you need more information about any non-electronic transactions (checks or deposits) on this statement. If any such error appears, you must notify the bank in writing no later than 30 days after the statement was made available to you. For more complete details, see the Account Rules and Regulations or other applicable account agreement that governs your account.



JP Morgan Chase Bank, N.A. Member FDIC



BUSINESS ACCOUNT ADD SIGNERS FORM


NAME OF BUSINESS HBL SNF, LLC TAXPAYER ID NO. 6045

BUSINESS ADDRESS 1280 ALBANY POST RD, CROTON HDSN, NY 10520-1570

BRANCH NAME AND NO. CHASE PLAZA - 217 BANK NO. 802 BRANCH PHONE NO. (212) 422-4065

INTEROFFICE MAILCODE NY1-0217 PREPARED BY: NAME STELLA C BARRY DATE: 12/14/2015

Please add the following signer to the accounts listed below (other authorized signers on record do not change):

Name of the Signer to Add	Title	Signature	Date
WILLIAM A NICOHOLSON	SIGNER		

Identification	ID Number	Issuer	Issuance Date	Expiration Date
1) Driver's License	<u>60452</u>	MA	10/08/2012	10/14/2017
2) None				

Account Numbers: 1055  
7272

Please add the following signer to the accounts listed below (other authorized signers on record do not change):

Name of the Signer to Add	Title	Signature	Date
LIZER JOZEFOVIC	MEMBER		12/14/15

Identification	ID Number	Issuer	Issuance Date	Expiration Date
1) Driver's License	<u>4075</u>	NY	08/28/2008	03/31/2017
2) None				

Account Numbers: 1055  
7272

Please add the following signer to the accounts listed below (other authorized signers on record do not change):

Name of the Signer to Add	Title	Signature	Date
HOWARD FENSTERMAN	SIGNER		12/14/15

Identification	ID Number	Issuer	Issuance Date	Expiration Date
1) Driver's License	<u>6516</u>	NY	05/30/2012	07/31/2020
2) None				

Account Numbers: 1055  
7272

CERTIFICATION

The undersigned hereby certifies that the person(s) added as authorized signers on the account(s) indicated above have been added in accordance with resolutions or other documents of the Business regarding signing authority for bank accounts. The undersigned further certifies that for those added as authorized signers, the names, titles and signatures are correct.

For a Corporation or Unincorporated Association or Organization:	For Sole Proprietorship:	For Partnership or Limited Liability Company:	For Government Entity:
Secretary _____ Date _____	Owner/Sole Proprietor _____ Date _____	Partner/Member/Manager:  _____ Date <u>12/14/15</u>	Certifying Officer: _____ Date _____



JPMorgan Chase 7/25/2017 11:24:27 AM PAGE 1/004 Fax Server

# EXHIBIT F

**Mark H. Zafrin (NY)**

**From:** Howard Fensterman <HFensterman@Abramslaw.com>  
**Sent:** Thursday, August 10, 2017 10:07 AM  
**To:** Mark H. Zafrin (NY)

Mark: I have substantially watered down and modified Gerry's language. The below reflects what we agreed to . Please confirm with Gerry and have him do the paperwork to finalize this. If you have any issues with what I did please call me on cell.

You did not send me your daughters singing video. Please do so because I am interested to see her sing at this age. Enjoy the orientation. Life is going by very quickly. I do not even remember those times in my life.

With respect to the Waterview account:

1. Howard Fensterman and Lizer Jozefovic shall be co- signatories to the Waterview account, provided however that Howard Fensterman shall be the sole signatory authorized on any direction for the account to be diminished below 1.6 million dollars. This authority shall be relegated to removal of the funds pursuant to the terms of the lease between HBL SNF, LLC as Tenant And White Plains Healthcare Property I, LLC as Landlord. Lizer and Waterview agree to maintain at least \$1.6 M in account. Howard Fensterman agrees that he shall consent to all sums in excess 1.6 million being withdrawn from the account by the direction of Lizer Jozefovic. The terms of this paragraph shall be incorporated into written agreements, and a resolution and direction to JP Morgan Chase Bank.
2. Waterview and Lizer Jozefovic agree that the foregoing resolution cannot be modified without the consent of Howard Fensterman. The obligation of Waterview and Lizer Jozefovic to comply with the terms of the above resolution shall be secured by a pledge of Lizer Jozefovic's membership interest in Waterview, which he represents is unencumbered, along with a UCC 1 filing on same.

With respect to Mark Neuman Guaranty:

"Per your request the undersigned, the beneficiary of your Guaranty dated as of November 19, 2015 (the "Guaranty"), and landlord under the lease with HBL SNF, LLC of that date (the "Lease"), agrees that it will terminate your Guaranty upon satisfaction of the following conditions:

1. You terminate all of the beneficial interest you may have in HBL SNF, LLC and you do not park your interest in any nominee provided this may only be done after construction of the building;
2. New York State Department of Public Health has removed you from the license once it is issued after the construction of the building which is contemplated to be accomplished within 30 days;
3. The Tenant is otherwise in compliance with the lease.

# EXHIBIT G

**Mark H. Zafrin (NY)**

**From:** Howard Fensterman <HFensterman@Abramslaw.com>  
**Sent:** Wednesday, August 16, 2017 2:32 PM  
**To:** Mark H. Zafrin (NY)  
**Subject:** Re:

Where do I send it?

*Sent from my iPad*

On Aug 16, 2017, at 12:34 PM, Mark H. Zafrin (NY) <mzafrin@mrlip.com> wrote:

Enclosed please find the Chase Certification that we received today; Please note that the Certification requires that the Resolution that we prepared be annexed as an exhibit. What I need from Howard is original signature cards from Howard with wet ink signatures—Lizer should have all of the resolutions and certifications signed this evening.

**Mark H. Zafrin**

Los Angeles | Orange County | San Francisco | Chicago | New York

800 Third Avenue, 24th Floor, New York, NY 10022  
T 212.730.7700 F 212.730.7725  
E [mzafrin@mrlip.com](mailto:mzafrin@mrlip.com) [www.mrlip.com](http://www.mrlip.com)  
Bio vCard

The contents of this e-mail message and its attachments are intended solely for the addressee(s) hereof. In addition, this e-mail transmission may be confidential and it is subject to privilege protecting communications between attorneys or solicitors and their clients. If you are not the named addressee, or if this message has been addressed to you in error, you are directed not to read, disclose, reproduce, distribute, disseminate or otherwise use this transmission. Delivery of this message to any person other than the intended recipient(s) is not intended in any way to waive privilege or confidentiality. If you have received this transmission in error, please alert the sender by reply e-mail and also request that you immediately delete this message and its attachments, if any. UNAUTHORIZED INTERCEPTION PROHIBITED BY FEDERAL LAW (18 U.S.C. 2522).

<doc01180120170816102002.pdf>

**Howard Fensterman, Esq.**

**ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO, FERRARA, WOLF & CARONE, LLP**

**Managing Partner**

Tel: 516-328-2300

Direct: 516-328-3953

Email: [hfensterman@abramslaw.com](mailto:hfensterman@abramslaw.com)



Long Island Office

3 Dakota Drive

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Lake Success, New York 11042

~~Long Island~~  
~~(516) 328-2300~~

~~Manhattan~~  
~~(212) 279-9200~~

~~Brooklyn~~  
~~(718) 215-5300~~

~~Rochester~~  
~~(585) 218-9999~~

**WWW.ABRAMSLAW.COM**

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# EXHIBIT H

**From:** Mark H. Zafrin (NY)

**Sent:** Thursday, August 17, 2017 9:29 AM

**To:** Howard Fensterman <HFensterman@Abramslaw.com>; Gerald Billow <gbillow@PBL.COM>

**Subject:**

Howard I need your signature on the last page

# Limited Liability Company Certification

# Chase Investments

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
Account Maintenance Fax (800) 805-3909

## Account Information

Account Number	0885 (NON MANAGED)	WATERVIEW ACQUISITION I L
Account Description	LTD LIABILITY CO	L.C
Rep of Record	0V01	537 RT 22
Completed By	KENNETH GATES (CHCKG17)	PURDYS NY 10578-2900

## Limited Liability Company Information

Use this form to certify the member/manager(s) authorized to act on an investment account for a Limited Liability Company. A Signatory Information Sheet **MUST BE provided** for all signers.

Limited Liability Company Name  
Waterview Acquisition I LLC

Limited Liability Company Tax ID Number (TIN)  
7872

Limited Liability Company Type  
Member Managed Company

## Member/Manager Information

Member/Manager Name  
Mark Neuman

Member/Manager Name  
Herbert Jozefovic

Member/Manager Name  
Howard Fensterman

Member/Manager Name

## Certification

In consideration of J.P. Morgan Securities LLC ("JPMS") opening and/or maintaining an investment account ("Account") for the Limited Liability Company ("LLC") named above, the undersigned duly authorized to bind the LLC and all of its Members/Managers personally, certify as follows:

**FIRST:** The name of the LLC to which this Certification applies is as indicated above.

**SECOND:** All Members/Managers are over the age of majority in their respective state of residence. Each of the Members/Managers listed above is hereby individually authorized, for and on behalf of the LLC.

**THIRD:** JPMS is authorized to accept orders for trading, purchases and sales of assets and other instructions for the receipt and withdrawal and disposition of assets to any name, including themselves and third parties, whether free or versus payment, or trade or non-trade related (including to any Members/Managers) from those Members/Managers listed above, pursuant to the terms of the LLC and applicable law. The LLC is duly authorized and permitted to engage in cash and margin transactions in any and all forms of securities including, but not limited to, evidences of interest, participation, or indebtedness, instruments of any issuer (whether publicly registered or exempt from registration) including, but not limited to, common or preferred stock, scrip, warrants and rights; bills, notes, bonds or debentures of any coupon, including "zero coupon" or maturity; certificates of deposit, bank notes or deposit notes; commercial paper, money market instruments; listed and/or over-the-counter options, commodities, commodity futures, options on futures (including single stock futures contracts and other securities futures products), transactions in foreign currencies; limited partnership interests and other interests in hedge funds, buyout funds, real estate investment trusts, venture capital funds, private equity funds and private equity investment vehicles; whole mortgage loans, any and all interests and participations in mortgage loans, mortgage-backed and asset backed securities; any kind of derivative investment, including interest rate, currency, credit, equity or other swap transactions; repurchase and reverse\* repurchase transactions, buy/forward sale transactions, dollar rolls, secured lending transactions and any instrument or interest generally regarded as an investment or hedge, secured or unsecured, or any transaction, that is similar to any of those described above (including an option with respect to any of them).

(continued on next page)

**INVESTMENT PRODUCTS ARE:**

**NOT FDIC INSURED • NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES • SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED**



### Certification Regarding Municipal Advisor Rule

**Chase Investments**

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
Account Maintenance Fax (800) 805-3909

Use this form to certify entity status on an investment account.

#### Account Holder Information

Name of Account Owner ("Entity")

Waterview Aquisition LLC

For the purposes of Section 15B of the Securities Exchange Act of 1934 (the "Municipal Advisor Rule"), I hereby represent, warrant, and certify to J.P. Morgan Securities LLC ("JPMS") on behalf of the Entity, each of the following and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue:

- I am a knowledgeable official representative of the Entity, am authorized to sign this certificate, have access to the appropriate information or have direct knowledge of the source of the funds of the Entity that enables me to make these representations; and, if necessary, have consulted with legal counsel, in regard to these representations, warranties and certifications.

#### Certification Regarding Municipal Entity Status (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a **Municipal Entity**  
 The Entity is not a **Municipal Entity**

The term "**Municipal Entity**" means any state, political subdivision of a state, or municipal corporate instrumentality of a state, including: (1) any agency, authority or instrumentality of the state, political subdivision or municipal corporate instrumentality; (2) any plan, program or pool of assets sponsored or established by the state, political subdivision or municipal corporate instrumentality thereof; and (3) any other issuer of municipal securities.

#### Certification Regarding Obligated Entity Status (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a **Obligated Person**  
 The Entity is not a **Obligated Person**

The term "**Obligated Person**" means any person or entity, including an issuer of municipal securities, who is either generally or through an enterprise, fund or account of such person, committed by contract or other arrangement to support the payment of all, or a part of, the obligations on the municipal securities to be sold in an offering of municipal securities, except the term Obligated Person shall not include: (1) a person who provides municipal bond insurance, letters of credit or other liquidity facilities; or (2) a person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility or other credit enhancement.

#### Certification Regarding Proceeds with JPMS (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- Amounts to be invested in accounts established at JPMS for the entity may constitute **Proceeds of Municipal Securities** or **Municipal Escrow Accounts**  
 Amounts to be invested in accounts established at JPMS for the entity may not constitute **Proceeds of Municipal Securities** or **Municipal Escrow Accounts**

The term "**Proceeds of Municipal Securities**" means monies derived by a municipal entity from the primary offering of municipal securities, investment income derived from the investment or reinvestment of such monies, and any monies of a municipal entity or obligated person held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the payment of the debt service on the municipal securities, including reserves, sinking funds and pledged funds created for such purpose, and the investment income derived from the investment or reinvestment of monies in such funds.

The term "**Municipal Escrow Investments**" means proceeds of municipal securities and any other funds of a municipal entity or Obligated Person that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities.

#### Signature

I hereby represent, warrant and certify to JPMS on behalf of the Entity, each of the foregoing and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue.

Authorized Signature

Date (mm/dd/yyyy)

X

Authorized Signer Name (please print)

Mark Neuman

#### INVESTMENT PRODUCTS ARE:

**NOT FDIC INSURED • NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES • SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED**

**Limited Liability Company Certification**

**Chase Investments**

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
 Account Maintenance Fax (800) 805-3909

**Certification (continued)**

A Member/Manager may: (1) give to, and receive from, JPMS or its affiliates oral, written or electronic instructions, confirmations, notices or demands with respect to the account and any transaction; (2) bind the LLC to enter into and perform any transaction or agreement, amendment or modification thereof, relating to the account and any transaction involving the LLC; (3) lend or borrow money or securities and secure the repayment thereof with the property of the LLC; (4) pay in cash or by check or by credit or debit card or draft drawn upon the funds of the LLC any sums required to be paid in connection with the account and any transaction; (5) direct the sale or exercise of any rights with respect to any securities or other property; (6) agree to any terms or conditions or execute or otherwise assent to any document or agreement affecting the account and any transaction; (7) direct JPMS to surrender any securities or other property for the purpose of effecting any exchange or conversion thereof; (8) appoint any other person or persons to do any and all things which such Member/Manager of the LLC is hereby empowered to do; and (9) generally, take all such action as such Member/Manager of the LLC may deem necessary or desirable to implement or facilitate the trading activities described herein. Members/Managers are permitted to sell, assign and endorse for transfer, certificates representing stocks, bonds or other securities now registered or hereafter registered in the name of the LLC. If a Member/Manager is an entity (e.g., Corporation), then the appropriate ancillary documents (e.g., corporate resolution) is required. If the Members/Managers want to authorize a third party to transact on the account, the General Partners must also submit a JPMS Trading Authorization form naming such party. Subject to the policies of JPMS and its affiliates, or in the event JPMS or its affiliates receive conflicting instructions, or reasonably believe instructions from one Member/Manager might conflict with the wishes of another Member/Manager or other authorized third party, JPMS or its affiliates may do any of the following: (a) choose which instructions to follow and which to disregard; (b) suspend all activity in the Account until written instructions, signed by all Members/Managers, are received; (c) close the Account and deliver all securities and other property, net of debits or liabilities, to the address of record; and/or (d) take other legal action.

**FOURTH:** Members/Managers certify that they have the power under the LLC Agreement and applicable law to open and maintain an Account with JPMS and its affiliates (including margin accounts\*) and to enter into transactions, both purchases and sales, of securities and other property for the LLC. Notwithstanding the herein certifications, any person with actual or apparent authority is authorized and empowered by the LLC to undertake any activity. All actions previously taken by any Member/Manager in connection with or related to the matters set forth in, or reasonably contemplated or implied by the herein certifications be, and each of them hereby is, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the LLC.

**FIFTH:** Members/Managers warrant and represent that the information above is accurate and complete. Members/Managers, jointly and severally, agree to indemnify and hold harmless JPMS, its agents, employees, representatives and affiliates, from and against any and all liabilities, judgments, claims, settlements, losses, damages, obligations, and expenses, including reasonable attorney fees, arising from or relating to this Certification and/or for effecting transactions for the Account in reliance thereon. If fewer than all Members/Managers sign, those signing certify that they are authorized to bind the LLC and all Members/Managers thereof to the terms of this Certification. Members/Managers agree to inform JPMS, in writing, of any changes in the identity of the Members/Managers listed above, any other amendments to the LLC and/or any other event that could alter the Certifications made herein including its revocation. Such written notice should be provided to JPMS at the following address: J.P. Morgan Securities LLC, Attention: Account Processing, IL-0291 4th Floor, 131 South Dearborn Street, Chicago, IL 60603-5506 or any other address that has been provided by JPMS specifically for such purpose. JPMS may rely on this Certification indefinitely or until written notice to the contrary is received by JPMS. Members/Managers agree that this release and discharge shall survive the revocation of this Certification with respect to transactions entered into prior to the effectiveness of such revocation.

**\*Additional Documentation Required**

**Member Signature(s)**

Authorized Members

All Members/Managers have signed below

Member Signature <i>X</i> <i>Reed Ayuma</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <i>X</i> <i>[Signature]</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <i>X</i> <i>[Signature]</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <i>X</i>	Date (mm/dd/yyyy) / /

**INVESTMENT PRODUCTS ARE:**  
 NOT FDIC INSURED • NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES • SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED



EXHIBIT A

ACTION OF THE MEMBERS AND MANAGERS

OF

WATERVIEW ACQUISITION I, LLC

AUGUST 11<sup>th</sup> 2017

The undersigned, each being a Member or Manager of WATERVIEW ACQUISITION I, LLC, a New York limited liability company (the "Company"), and collectively constituting all of the Members and Managers of the Company, do each hereby consent to and adopt the following resolutions as resolutions of the Members and Managers of the Company:

AUTHORIZATION

WHEREAS, it is deemed to be in the best interests of the Company and its members and affiliates to enter into an agreement with White Plains Health Care Properties as Developer (the "Developer"), for Developer to design and construct a 160 Bed Residential Health Care Facility in White Plains New York (the Facility).

WHEREAS, Marc Neuman, Lizer Jozefovic and Gerald Neuman and the Company will derive substantial economic benefit by increasing their market share in Westchester County by the construction of the Facility; and

WHEREAS, Waterview Acquisition I, LLC is the owner of that certain account maintained at JP Morgan Account's entitled Waterview Acquisition I, LLC Account Number [REDACTED]7002 and Account Number [REDACTED]0885 (the "Account") in which Marc Neuman and Lizer Jozefovic are the sole signatories;

WHEREAS, in order to achieve the Companies goals set for the above it is in the best interest of the Company and its members to add Howard Fensterman as a signatory to that account and place certain restrictions on withdrawals from the account pending the construction of the Facility

THEREFORE, BE IT RESOLVED, that

1. The Company add Howard Fensterman as a co-signatory to the following account Waterview Acquisition I, LLC Account Number [REDACTED]7002 and Account Number [REDACTED]0885 at JP Morgan Chase together with Marc Neuman and Lizer Jozefovic;
2. Howard Fensterman's signature shall be required on any withdrawal or any direction to the Bank on the account where such withdrawal or direction shall cause the balance and value of the account to fall below 1.6 million dollars until such

time as the Facility is completed and an affiliated entity HBL-SNF satisfies its obligation to post a 1.6 million dollar additional cash security deposit according to Section 7.1(a)(iii) of the lease between HBL SNF, LLC as Tenant And White Plains Healthcare Property I, LLC as Landlord which requires Sixty days prior to the anticipated Commencement Date that the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account,

3. Howard Fensterman's signature shall be required to withdraw all sums in the account in excess of 1.6 million at the direction of Lizer Jozefovic or Marc Neuman and by his signature below agrees to give such consent unless such withdrawal shall cause the balance in the account to fall below 1.6 Million dollars.

RESOLVED FURTHER, that the managers of the Company designated by any of them (such manager or managers, which are authorized to act singly or together pursuant hereto, being hereinafter designated as "authorized managers"), be and they are each hereby authorized, directed and empowered, in the name of the Company, to execute and deliver to JP Morgan Bank and all , agreements or instruments including this Resolution to JP Morgan Bank required to evidence and effectuate the terms of this Resolution which shall be incorporated into a formal resolution and direction to JP Morgan Chase Bank, N.A. evidencing the agreements memorialized by this Resolution.

RESOLVED FURTHER, that any and all acts of any of the authorized managers of the Company done or made heretofore in connection with the actions authorized by this Resolution and the execution of all agreements related thereto, are hereby ratified and approved in all respects.

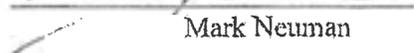
RESOLVED FURTHER, that JP Mortgage Bank may conclusively rely upon a copy of these resolutions and is authorized to act upon these resolutions for past, present and future transactions until (a) written notice of its revocation is delivered JP Morgan Bank. The authority hereby granted shall apply with equal force and effect to the successors in office of the managers herein named.

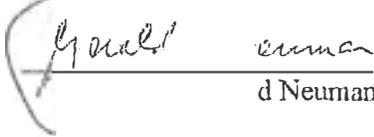
[SIGNATURE PAGE FOLLOWS]

The foregoing action is taken pursuant to the applicable New York limited liability company statutory laws and the operating agreement of the Company, by the written consent of a majority of its members and managers of the Company acting without a meeting.

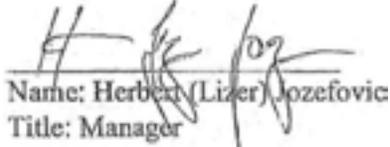
MEMBERS:

  
 Lizer Jozefovic

  
 Mark Neuman

  
 Gerald Neuman

MANAGERS:

  
 Name: Herbert (Lizer) Jozefovic  
 Title: Manager

AUTHORIZED SIGNATORY

\_\_\_\_\_  
 Howard Fensterman

**Limited Liability Company Certification**

**Chase Investments**

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
 Account Maintenance Fax (800) 805-3909

**Certification (continued)**

A Member/Manager may: (1) give to, and receive from, JPMS or its affiliates oral, written or electronic instructions, confirmations, notices or demands with respect to the account and any transaction; (2) bind the LLC to enter into and perform any transaction or agreement, amendment or modification thereof, relating to the account and any transaction involving the LLC; (3) lend or borrow money or securities and secure the repayment thereof with the property of the LLC; (4) pay in cash, by check or by credit or debit card or draft drawn upon the funds of the LLC any sums required to be paid in connection with the account and any transaction; (5) direct the sale or exercise of any rights with respect to any securities or other property; (6) agree to any terms or conditions or execute or otherwise assent to any document or agreement affecting the account and any transaction; (7) direct JPMS to surrender any securities or other property for the purpose of effecting any exchange or conversion thereof; (8) appoint any other person or persons to do any and all things which such Member/Manager of the LLC is hereby empowered to do; and (9) generally, take all such action as such Member/Manager of the LLC may deem necessary or desirable to implement or facilitate the trading activities described herein. Members/Managers are permitted to sell, assign and endorse for transfer, certificates representing stocks, bonds or other securities now registered or hereafter registered in the name of the LLC. If a Member/Manager is an entity (e.g., Corporation), then the appropriate ancillary documents (e.g., corporate resolution) is required. If the Members/Managers want to authorize a third party to transact on the account, the General Partners must also submit a JPMS Trading Authorization form naming such party. Subject to the policies of JPMS and its affiliates, or in the event JPMS or its affiliates receive conflicting instructions, or reasonably believe instructions from one Member/Manager might conflict with the wishes of another Member/Manager or other authorized third party, JPMS or its affiliates may do any of the following: (a) choose which instructions to follow and which to disregard; (b) suspend all activity in the Account until written instructions, signed by all Members/Managers, are received; (c) close the Account and deliver all securities and other property, net of debts or liabilities, to the address of record; and/or (d) take other legal action.

**FOURTH:** Members/Managers certify that they have the power under the LLC Agreement and applicable law to open and maintain an Account with JPMS and its affiliates (including margin accounts\*) and to enter into transactions, both purchases and sales, of securities and other property for the LLC. Notwithstanding the herein certifications, any person with actual or apparent authority is authorized and empowered by the LLC to undertake any activity. All actions previously taken by any Member/Manager in connection with or related to the matters set forth in, or reasonably contemplated or implied by the herein certification is, and each of them hereby is, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the LLC.

**FIFTH:** Members/Managers warrant and represent that the information above is accurate and complete. Members/Managers, jointly and severally, agree to indemnify and hold harmless JPMS, its agents, employees, representatives and affiliates, from and against any and all liabilities, judgments, claims, settlements, losses, damages, obligations, and expenses, including reasonable attorney fees, arising from or relating to this Certification and/or for effecting transactions for the Account in reliance thereon. If fewer than all Members/Managers sign, those signing certify that they are authorized to bind the LLC and all Members/Managers thereof to the terms of this Certification. Members/Managers agree to inform JPMS, in writing, of any changes in the identity of the Members/Managers listed above, any other amendments to the LLC and/or any other event that could alter the Certifications made herein including its revocation. Such written notice should be provided to JPMS at the following address: J.P. Morgan Securities LLC, Attention: Account Processing, IL-0291 4th Floor, 131 South Dearborn Street, Chicago, IL 60603-5506 or any other address that has been provided by JPMS specifically for such purpose. JPMS may rely on this Certification indefinitely or until written notice to the contrary is received by JPMS. Members/Managers agree that this release and discharge shall survive the revocation of this Certification with respect to transactions entered into prior to the effectiveness of such revocation.

\*Additional Documentation Required

**Member Signature(s)**

Authorized Members

All Members/Managers have signed below

Member Signature <b>X</b>	Date (mm/dd/yyyy) / /

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### Certification Regarding Municipal Advisor Rule

### Chase Investments

A Division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
Account Maintenance Fax (800) 805-3909

Use this form to certify entity status on an investment account.

#### Account Holder Information

Name of Account Owner ("Entity")

Waterview Aquisition LLC

For the purposes of Section 15B of the Securities Exchange Act of 1934 (the "Municipal Advisor Rule"), I hereby represent, warrant and certify to J.P. Morgan Securities LLC ("JPMS") on behalf of the Entity, each of the following and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue:

I am a knowledgeable official representative of the Entity, am authorized to sign this certificate, have access to the appropriate information or have direct knowledge of the source of the funds of the Entity that enables me to make these representations; and, if necessary, have consulted with legal counsel, in regard to these representations, warranties and certifications.

#### Certification Regarding Municipal Entity Status (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a Municipal Entity
- The Entity is not a Municipal Entity

The term "Municipal Entity" means any state, political subdivision of a state, or municipal corporate instrumentality of a state, including: (1) any agency, authority or instrumentality of the state, political subdivision or municipal corporate instrumentality; (2) any plan, program or pool of assets sponsored or established by the state, political subdivision or municipal corporate instrumentality thereof; and (3) any other issuer of municipal securities.

#### Certification Regarding Obligated Entity Status (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a Obligated Person
- The Entity is not a Obligated Person

The term "Obligated Person" means any person or entity, including an issuer of municipal securities, who is either generally or through an enterprise, fund or account of such person, committed by contract or other arrangement to support the payment of all, or a part of, the obligations on the municipal securities to be sold in an offering of municipal securities, except the term Obligated Person shall not include: (1) a person who provides municipal bond insurance, letters of credit or other liquidity facilities; or (2) a person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility or other credit enhancement.

#### Certification Regarding Proceeds with JPMS (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- Amounts to be invested in accounts established at JPMS for the entity may constitute Proceeds of Municipal Securities or Municipal Escrow Accounts
- Amounts to be invested in accounts established at JPMS for the entity may not constitute Proceeds of Municipal Securities or Municipal Escrow Accounts

The term "Proceeds of Municipal Securities" means monies derived by a municipal entity from the primary offering of municipal securities, investment income derived from the investment or reinvestment of such monies, and any monies of a municipal entity or obligated person held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the payment of the debt service on the municipal securities, including reserves, sinking funds and pledged funds created for such purpose, and the investment income derived from the investment or reinvestment of monies in such funds.

The term "Municipal Escrow Investments" means proceeds of municipal securities and any other funds of a municipal entity or Obligated Person that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities.

#### Signature

I hereby represent, warrant and certify to JPMS on behalf of the Entity, each of the foregoing and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue.

Authorized Signature	Date (mm/dd/yyyy)
X	/ /
Authorized Signer Name (please print)	
Mark Neuman	

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# EXHIBIT I

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**HBL-SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520**

November 20, 2019

White Plains Healthcare Properties, I, LL  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William Nicholson

**Re: Letter of Intent  
Premises: 116-120 Church Street  
White Plains, New York**

Dear Mr. Nicholson

This Letter of Intent ("LOI") outlines our proposal for White Plains Health Care Properties, I, LLC (the "Contributor") to transfer the premises known as 116-120 Church Street, White Plains New York (the "Premises") to a Delaware Statutory Trust where we would jointly hold the beneficial interests in the Trust on the terms and conditions set forth below. The Building a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Facility") had been constructed pursuant to a Development Agreement dated November 19<sup>th</sup>, 2015 and for which we had simultaneously entered into that certain operating lease by and between you as Landlord and us as Tenant/Operator, (the "Lease").

- 1) **Basic Transaction:** (the "Transaction"): Contributor shall contribute premises 116-120 Church Street White Plains, New York to a newly formed Delaware Statutory Trust (the "Trust") formed by the parties. This transaction shall be memorialized by a contribution agreement in substantially the form annexed hereto as Exhibit A. The Contribution shall be governed by IRC Sec. 721. The agreed upon cost and fair market basis shall be \$67,345,348.00
  - a) Lizer Jozefovic and Mark Neuman will acquire from the Trust by a Purchase Agreement 77.50 Percent of the Beneficial Interests in the Trust and redemption of a portion of the Beneficiaries' interest for a purchase price of \$52,200,000.00 paid as follows:
    - i) By a down payment (the "Down Payment") not to be held in escrow, but to be made upon the execution and delivery of this LOI of \$2,200,000.00 by wire transfer to the account of White Plains Healthcare Properties I, LLC according to the wire instructions annexed hereto.
    - ii) By the Trust obtaining a new first mortgage of \$51,000,000.00 to pay the balance of the Purchase Price and cover closing costs to be used as follows;

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- (1) To pay the first Mortgage held by Security Benefit Life Insurance in the approximate amount of \$39,226,253 plus accrued interest and fees.
  - (2) To pay the loan encumbering the membership interests of the Contributors by Bradford Allen in the approximate amount of \$9,770,963 plus accrued interest and fees;
  - (3) By the Trust making a non-refundable down payment of \$2,200,000.00
  - (4) To pay the costs of the financing.
- b) Lizer Jozefovic and Mark Neuman shall be the A Beneficiaries of the trust holding a 77.50% Beneficial interest, and the present members of the Contributor or their designees shall be the B Beneficiary with a 22.5% equity position.
  - c) The A Beneficiaries shall be the personal guarantors of the new financing in the amount of Fifty-One Million (\$51,000,000.00) Dollars. The Transaction is to close thirty (30) days after Buyer has received approval for the Financing set forth in paragraph 1)a) ii)). The Contribution Agreement shall call for a purchase price equal to Transferors cash basis in the property and shall not result in a taxable event for Contributor;
  - d) The Financing shall be an obligation of the Trust secured by a first mortgage loan on the Facility and the Premises.
  - e) Lizer Jozefovic and Mark Neuman shall act as the Personal Guarantors and shall be obligated if necessary, to secure additional personal guarantors to ensure that none of the B beneficiaries shall have any obligation to guarantee the Financing. Any additional guarantors on the Financing shall also execute and deliver a personal guaranty of Tenant's obligations to Landlord on the Lease. All guaranties on the Lease shall be full unlimited personal guarantees.
  - f) The Financing shall bear interest at a constant rate of no more than 7% per annum with Principal and Interest paid on an amortization schedule of 35 years and shall be subject to the reasonable approval of the Contributor, which consent shall not be unreasonably withheld or delivered without cost to the Tenant Borrower.
  - g) Formal Contracts: The Parties intend that additional agreements including the Contribution Agreement, Redemption Agreement and Trust Agreement (the Formal Contracts") shall be complete as of November 22nd, 2019, and absent execution of Formal Contracts this LOI shall govern provided the Down Payment is received in good funds by Contributor upon execution of this LOI, and in no event latter than the end of business November 22, 2019. In the event Tenant defaults in the payment of rent on the Lease and such default continues for five (5) days, Contributor shall have the right to terminate this LOI and all Formal Contracts.
  - h) Closing: The Closing of the Transaction ("Closing") will occur at the offices of the First Mortgagee Bank's counsel or such other location within the State of New York as may be agreed upon by the Parties thirty (30) days after receipt by the Trust of approval for

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the Financing but no later than April 1st, 2020. If the Tenant has a commitment letter on April 1<sup>st</sup>, 2020 that is in the process of closing or if the closing is delayed by a title issue, the closing date shall be automatically extended for another Ninety-Days. If the closing does not occur by such date, time being of the essence, this LOI and the Formal Contracts shall be terminated and no party shall have any rights with respect thereto. The parties shall remain as Landlord and Tenant pursuant to the existing Lease until such time as the Transaction closes. The Lease may be amended as provided herein but only if and when such amendments are approved by Contributor's existing Lender.

2) **Structure of the Trust:** The Contributor and Tenant have agreed to create a Trust as a "statutory trust" in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. 3801 and enter into a Trust Agreement which shall constitute the "governing instrument" of the Trust. Each party will become a Beneficiary and will transfer certain sums of money and/or property to the Trust in exchange for a beneficial interest in the Trust as set forth above;

a) The Trust shall be a special purpose entity which is being formed solely for the purpose of acquiring the Trust Property from the Contributor and maintaining, improving, building upon, and leasing the Trust Property for use as a skilled nursing facility and all and such other activities incident or appropriate to the preceding

b) Simultaneously upon the closing of the transaction, the existing lease shall be modified only as set forth herein.

c) The trust shall be permitted to have only the following liens on the Trust Property and no other:

i) A Mortgage in the amount of Fifty-One Million (\$51,000,000.00) Dollars (the "First Mortgage") the terms of which shall be acceptable to the Department of Health and the Contributor.

ii) The Trust will designate Howard Fensterman and William Nicholson as the Administrative Trustees of the B interests.

(1) The Trust Agreement shall provide that Howard Fensterman and William Nicholson as the B beneficiaries Administrative Trustees shall have the sole authority to all issues governing administering and enforcing the terms of the Lease including the collection and distribution of rent.

(2) Lizer Jozefovic shall be responsible as the overall Administrative Trustee for all other matters concerning the building including but not limited to repairs, maintenance, and operation of the building. Any Trustee may be removed for cause including misconduct, bad faith, fraud or gross negligence.

(3) Except as otherwise provided in a Trust Agreement to be executed and notwithstanding any provision of the Act that otherwise so empowers the Trust, neither the Beneficiaries nor any Trustees nor any other Person shall be authorized or empowered, nor shall they permit the Trust, to take any of the following actions

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without the prior unanimous written consent of all of the Beneficiaries:

- (a) Make any arrangements to reduce, modify, or forebear on the payment of rent by the Tenant.
- (b) Guarantee any obligation of any Person, including any Affiliate;
- (c) engage, directly or indirectly, in any business other than the actions required or permitted to be performed hereunder;
- (d) incur, create or assume any indebtedness;
- (e) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person;
- (f) To the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of their Interests subject to obtaining any approvals required under this Trust Agreement other than a sale of the interests to qualified purchasers under a syndicated offering of the B interests. The cost of such syndication shall not be charged to the B Beneficiaries and all monies derived therefrom and due hereunder shall be net of the costs of the syndication.
- (g) allow any business to be conducted on the Property other than the operation of a skilled nursing facility and ancillary uses;
- (h) own any other property or engage in any business other than owning and leasing the Trust Property for use as a skilled nursing facility;
- (i) take any action to consolidate or merge the Trust with or into any Person;
- (j) sell all or any portion of or any interest in the Trust Property;
- (k) grant an option to lease all or any portion of the Trust Property for a term (with all extension periods) ending on or after the 45th Anniversary Date;
- (l) amend, terminate or waive any material provisions of any lease for all or any portion of the Trust Property;
- (m) enter into any agreement with any Person giving any Person any rights with respect to the Trust Property that extend beyond the 45th Anniversary Date or which are not terminable without penalty on less than 90 days' notice;
- (n) encumber the Trust Property with any mortgages or another lien, easement, covenant or restriction other than the First Mortgage, or a HUD Mortgage to refinance the debt contemplated by this Agreement, at such time as HUD regulations shall allow;
- (o) modify the Trust Agreement or the Trust's certificate of trust in any manner, issue additional Interests in the Trust to any Person, or modify the rights and privileges of the Interest owners;
- (p) institute proceedings to have the Trust be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Trust or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequester (or other similar official) of the Trust or a substantial part of its property;
- (q) make any assignment for the benefit of creditors of the Trust;

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- (r) admit in writing the Trust's inability to pay its debts generally as they become due;
  - (s) take action in furtherance of any of the foregoing actions; or dissolve or liquidate the Trust.
- iii) The 22.5% of the Trust Owned by the B Beneficiaries interest shall be subject to a Redemption Agreement where the B interests shall be sold to the A interests or their designees, assigns or transferees, over five years for a total price of \$19,800,000.00 in four tranches each representing interests of 5.625% each
- (1) Tranche one on or before August 1, 2020 in the amount of \$3,786,250.00
  - (2) Tranche two on or before August 1, 2021 in the amount of \$3,786,250.00
  - (3) Tranche three on or before August 1, 2022 in the amount of \$3,786,250.00
  - (4) Final Tranche by August 1, 2023 in the amount of \$8,441,250
- iv) Any purchase of the membership interests shall be a purchase of Beneficial Interests from the B Beneficiaries and shall reduce the Priority Return proportionate to the payments as a percentage of the total remaining price of \$19,800,000, which is the balance after payment of the non-refundable Down Payment.
- v) The A Beneficiaries shall prepare at their sole cost and expense of the A Beneficiaries a Private Placement Memorandum for the Sale of Membership interests in the Trust by a Broker Dealer who specializes in sales of marginal interests in Delaware Statutory Trusts to individuals and other entities who have to designate property as target property in connection with 1031 Exchanges of Property. The A Beneficiaries shall have the right to designate a portion of their membership interests as C interests for the purpose of selling them as part of the same syndication, provided that (1) there is no change in control of the A Beneficiaries or the Tenant entity.
- vi) The B Beneficiaries will be entitled to a priority return ( the "Priority Return") equal to all available rental and other income over and above the payment of the P&I on the New First Mortgage which shall in no event be less than \$2,000,000 per year (as adjusted by periodic redemptions) and shall be paid to the B Beneficiaries as a Priority Return until such time as they have been fully redeemed pursuant to the Redemption Agreement.
- vii) The Trustee shall deposit all rents and other funds collected from the operation of the Real Estate in the bank designated by the first mortgagee (the "Operating Account") which shall be subject to both a Deposit Account Control Agreement and Deposit Account Instruction Agreement. The Trust shall maintain books and records of the funds from the Real Estate deposited in such account, interest earned thereon, and withdrawals therefrom. The Trustee shall pay from the Operating Account the operating expenses of the Real Estate (other than those paid by a tenant of the Real Estate as set forth in its lease) and any other payments relative to the Real Estate as required by this the Trust Agreement.

- viii) The Trustee shall be responsible for receiving all cash from the Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust Agreement. The Trustees shall furnish quarterly and annual reports to each of the Beneficiaries as to the amounts of rent received from the Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficiaries.
  - ix) To the extent permitted by the Internal Revenue Code depreciation, which shall be calculated on a straight-line depreciation method shall be allocated as follows: a) first to the B Beneficiary to the extent necessary to shelter the Priority return from taxes and b) second to the beneficiaries, pro rata, in accordance with the ownership interests.
- 3) **Condition of Property and Title:** Contributor shall give, and the Trust and the Trust shall accept, a good and marketable title which any National Title Insurance Company (the "Title Company"), will approve and insure at standard rates, free and clear of all liens, hypothecations, mortgages, easements, and encumbrances, except for the Permitted Exceptions.
- i) The Premises is being contributed subject to the following exceptions to the title (the "Permitted Exceptions"):
    - (1) Zoning and building regulations, restrictions and ordinances now or hereafter adopted or imposed by any governmental or quasi-governmental body having or asserting jurisdiction over the Premises or any part thereof;
    - (2) Future Real Estate taxes, assessments, water charges, sewer rents or other charges not yet due and payable (subject to apportionment as provided herein) and certified, confirmed or ratified assessment liens and pending assessments, if any;
    - (3) The state of facts shown on an updated as built survey prepared originally prepared and revised to be an as built survey, (the "Survey") and such additional state of facts which said survey would show or reveal provided such additional state of facts do not render title unmarketable;
    - (4) Any state of facts a physical inspection of the Premises would reveal;
    - (5) Exceptions permitted by the Title Company (as defined herein) (the "Title Exceptions");
  - 4) All payments made to purchase any portion of the B Beneficiaries 22.5% interest shall also act to proportionally reduce the amount of Priority Return paid to the B beneficiaries under the Trust and the proportionate difference shall be paid to the A Beneficiaries or whoever purchases the B Beneficiaries interests as the case may be.,
    - a) Distributions: Provided that all required payments set forth herein have been made by the Tenant, During the interim period prior to the purchase of the premises Tenant may pay Management Fees so long as (i) the amount of such Management Fees paid in any twelve-month period shall not exceed five percent (5%) of Tenants' gross revenues for such period

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and (ii) there shall not then exist, and/or the paying of such Management Fees shall not cause there to exist, a Default or Event of Default under the Lease the first mortgage on the property or the Tenant's Working Capital Loans, (iii) the Initial Payment, the payment of Rent, and all other payments set forth herein have been made by the Buyer/Tenant. Upon the occurrence of an Event of Default, Tenant shall not pay Management Fees. The Tenant will make no distributions to its shareholders, officers, affiliates, or any related party unless the Down Payment, the payment of Rent is current, and.

- 5) **Confidentiality and Disclosure:** Tenant and Contributor shall each maintain the confidentiality of all confidential and non-public information supplied by the other. If this Transaction is not consummated, each party shall return all documents obtained to the other. Except as required by law, without the prior written consent of the other party, neither Tenant nor Contributor will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this Letter of Intent. If a party is required by law to make any such disclosure, the parties shall consult with each other and seek to agree upon appropriate language for such disclosure. The Tenant acknowledges that Contributor will be unable to furnish any patient health information unless such disclosure complies specifically and completely with all terms, conditions, regulations, and guidelines in HIPAA.
  
- 6) **Interim Operation:** Subject to the approval in writing of Contributor's existing Lender, the parties will enter into an amendment of the Lease as follows to allow for the operation of the facility before the closing.
  - a) **Commencement Date:**The Commencement Date according to the Lease shall be September 30, 2019.
  
  - b) **Rent:** An initial rent payment of \$509,000.00 has been paid receipt of which is on account toward the rental period from September 30, 2019 to October 31, 2019 (the "October 2019 Rent") leaving a balance of \$13,735 for October 2019 Rent. November 1, 2019, to November 30, 2019 (the "November 2019 Rent") shall be postponed until November 18, 2019 and shall be paid by Tenant on that date. The next rental payment shall be the December monthly rent amount outlined in the Lease - \$506,097 which shall be paid on December 5, 2019. Also, the Tenant will reimburse the Landlord for their municipal maintenance escrow and utility deposits of \$5,500 and \$60,356, respectively. Such reimbursement payment shall be made on or before December 5<sup>th</sup>, 2019. Upon receipt of the \$60,356 for the utility deposits from the Tenant, Landlord will direct any refund from the Utility companies to the Tenant, or otherwise pay such refund over to the Tenant forthwith provided Landlord has previously received those funds from the Tenant.
  
  - i) The following amounts are in dispute, and neither party will be obligated to waive their rights and positions by the signing of this agreement. The landlord has demanded the following sums due to their Lender.

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- (1) Late and Default Interest costs of \$201,997.34 for September 2019 and October 2019,
- (2) \$19,000 of Late Fees for November 2019,
- (3) \$5,061 per day for Default Interest premium during November 2019.
- ii) The A Beneficiaries and the B Beneficiaries shall jointly negotiate with the Contributor's current Lenders to effectuate the best possible settlement of these late costs ( the "Late Costs"). The amounts if any remaining after such joint negotiation will be paid by the 77.5% by the Buyer and 22.5% by the Contributor (provided the Initial Payment, the payment of Rent and all other payments set forth herein are made timely) from Financing proceeds. If not available from the Financing proceeds the Tenant shall pay all Late Costs. .
- c) Security Deposit/ Guaranty: Section 7.1(a)(i) the Lease shall be amended to provide that Tenant shall enter into a Deposit Account Control Agreement with Metropolitan National Bank which can only be revoked with the consent of both parties, which shall provide that each month, the Tenant's Lender shall draw on the loan amount first to pay rent to the Landlord, notwithstanding the adequacy of any accounts receivable borrowing base calculations. This Document shall be part of the Closing Documents on the Tenant's first initial Term Loan and shall be delivered in full effect by December 1, 2019.
- d) Section 7.1(a)(ii) of the Lease shall be amended to provide that the obligation for the Security Deposit shall initially be reduced to 2,000,000 dollars.
  - i) The sum shall be paid by Tenant as follows: (a) Provided that the Contributor has obtained a permanent Certificate of Occupancy the Tenant shall draw the initial \$1,000,00.00 from its credit line on or no later than December 1, 2019. (b) Landlord shall obtain a release of the lien of its Lender on the FF&E, upon delivery of free and clear title to the FF&E the Tenant will enter into a reverse lease and obtain at least \$1,000,000.00 which shall be paid on account of the Security Deposit no later than April 1, 2020.
  - ii) Also, Tenant shall pay the sum of \$40,000 per month commencing January 1, 2020 to be treated as additional rent until there is a total \$3,700,000 posted as Security Deposit under 7.1(a)(i).
- e) Section 7.1(a)(iii) of the Lease shall be amended to provide that instead of delivering the sum of \$1,600,000 in cash, the parties shall enter into a blocked account agreement wherein and whereby account number 3379737272 in JP Morgan Chase Bank NA prohibiting any liquidation of that account until the Second Payment is paid. Such account shall be not be posted as collateral security to Landlord's Lender provided the Initial Payment has been made in full, and all payments of Rent are current and the Tenant is not otherwise in Default, except that the Landlord shall have a security interest in such account under a DAISA, which allows the Landlord to demand the liquidation of such account to pay any defaults under the lease.

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- f) **Working Capital:** Section 7.7 of the Lease shall be amended to suspend the requirement for providing the working capital account. The Tenant shall be obtaining a single working capital line for \$8,000,000.00 no later than December 1, 2019.
- g) **Right of First Refusal and Option to Purchase:** The Tenant's rights with respect to the right of first refusal and option to purchase under Sections 3.7 and 3.7 of the Lease will be suspended pending payment in full of the Security Deposits required by Section 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) of the Lease as amended, the payment of the Initial Payment, the working capital required by Section 7.7 of the Lease and Tenant being in full compliance with the Lease.
- h) **Insurance:** Tenant shall obtain property insurance, effective as of September 30, 2019, and (2) provide the property insurance, and all other insurances required by the Lease by November 19, 2019, effective retroactively back to September 30, 2019.
- i) **Real Estate Taxes:** Real estate taxes shall be prorated as of September 30, 2019 and the Tenant's portion shall be paid to the Landlord no later than December 1, 2019, plus any late charges which the City of White Plains may impose.
- j) **Utilities:** Tenant shall pay actual costs of utilities incurred at the property covering the rental period from September 30, 2019 (pro-rated as the utility company billing periods may require) forthwith upon presentation of invoices for the same from the Landlord, no later than December 1, 2019.
- k) **Punchlist:** The punch list and all other developer obligations are deemed complete except for.
- i) The White Plains Outstanding Punchlist November 5, 2019 (the Remaining Punchlist), the value of which is has been determined by the Architect and agreed herein to be \$3,800.
- ii) The Electric Blinds in rooms (the "Suspended Work") the value of which is agreed herein to be \$35,000.
- iii) Provided the Initial Payment is made by November 15, 2019 and provided there are no other Defaults by the Tenant, Landlord shall complete the Remaining Punchlist and the Suspended Work to the approval of the Architect, within 45 days from the date of the Contributor's receipt of the Initial Payment. Should Landlord not do so, then the Tenant may credit the agreed values of any uncompleted Punchlist or Suspended Work from the February, 2020 Rent payment, and the Landlord's Work under the Lease and Development Agreement shall be deemed complete.

**Security:** Tenant shall assume all property security obligations as of November 11, 2019.

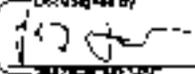
Upon the closing of the purchase of the premises by the Trust, the Trust shall take an assignment of the lease as amended above.

- 7) **Exclusivity:** In consideration of (1) the Initial Payment, (2) the payment of Rent as set forth herein, and (3) Tenant's efforts in pursuing the Transaction, Contributor agrees that (1) until the termination of this Letter of Intent, or execution of the Formal Contracts and (2) provided the payment of the Initial Payment and the payment of Rent as set forth herein is made, and (3) all other obligations of the Tenant set forth herein,, Contributor will not permit any of its affiliates to, and will not authorize or permit any officer, director, employee, counsel, agent, investment banker, accountant, or other representative of any of them, directly or indirectly, to: (a) initiate contact with any person in an effort to solicit any proposal (other than that contemplated by this Letter of Intent for the acquisition (directly or indirectly , by sale of stock or assets, or by merger or consolidation or otherwise) of the operation of the Real Estate, or any of the Assets, or any other business combination or financing transaction involving such business (a "Proposal"); (b) cooperate with, or furnish or cause to be furnished any non-public information concerning the operation of the Real Estate, to, any person in connection with any Proposal; (c) negotiate or enter into discussions with any person with respect to any Proposal; or (d) enter into any agreements or understanding with the intent to effect a Proposal. Contributor will immediately give written notice to Tenant of the details of any Proposal of which Contributor becomes aware. Contributor will, and will cause its officers, directors, affiliates, agents, and representative to, terminate all discussions regarding a Proposal, other than those with Tenant and its representatives concerning the Transaction, and represents that neither it nor any of its officers, directors, affiliates, agents, or representatives have entered into any executory agreements or accepted any commitments concerning any Proposal other than the Transaction provided that (1) this LOI or successor Formal Contracts has not terminated, and (2) the payment of the Initial Payment, the payment of Rent as set forth herein have all been paid and are current, and (3) all other obligations of the Tenant set forth herein are not in Default and are current.
- 8) **Waiver of Claims:** Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the Lease, (3) any claims related to the Cost Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.
- 9) **Expenses:** Tenant and Contributor shall each be responsible for their respective accounting, legal, advisory, and other costs and expenses in connection with the Transaction. Tenant shall reimburse Contributor for its legal, advisory and other costs and expenses in connection with the Transaction and the Termination of the Lease. Reimbursement for such legal and transaction fees shall not to exceed \$125,000 and may be made from the proceeds of the Closing, provided the Closing occurs and the Contributor's existing 1<sup>st</sup> Mortgage Loan and Mezzanine Loan are paid off from the proceeds of the Financing by March 31, 2020, and (2) the Initial Payment is made as set forth herein above, and (3) the Tenant is not in default under this LOI or the successor Formal Contracts. Otherwise the \$125,000 cap shall expire and the Tenant shall pay the Contributor all such costs incurred after September 30, 2019.

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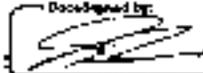
- 10) **Letter of Intent:** This LOI represents a statement of all of the terms, conditions, representations, warranties, indemnities, covenants, and other provisions that would be contained in the definitive documentation for the proposed transactions. This LOI shall constitute a binding agreement upon payment of the or any of their respective affiliates will have any legal obligation under this LOI unless and until one or more subsequent definitive written agreements are mutually executed and delivered by each of Contributor and Buyer. No past, present, or future action, course of conduct, or failure to act relating to the transactions referenced in this LOI or relating to the negotiation of the terms of such transactions will give rise to or serve as the basis for any obligation or other liability on the part of Contributor or Buyer or any of their respective affiliates. [ These changes should be rejected]
  
- 11) **Governing Law:** This Agreement shall be governed by and construed by the internal laws of the State of New York, Venue shall be in Westchester County without application of its conflicts of law rules. If you agree with the preceding, please sign and return one copy of this Letter of Intent.

HBL-SNF, LLC

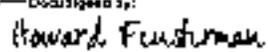
DocuSigned by:  
  
 Lizer Jozelovic

ACKNOWLEDGED AND AGREED

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Name: William A. Nicholson  
 Title: Manager

Accepted and Agreed

DocuSigned by:  
  
 \_\_\_\_\_  
 Howard Feusterman

# EXHIBIT J

# Exhibit Q

## To Nicholson Aff.



One Security Benefit Place  
Topeka, Kansas 66636  
SecurityBenefit.com

April 16, 2020

**VIA FEDEX DELIVERY and EMAIL [wnicholson@congressconstruction.com](mailto:wnicholson@congressconstruction.com)**

White Plains Healthcare Properties I, LLC  
West Peabody Executive Center, Ste. 200  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William A. Nicholson

Re: Construction loan (the "Loan") evidenced by that certain Promissory Note dated August 18, 2017 (the "Note") in the original aggregate principal amount of \$38,500,000.00 made by White Plains Healthcare Properties I, LLC ("Borrower") to the order of Security Benefit Life Insurance Company ("Lender")

Dear Mr. Nicholson:

Reference is made to the Note and to the Loan Agreement dated August 18, 2017 by and between Borrower and Lender (the "Loan Agreement").

Borrower executed and delivered the Note to Lender. The Note evidences the obligation of Borrower to pay the Loan, including without limitation, the principal amount of the Note and all interest which accrued on the Note.

**Borrower has failed to make, or cause to be made, the monthly payment of interest due under the Note and under Section 2.12 of the Loan Agreement on April 1, 2020, which failure constitutes an Event of Default under the Loan Agreement Section 5.1 (a) (Events of Default). In accordance with the terms and conditions of the Loan Agreement, for so long as any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by applicable law, overdue interest in respect of the Loan, shall each accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained in the Loan Agreement.**

**In addition, pursuant to Section 2.8 of the Loan Agreement, a late charge will be assessed.**

**Finally, despite repeated requests, Borrower has failed to establish the Cash Management Account as required under Section 8.1 of the Loan Agreement.**

Security Benefit Life Insurance Company

White Plains Healthcare Properties I, LLC  
Attn: William A. Nicholson  
April 16, 2020  
Page Two

The foregoing does not constitute a waiver of any term, provision, condition, covenant or agreement contained in any of the Loan Documents (as defined in the Loan Agreement) or any instrument or agreement evidencing, related to or securing the Note, nor shall it (i) operate as a waiver of any right, remedy, power or privilege thereunder, (ii) prejudice or preclude any other further exercise thereof or the exercise of any right or remedy provided by law or in equity, (iii) entitle Borrower to any other or further notice or demand whatsoever or (iv) in any way modify, change impair, affect, diminish or release any liability of Borrower under or pursuant to any of the Loan Documents.

Please contact Douglas Schneider (785-438-1642) with any questions regarding the content of this letter, or have your counsel contact me directly.

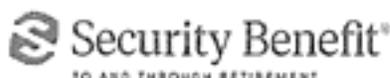
Very truly yours,  
Security Benefit Life Insurance Company

By   
Douglas Schneider  
Investment Analyst

Douglas Schneider (via email - douglas.schneider@securitybenefit.com)

# Exhibit R

## To Nicholson Aff.



One Security Benefit Place  
Topeka, Kansas 66635  
SecurityBenefit.com

May 22, 2020

**VIA FEDEX DELIVERY and**  
**EMAIL [wnicholson@congressconstruction.com](mailto:wnicholson@congressconstruction.com)**

White Plains Healthcare Properties I, LLC  
West Peabody Executive Center, Ste. 200  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William A. Nicholson

Re: **Notice of Default** - Construction loan (the "Loan") evidenced by that certain Promissory Note dated August 18, 2017 (the "Note") in the original aggregate principal amount of \$38,500,000.00 made by White Plains Healthcare Properties I, LLC ("Borrower") to the order of Security Benefit Life Insurance Company ("Lender")

Dear Mr. Nicholson:

Reference is made to the Note and to the Loan Agreement dated August 18, 2017 by and between Borrower and Lender (the "Loan Agreement").

Borrower executed and delivered the Note to Lender. The Note evidences the obligation of Borrower to pay the Loan, including without limitation, the principal amount of the Note and all interest which accrued on the Note.

**Payment Default**

Borrower has failed to make, or cause to be made, the monthly payment of interest due under the Note and under Section 2.12 of the Loan Agreement on May 1, 2020, which failure constitutes an Event of Default under the Loan Agreement Section 5.1 (a) (Events of Default). In accordance with the terms and conditions of the Loan Agreement, for so long as any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by applicable law, overdue interest in respect of the Loan, shall each accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained in the Loan Agreement. In addition, pursuant to Section 2.8 of the Loan Agreement, a late charge will be assessed. Please note that the total principal amount currently due from Borrower, together with late charges and default interest due from Borrower, are shown on Exhibit A.

**Other Defaults**

1. Borrower has failed to establish the Cash Management Account as required under Section 8.1 of the Loan Agreement.

**Security Benefit Life Insurance Company**

White Plains Healthcare Properties I, LLC  
Attn: William A. Nicholson  
May 22, 2020  
Page Two

2. Borrower has failed to send a Tenant Direction Notice to direct the sole tenant, HBL SNF, LLC, to pay rent directly to Lender, as required by Section 8.1 of the Loan Agreement.

3. Borrower has failed to deposit all revenue generated by the Property into the Cash Management Account as required by Section 8.1 of the Loan Agreement. Among other things, we recently learned that the Tenant may have paid Borrower approximately \$2,200,000 in late 2019 or early 2020. Any such revenue should have been deposited with Lender.

4. Borrower has failed to supply the financial statements for Borrower required under Section 3.13 and Exhibit B of the Loan Agreement.

5. Borrower has failed to supply annual financial statements of each Guarantor as required under Section 3.13 and Exhibit B of the Loan Agreement.

**Other Issues**

We also call your attention to the following:

1. No Distributions. Section 3.27 of the Loan Agreement prohibits "any distribution" to "any owner of any direct or indirect equity interests of Borrower," with limited exceptions. Please confirm that no prohibited distributions have been made while the Loan has been outstanding.

2. No Termination of Lease. We understand Borrower may have sent a Notice of Termination to the tenant under the Operating Lease in late 2019 or early 2020. Please note that pursuant to Section 3.5 of the Loan Agreement, the Operating Lease cannot be terminated without the consent of Lender.

3. Recourse Liability. Under the Loan Agreement and the Guaranty Agreement, Borrower and each Guarantor are personally liable to Lender for the "misapplication, misappropriation or conversion by Borrower" of any "Rents" or other monetary collateral for the Loan. We also call to your attention that Borrower and each Guarantor are personally liable to Lender for certain "Losses" arising out of the "willful misconduct" of Borrower in connection with the Loan or Property.

4. Maturity Date. We remind you again of the maturity date of the Loan on August 1, 2020.

**Reservation of Rights**

The foregoing does not constitute a waiver of any term, provision, condition, covenant or agreement contained in any of the Loan Documents (as defined in the Loan Agreement) or any

**Security Benefit Life Insurance Company**

White Plains Healthcare Properties I, LLC  
Attn: William A. Nicholson  
May 22, 2020  
Page Three

instrument or agreement evidencing, related to or securing the Note, nor shall it (i) operate as a waiver of any right, remedy, power or privilege thereunder, (ii) prejudice or preclude any other further exercise thereof or the exercise of any right or remedy provided by law or in equity, (iii) entitle Borrower to any other or further notice or demand whatsoever or (iv) in any way modify, change impair, affect, diminish or release any liability of Borrower under or pursuant to any of the Loan Documents.

Please contact Douglas Schneider (785-438-1642) with any questions regarding the content of this letter, or have your counsel contact me directly.

Very truly yours,  
Security Benefit Life Insurance Company

  
By: \_\_\_\_\_  
Douglas Schneider  
Investment Analyst

- cc: Patrick Formato (via e-mail)
- Howard Fensterman (via Federal Express)
- Matthew Barbara (via Federal Express)
- Paul Barbara (via Federal Express)

# EXHIBIT K



**JOHN GIARDINO**  
jgiardino@mrlp.com

**New York Office**  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
P 212.730.7700 F 212.730.7725 www.mrlp.com

April 8, 2021

**Via Electronic Mail**

Marthe JB Ngwashi, Director  
Bureau of Health Facility Planning and Development  
Division of Legal Affairs  
New York State Department of Health  
Corning Tower - Empire State Plaza  
Albany, NY 12237  
Email: [marthe.ngwashi@health.ny.gov](mailto:marthe.ngwashi@health.ny.gov)

**Re: *White Plains Rehabilitation Center***

Dear Marthe:

Thank you for the candid discussion of the recent request made by White Plains Healthcare Properties I, LLC (“White Plains”) and its counsel to appoint a receiver for our client’s facility, White Plains Rehabilitation Center.

After our call, we reached out to counsel for White Plains to understand the basis for their request to the New York State Department of Health (“DOH”). In response, counsel advised that their client, White Plains, is pursuing its rights under the Amended and Restated Operating Lease dated November 19, 2015 (the “Lease”).

The only section of the Lease which references receivership is Article XVI, Section 16.1, which provides, in relevant part:

[White Plains], in addition to all other remedies given to [White Plains] at law or in equity, may **by written notice to [HBL-SNF, LLC], without terminating this Lease, cause [HBL-SNF, LLC] to apply to the DOH to install a manager and/or management consultant and/or a receiver having the necessary approvals from Governmental Authorities, of [White Plains]’ choice, at [HBL-SNF, LLC]’s sole cost and expense or to the extent permitted by applicable law, reenter the Leased Premises by summary proceedings or otherwise (emphasis added).**

This remedy, like the other remedies given to White Plains, only arises upon a default by the Tenant, HBL-SNF, LLC. As we advised during our call, there is no default under the Lease. White Plains’ allegations of default are the subject of a significant litigation matter which has been pending before Judge Walsh in Westchester County for the past nine (9) months with further proceedings scheduled into 2022 (*White Plains Healthcare Properties I, LLC v. HBL SNF, LLC, Lizer Jozefovic A/K/A Lizer Jozefovic, and Mark Neuman*, Index No. 60278/2020).

Marthe JB Ngwashi, Director  
Bureau of Health Facility Planning and Development  
Division of Legal Affairs  
New York State Department of Health  
April 8, 2021  
Page 2

As we discussed during our call:

1. HBL-SNF, LLC is current on its rent payments;
2. HBL-SNF, LLC is current on its obligation for taxes, insurance, and all other operating expenses;
3. The litigation involves capital contributions to the development project other than monthly lease payments; and
4. HBL-SNF, LLC has asserted substantial counterclaims arising from (i) delays in completing the project, (ii) severe project cost overruns, (iii) the failure to procure financing consistent with DOH approvals, and (iv) the lack of accounting for millions of dollars advanced to the project by HBL-SNF, LLC.
5. There are no issues whatsoever regarding HBL-SNF, LLC's financial status and no allegations relating to patient care and wellbeing.

White Plains has not raised the issue of the appointment of a receiver or made any request for emergent or injunctive relief to e Judge Walsh, and White Plain's current request represents nothing more than an attempted "end-run" to avoid Judge Walsh's rulings in the pending lawsuit.

Furthermore, please observe that pursuant to Section 16.1 of the Lease, White Plains is required to provide notice to HBL-SNF, LLC. No such notice has been provided. We only just learned of the request from the DOH. More importantly, pursuant to Section 16.1, White Plains can only cause HBL-SNF, LLC to apply to your Department for a receiver - it has no right to act unilaterally.

For the reasons stated above, there are no grounds to request the appointment of a receiver, and HBL-SNF, LLC rejects such a request as an improper attempt to engage the DOH in private civil litigation. Accordingly, HBL-SNF, LLC requests that the Department refuse the request.

I am enclosing the Complaint filed by White Plains, and HBL-SNF, LLC's Answer and Counterclaims for your review. I am available to discuss this matter further at your convenience.

Very truly yours,

**MICHELMAN & ROBINSON, LLP**



John Giardino

JG:ec

Enclosures

cc: Andrew Blatt Via E-mail  
Lizer Jozefovic Via E-mail

# EXHIBIT L

VISION OF 3 CORPORATIONS AND STATE RECORDS

RECEIVED NYSCEF 10/23 ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: WATERVIEW ACQUISITION I, LLC

DOCUMENT TYPE: AMENDMENT (DOM LLC) PROVISIONS

COUNTY: WEST

SERVICE COMPANY: CORPORATION SERVICE COMPANY

SERVICE CODE: 45

FILED:10/11/2005 DURATION:\*\*\*\*\* CASH#:051011000571 FILM #:051011000534

ADDRESS FOR PROCESS

REGISTERED AGENT



FILER	FEES	120.00	PAYMENTS	120.00
	FILING	60.00	CASH	0.00
	TAX	0.00	CHECK	0.00
ABRAMS FENSTERMAN FENSTERMAN	CERT	0.00	CHARGE	0.00
FLOWERS GREENBERG & EISMAN LLP	COPIES	10.00	DRAWDOWN	120.00
1111 MARCUS AVE STE 107	HANDLING	50.00	OPAL	0.00
LAKE SUCCESS, NY 11042			REFUND	0.00

637822JBA

DOS-1025 (11/89)

CSC 45

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CERTIFICATE OF AMENDMENT OF THE  
ARTICLES OF ORGANIZATION  
OF

WATERVIEW ACQUISITION I, LLC

(Pursuant to Section 211 of the Limited Liability Company Law)

IT IS HEREBY CERTIFIED THAT:

FIRST: The name of the limited liability company is:

WATERVIEW ACQUISITION I, LLC

SECOND: The Articles of Organization of the limited liability company were filed by the Department of State on July 7, 2003.

THIRD: The Articles of Organization of the limited liability company effected by this certificate are amended as follows:

The following paragraph replaces paragraph 5 of the Articles of Organization:

- (5) The Company is to be managed by its members and neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without Department of Health approval.

The following paragraphs are added to the Articles of Organization:

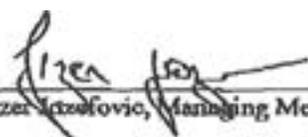
- (7) The purpose or purposes for which the Company is formed are limited to the ownership and operation of a Residential Health Care Facility under Article 28 of the Public Health Law to be known as Waterview Hills Rehabilitation and Nursing Center, located at 537 Route 22, P.O. Box 257, Purdys Station, New York 10578.
- (8) No person may own ten (10%) percent or more of any membership interest or voting rights in the Company unless approved by the Public Health Council of the State of New York and, notwithstanding anything to the contrary in this Certificate or the Operating Agreement, transfers,

assignments or other dispositions of membership interest, economic interest or voting rights must be effectuated in accordance with the Public Health Law of the State of New York Section 2801-a (4)(b).

**FOURTH:** The foregoing amendment of the Articles of Organization of the limited liability company was authorized by a majority in interest of the members entitled to vote thereon.

**IN WITNESS WHEREOF,** I have subscribed this documents on the date set forth below and do hereby affirm, under the penalties of perjury, that the statements contained thereon have been examined by me and are true and correct.

Executed on this 3rd day of October, 2005

  
Lizer Jozefovic, Managing Member

K 051011000

VED NYSCEF

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RECEIVED

2005 OCT 11 AM 11:02

RECEIVED

2005 OCT -7 PM 2:03

Certificate of Amendment of the  
Articles of Organization of

WATERVIEW ACQUISITION I, LLC

(Under Section 211 of the Limited Liability Company Law)

2005 OCT 1 AM : 36  
FILED

FILED

KE

STATE OF NEW YORK  
DEPARTMENT OF STATE

OCT 11 2005

Filed by:

Abrams, Fensterman, Fensterman,  
Flowers, Greenberg & Eisman, LLP  
1111 Marcus Avenue, Suite 107  
Lake Success, New York 11042

Client ref 637822 JJA  
5

FILED

TAXS

BY

[Signature]

CSC 45  
DRAW DOWN

571

# EXHIBIT M

Notice Pg 62 of 69

LAW FIRM OF

**Abrams, Fensterman**

3 Dakota Drive  
Suite 300  
Lake Success, NY 11042  
516-328-2300

January 31, 2020

Waterview Hills Nursing and Rehab Center  
Attn: Karen Capparelli  
PO Box 130  
Croton-On-Hudson, NY 10520

Invoice # 211868  
Client # 007444  
Billing through 1/31/2020

**INVOICE SUMMARY**

PLEASE RETURN THIS PAGE WITH YOUR PAYMENT

MATTER

007444-0000 GENERAL  
007444-0072 Bartlett, Clifford

Total fees and expenses incurred  
Plus net balance forward  
Total balance now due

CURRENT CHARGES

\$1,400.00  
\$457.00

173		
CODE 8350-300	AMT	1857.00
CODE	AMT	
CODE	AMT	
ENTERED 1/2020		
PAYDATE	CK#	

\$1,857.00  
\$17,883.34  
\$19,740.34

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Abrams, Fensterman  
Account balances will be subject to interest charges after 30 days

Notice Pg 63 of 69  
LAW FIRM OF

**Abrams, Fensterman**

3 Dakota Drive  
Suite 300  
Lake Success, NY 11042  
516-328-2300

February 29, 2020

Waterview Hills Nursing and Rehab Center  
Attn: Karen Capparelli  
PO Box 130  
Croton-On-Hudson, NY 10520

Invoice # 214048  
Client # 007444  
Billing through 2/29/2020

**INVOICE SUMMARY**

PLEASE RETURN THIS PAGE WITH YOUR PAYMENT

MATTER

CURRENT CHARGES

007444-0000 GENERAL  
007444-0030 Brennan, John  
007444-0053 Arce, Aurelio  
007444-0062 Maloney, Earl  
007444-0074 Jackson, Daphne  
  
Total fees and expenses incurred  
Plus net balance forward  
**Total balance now due**

173

CODE 8350-300	AMT 2/3150
CODE	AMT
CODE	AMT
ENTERED 2/2020	
PAYDATE	CHK #

\$1,400.00  
\$126.00  
\$222.00  
\$327.50  
\$56.00  

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\$2,131.50  
\$19,740.34  

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**\$21,871.84**

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Notice Pg 64 of 69

LAW FIRM OF  
**Abrams, Fensterman**

3 Dakota Drive  
Suite 300  
Lake Success, NY 11042  
516-328-2300

March 31, 2020

Waterview Hills Nursing and Rehab Center  
Attn: Karen Capparelli  
PO Box 130  
Croton-On-Hudson, NY 10520

Invoice # 216590  
Client # 007444  
Billing through 3/31/2020

**INVOICE SUMMARY**

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MATTER	CURRENT CHARGES
007444-0000 GENERAL	\$1,400.00
007444-0030 Brennan, John	\$42.00
007444-0053 Arce, Aurelio	\$190.50
007444-0062 Maloney, Earl	\$153.47
007444-0072 Bartlett, Clifford	\$1,508.00
Total fees and expenses incurred	<u>\$3,293.97</u>
Plus net balance forward	<u>\$21,871.84</u>
<b>Total balance now due</b>	<b><u>\$25,165.81</u></b>

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CODE 8350300	AMT 3293.97
CODE	AMT
CODE	AMT
ENTERED 4/1/20	
PAYDATE	CK #

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Abrams, Fensterman  
Account balances will be subject to interest charges after 30 days

Notice Pg 65 of 69

LAW FIRM OF  
**Abrams, Fensterman**

3 Dakota Drive  
Suite 300  
Lake Success, NY 11042  
516-328-2300

April 30, 2020

Waterview Hills Nursing and Rehab Center  
Attn: Karen Capparelli  
PO Box 130  
Croton-On-Hudson, NY 10520

Invoice # 218019  
Client # 007444  
Billing through 4/30/2020

**INVOICE SUMMARY**

PLEASE RETURN THIS PAGE WITH YOUR PAYMENT

MATTER	CURRENT CHARGES
007444-0000 GENERAL	\$1,400.00
007444-0053 Arce, Aurelio	\$25.00
007444-0062 Maloney, Earl	\$25.00
007444-0072 Bartlett, Clifford	\$425.00
Total fees and expenses incurred	<u>\$1,875.00</u>
Plus net balance forward	\$25,165.81
<b>Total balance now due</b>	<b><u>\$27,040.81</u></b>

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113

CODE 8350-320	AMT 1875.00
CODE	AMT
CODE	AMT
DATE 4/2020	
NAME	CHK#

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Abrams, Fensterman  
Account balances will be subject to interest charges after 30 days

Notice Pg 66 of 69

LAW FIRM OF  
**Abrams, Fensterman**

3 Dakota Drive  
Suite 300  
Lake Success, NY 11042  
516-328-2300

May 31, 2020

Waterview Hills Nursing and Rehab Center  
Attn: Karen Capparelli  
PO Box 130  
Croton-On-Hudson, NY 10520

Invoice # 220232  
Client # 007444  
Billing through 5/31/2020

**INVOICE SUMMARY**

PLEASE RETURN THIS PAGE WITH YOUR PAYMENT

MATTER  
007444-0000 GENERAL  
007444-0075 Weiss, Theodore  
  
Total fees and expenses incurred  
Plus net balance forward  
**Total balance now due**

CURRENT CHARGES  
  
\$1,400.00  
\$162.94  

---

\$1,562.94  
\$27,040.81  

---

**\$28,603.75**

173	CODE X350-30	AMT 1562.94
	CODE	AMT
	CODE	AMT
	ENTERED \$2000	
	PAYDATE	CK #

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Notice Pg 67 of 69

LAW FIRM OF

**Abrams, Fensterman**

3 Dakota Drive  
Suite 300

Lake Success, NY 11042  
516-328-2300

June 30, 2020

Waterview Hills Nursing and Rehab Center  
Attn: Karen Capparelli  
PO Box 130  
Croton-On-Hudson, NY 10520

Invoice # 222064  
Client # 007444  
Billing through 6/30/2020

**INVOICE SUMMARY**

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MATTER	CURRENT CHARGES
007444-0000 GENERAL	\$1,400.00
007444-0072 Bartlett, Clifford	\$177.50
007444-0075 Weiss, Theodore	\$25.00
Total fees and expenses incurred	<u>\$1,602.50</u>
Plus net balance forward	<u>\$28,603.75</u>
<b>Total balance now due</b>	<b><u><u>\$30,206.25</u></u></b>

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173	
CODE 8350300	AMT 1602.50
CODE	AMT
CODE	AMT
ENTERED 6/2020	
PAYDATE	CK#

Invoice is due upon receipt. Please make checks payable to:  
Abrams, Fensterman  
Account balances will be subject to interest charges after 30 days

Notice Pg 68 of 69  
LAW FIRM OF

**Abrams, Fensterman**

3 Dakota Drive  
Suite 300  
Lake Success, NY 11042  
516-328-2300

July 31, 2020

~~Waldview Hills Nursing and Rehab Center~~

Attn: Karen Capparelli  
PO Box 130  
Croton-On-Hudson, NY 10520

Invoice # 223599  
Client # 007444  
Billing through 7/31/2020

**INVOICE SUMMARY**

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MATTER

- 007444-0000 GENERAL
- 007444-0030 Brennan, John
- 007444-0062 Maloney, Earl

CURRENT CHARGES

- \$1,400.00
- \$855.10
- \$592.00

Total fees and expenses incurred  
Plus net balance forward  
**Total balance now due**

773		
CODE	8350.000	AMT 8357.10
CODE		AMT
CODE		AMT
ENTERED	7/31/20	
PAYDATE		CK#

\$2,847.10  
\$18,704.90  
**\$21,552.00**

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Abrams, Fensterman  
Account balances will be subject to interest charges after 30 days

LAW FIRM OF  
**Abrams, Fensterman**

3 Dakota Drive  
Suite 300  
Lake Success, NY 11042  
516-328-2300

August 31, 2020

Waterview Hills Nursing and Rehab Center  
Attn: Karen Capparelli  
PO Box 130  
Croton-On-Hudson, NY 10520

Invoice # 225389  
Client # 007444  
Billing through 8/31/2020

**INVOICE SUMMARY**  
PLEASE RETURN THIS PAGE WITH YOUR PAYMENT

MATTER	CURRENT CHARGES
007444-0000 GENERAL	\$1,400.00
007444-0062 Maloney, Earl	\$145.00
Total fees and expenses incurred	<u>\$1,545.00</u>
Plus net balance forward	<u>\$21,552.00</u>
<b>Total balance now due</b>	<b><u>\$23,097.00</u></b>

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113

CODE 8350-300	AMT 1545.00
CODE	AMT
CODE	AMT
ENTERED 8/2020	
PAYDATE 1	CK #

Invoice is due upon receipt. Please make checks payable to:  
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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

[Display Document List with Motion Folders](#)

Sort By:

#	Document	Filed By	Status
76	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
77	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Complaint in New York Action</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
78	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Judge Bannon's Interim Order</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
79	<a href="#">AFFIDAVIT OR AFFIRMATION IN REPLY</a> (Motion #3) <i>Reply Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
80	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>NY County Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
81	<a href="#">MEMORANDUM OF LAW IN REPLY</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
82	<a href="#">STIPULATION - DISCOVERY ( REQUEST TO SO</a> <i>ORDER</i> ) (Motion #4)	<a href="#">Giardino, J.</a> Filed: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

STIPULATION (Motion #1)

Stipulation regarding document discovery and motion to dismiss

Received: 03/04/2021

83 STIPULATION - SO ORDERED

Court User  
Filed: 03/11/2021  
Received: 03/11/2021

**Processed**  
[Confirmation Notice](#)

84 DECISION + ORDER ON MOTION (Motion #3)

Court User  
Filed: 03/18/2021  
Received: 03/18/2021

**Processed**  
[Confirmation Notice](#)

85 NOTICE OF ENTRY (Motion #3)

[Lara-Garduno, N.](#)  
Filed: 03/19/2021  
Received: 03/19/2021

**Processed**  
[Confirmation Notice](#)

86 COMPLAINT (AMENDED)

First Amended Verified Complaint

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

87 EXHIBIT(S) - 1

Amended and Restated Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

88 EXHIBIT(S) - 2

Jozefovic Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

89 EXHIBIT(S) - 3

Neuman Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

90 EXHIBIT(S) - 4

Jozefovic Security Agreement  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

91 EXHIBIT(S) - 5

Letter of Intent  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

92 EXHIBIT(S) - 6

Notice of Default  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

93 LETTER / CORRESPONDENCE TO JUDGE

[Lara-Garduno, N.](#)  
Filed: 03/26/2021  
Received: 03/26/2021

**Processed**  
[Confirmation Notice](#)

94 LETTER / CORRESPONDENCE TO JUDGE

[Donnellan, A.](#)  
Filed: 04/09/2021  
Received: 04/09/2021

**Processed**  
[Confirmation Notice](#)

95 DECISION + ORDER ON MOTION (Motion #4)

Motion withdrawn without prejudice

Court User  
Filed: 04/20/2021  
Received: 04/20/2021

**Processed**  
[Confirmation Notice](#)

96 ANSWER (AMENDED)

[Barnett-Howell, A.](#)  
Filed: 05/21/2021  
Received: 05/21/2021

**Processed**  
[Confirmation Notice](#)

# Document

Filed By

Status

97	<a href="#">EXHIBIT(S)</a> - A <i>Incorporated Complaint from New York County</i>	<a href="#">Barnett-Howell, A.</a> Filed: 05/21/2021 Received: 05/21/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
98	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 05/25/2021 Received: 05/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
99	<a href="#">NOTICE TO ADMIT</a>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
100	<a href="#">EXHIBIT(S)</a> - 1 <i>to Notice to Admit - Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
101	<a href="#">EXHIBIT(S)</a> - 2 <i>to Notice to Admit - Development Agreement</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
102	<a href="#">EXHIBIT(S)</a> - 3 <i>to Notice to Admit - Temporary C of O</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
103	<a href="#">EXHIBIT(S)</a> - 4 <i>to Notice to Admit - AJA form 0704</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
104	<a href="#">EXHIBIT(S)</a> - 5 <i>to Notice to Admit - NYSDOH letter</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
105	<a href="#">ORDER - MEDIATION</a>	Court User Filed: 06/03/2021 Received: 06/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
106	<a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
107	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
108	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>First Notification of Disposition of Collateral, 10.6.20</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
109	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Second Notification of Disposition of Collateral, 6.9.21</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
110	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Term Sheet, 11.20.15</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
111	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Document

Filed By

Status

112	<a href="#">EXHIBIT(S)</a> - E (Motion #5) <i>November 19 Email and Account Statement</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
113	<a href="#">EXHIBIT(S)</a> - F (Motion #5) <i>August 10 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
114	<a href="#">EXHIBIT(S)</a> - G (Motion #5) <i>August 16 Emails</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
115	<a href="#">EXHIBIT(S)</a> - H (Motion #5) <i>August 17 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
116	<a href="#">EXHIBIT(S)</a> - I (Motion #5) <i>Letter of Intent</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
117	<a href="#">EXHIBIT(S)</a> - J (Motion #5) <i>Security Benefit Letters</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
118	<a href="#">EXHIBIT(S)</a> - K (Motion #5) <i>NYSDOH Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
119	<a href="#">EXHIBIT(S)</a> - L (Motion #5) <i>Certificate of Amendment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
120	<a href="#">EXHIBIT(S)</a> - M (Motion #5) <i>2020 Monthly Invoices</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
121	<a href="#">EXHIBIT(S)</a> - N (Motion #5) <i>September Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
122	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>Proposed UCC Form</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
123	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
124	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' / Third-Party Plainti ...</i> <i>show more</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
125	<a href="#">EXHIBIT(S)</a> - 1 (Motion #5) <i>Exhibit 1 - Bandazian Affidavit</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
126	<a href="#">EXHIBIT(S)</a> - 2 (Motion #5) <i>Exhibit 2 - Prior Order to Show Cause</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

Received: 06/25/2021

- |     |  |  |   |
|-----|--|--|---|
| 127 | <a href="#">EXHIBIT(S)</a> - 3 (Motion #5)<br><i>Exhibit 3 - Answer with Cross-Claims</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 128 | <a href="#">EXHIBIT(S)</a> - 4 (Motion #5)<br><i>Exhibit 4 - Decision and Order</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 129 | <a href="#">EXHIBIT(S)</a> - 5 (Motion #5)<br><i>Exhibit 5 - Notice of Sale</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 130 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)<br><i>Third-Party Defendant/Cross-Claimant Metropolitan Commercial Bank's Memorandum of Law in Partial Joi ... show more</i>        | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 131 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Donnellan, A.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 132 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 133 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)<br><i>Affidavit of Lizer Jozefovic</i>   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 134 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5)<br><i>Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' Third-Pa ... show more</i> | <a href="#">Malatak, R.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 135 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 136 | <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5)<br><i>Affidavit of William A. Nicholson</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 137 | <a href="#">EXHIBIT(S)</a> - A (Motion #5)<br><i>Lease</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 138 | <a href="#">EXHIBIT(S)</a> - B (Motion #5)<br><i>Jozefovic Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 139 | <a href="#">EXHIBIT(S)</a> - C (Motion #5)<br><i>Neuman Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 140 | <a href="#">EXHIBIT(S)</a> - D (Motion #5)<br><i>Collateral Assignment and Pledge</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021                         | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

**Redacted** per 22 NYCRR §202.5(e)

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- 142 [EXHIBIT\(S\)](#) - F (Motion #5)  
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Filed: 06/29/2021  
Received: 06/29/2021

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# EXHIBIT N

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For More Information Contact:

FIRM OFFICES

Brooklyn

New York

Rochester

**Via E-mail & Mail**

September 11, 2020

Waterview Hills Nursing & Rehabilitation Center  
 537 Route 22  
 Purdys, New York 10578  
 Attention: Business Office

Re: Status Updates

Gentlemen and Ladies,

Please allow this letter to update you on the status of the matters our office is handling on behalf of Waterview Hills.

BARTLETT, CLIFFORD

This file was closed in our office after we wired the \$25,000 settlement sum to the client.

BEVILACQUA, PASQUALE

We succeeded in compelling WCDSS to revise this former resident's Medicaid budget, which reduced the debt to only \$1815.60 and we were then authorized to close the file in our office.

BRENNAN, JOHN T.

We are in the process of finalizing a settlement of this account for a lump sum payment of \$50,000.

JACKSON, DAPHNE

After trying for months to informally resolve errors in the 2/2/2020 budget with WCDSS, we finally requested a formal Fair Hearing; however, since the resident is deceased, and no estate representative is in place, we will not have standing to proceed with the Fair Hearing once it is scheduled by OTDA. We have been asking the caseworker to revise the budget to either give the recipient a 2/1/2019 pick up date, or deduct the full viable bill of \$5,173.08 from the excess resources. Given the relatively small amounts of money at stake, and the costs of filing a creditor's petition with the Surrogate's Court to get Fair Hearing standing, this case may not be cost effective to pursue further if we cannot reach an informal resolution with WCDSS. Since we were only asked to maximize this resident's Medicaid coverage, and were never authorized to commence litigation on the account, the facility may ultimately decide to write off the debt.

MALONEY, EARL

Using subpoenas and title searches, we compiled the evidence needed to support our motion for a default judgment against this deceased resident's son based on our allegations of fraud.

*Waterview Hills Nursing & Rehabilitation Center  
September 11, 2020  
Page 2*

MILLER, JOAN

This case settled in open court for \$3000 to be paid off in monthly payments of \$50 starting June 15, 2017. According to our records, a balance of \$1820 remains unpaid on the settlement. We have sent out a series of default notices, but have not received a payment on account since February. If the default is not cured following our most recent letter drafted this month, we will assume you want us to close the file as the case is not cost effective to pursue further.

Kindly call with questions or concerns regarding the preceding or any other matters.

Thank you.

Warmest regards,

  
Nancy Levitin

# EXHIBIT O

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]  
**John Giardino, Esq.**

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Michelman & Robinson, LLP**  
**800 3rd Ave.**  
**24th Floor**  
**New York, NY 10022**  
**Attn: John Giardino, Esq.**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME** - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME <b>HBL SNF, LLC</b>				
OR	1b. INDIVIDUAL'S LAST NAME			
1c. MAILING ADDRESS <b>1280 Albany Post Rd.</b>		CITY <b>Croton on Hudson</b>	STATE <b>NY</b>	POSTAL CODE <b>10520-1570</b>
1d. <u>SEE INSTRUCTIONS</u> Not Applicable		ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION <b>LLC</b>	1f. JURISDICTION OF ORGANIZATION <b>New York</b>
			1g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME** - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S LAST NAME			
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. <u>SEE INSTRUCTIONS</u> Not Applicable		ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION
			2g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE

**3. SECURED PARTY'S NAME** (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>White Plains Healthcare Properties I, LLC</b>				
OR	3b. INDIVIDUAL'S LAST NAME			
3c. MAILING ADDRESS <b>West Peabody Executive Center, 2 Bourbon Street</b>		CITY <b>Peabody</b>	STATE <b>MA</b>	POSTAL CODE <b>01960</b>
				COUNTRY <b>US</b>

4. This FINANCING STATEMENT covers the following collateral:  
**One million six hundred thousand and 00/100 Dollars (\$1,600,000.00) in a depository account held at JP Morgan Chase N.A.;  
 Account number: xxx-xxx-7272.**

5. ALTERNATIVE DESIGNATION [if applicable]:	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	<input type="checkbox"/> if applicable	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]	<input type="checkbox"/> All Debtors	<input type="checkbox"/> Debtor 1	<input type="checkbox"/> Debtor 2	
8. OPTIONAL FILER REFERENCE DATA						

## Instructions for UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read all Instructions, especially Instruction 1; correct Debtor name is crucial. Follow Instructions completely.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. Filing office cannot give legal advice. Do not insert anything in the open space in the upper portion of this form; it is reserved for filing office use.

When properly completed, send Filing Office Copy, with required fee, to filing office. If you want an acknowledgment, complete item B and, if filing in a filing office that returns an acknowledgment copy furnished by filer, you may also send Acknowledgment Copy; otherwise detach. If you want to make a search request, complete item 7 (after reading Instruction 7 below) and send Search Report Copy, otherwise detach. Always detach Debtor and Secured Party Copies.

If you need to use attachments, you are encouraged to use either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP).

A. To assist filing offices that might wish to communicate with filer, filer may provide information in item A. This item is optional.

B. Complete item B if you want an acknowledgment sent to you. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor name:** Enter only one Debtor name in item 1, an organization's name (1a) or an individual's name (1b). Enter Debtor's exact full legal name. Don't abbreviate.
    - 1a. **Organization Debtor.** "Organization" means an entity having a legal identity separate from its owner. A partnership is an organization; a sole proprietorship is not an organization, even if it does business under a trade name. If Debtor is a partnership, enter exact full legal name of partnership; you need not enter names of partners as additional Debtors. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed charter documents to determine Debtor's correct name, organization type, and jurisdiction of organization.
    - 1b. **Individual Debtor.** "Individual" means a natural person; this includes a sole proprietorship, whether or not operating under a trade name. Don't use prefixes (Mr., Mrs., Ms.). Use suffix box only for titles of lineage (Jr., Sr., III) and not for other suffixes or titles (e.g., M.D.). Use married woman's personal name (Mary Smith, not Mrs. John Smith). Enter individual Debtor's family name (surname) in Last Name box, first given name in First Name box, and all additional given names in Middle Name box.  
For both organization and individual Debtors: Don't use Debtor's trade name, DBA, AKA, FKA, Division name, etc. in place of or combined with Debtor's legal name; you may add such other names as additional Debtors if you wish (but this is neither required nor recommended).
  2. If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. To include further additional Debtors, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names.
  3. Enter information for Secured Party or Total Assignee, determined and formatted per Instruction 1. To include further additional Secured Parties, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names. If there has been a total assignment of the Secured Party's interest prior to filing this form, you may either (1) enter Assignor S/P's name and address in item 3 and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Total Assignee's name and address in item 3 and, if you wish, also attaching Addendum (Form UCC1Ad) giving Assignor S/P's name and address in item 12.
  4. Use item 4 to indicate the collateral covered by this Financing Statement. If space in item 4 is insufficient, put the entire collateral description or continuation of the collateral description on either Addendum (Form UCC1Ad) or other attached additional page(s).
  5. If filer desires (at filer's option) to use titles of lessee and lessor, or consignee and consignor, or seller and buyer (in the case of accounts or chattel paper), or bailee and bailor instead of Debtor and Secured Party, check the appropriate box in item 5. If this is an agricultural lien (as defined in applicable Commercial Code) filing or is otherwise not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 5, complete items 1-7 as applicable and attach any other items required under other law.
  6. If this Financing Statement is filed as a fixture filing or if the collateral consists of timber to be cut or as-extracted collateral, complete items 1-5, check the box in item 6, and complete the required information (items 13, 14 and/or 15) on Addendum (Form UCC1Ad).
  7. This item is optional. Check appropriate box in item 7 to request Search Report(s) on all or some of the Debtors named in this Financing Statement. The Report will list all Financing Statements on file against the designated Debtor on the date of the Report, including this Financing Statement. There is an additional fee for each Report. If you have checked a box in item 7, file Search Report Copy together with Filing Officer Copy (and Acknowledgment Copy). Note: Not all states do searches and not all states will honor a search request made via this form; some states require a separate request form.
  8. This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information (e.g., Secured Party's loan number, law firm file number, Debtor's name or other identification, state in which form is being filed, etc.) that filer may find useful.
- 1c. An address is always required for the Debtor named in 1a or 1b.
- 1d. Reserved for Financing Statements to be filed in North Dakota or South Dakota only. If this Financing Statement is to be filed in North Dakota or South Dakota, the Debtor's taxpayer identification number (tax ID#) — social security number or employer identification number must be placed in this box.
- 1e,f,g. "Additional information re organization Debtor" is always required. Type of organization and jurisdiction of organization as well as Debtor's exact legal name can be determined from Debtor's current filed charter document. Organizational ID #, if any, is assigned by the agency where the charter document was filed; this is different from tax ID #; this should be entered preceded by the 2-character U.S. Postal identification of state of organization if one of the United States (e.g., CA12345, for a California corporation whose organizational ID # is 12345); if agency does not assign organizational ID #, check box in item 1g indicating "none."

**Note:** If Debtor is a trust or a trustee acting with respect to property held in trust, enter Debtor's name in item 1 and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a decedent's estate, enter name of deceased individual in item 1b and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a transmitting utility or this Financing Statement is filed in connection with a Manufactured-Home Transaction or a Public-Finance Transaction as defined in applicable Commercial Code, attach Addendum (Form UCC1Ad) and check appropriate box in item 18.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I, :  
LLC, :

Plaintiff, :

Index No. 60278/2020

-against- :

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
JOZOFOVIC, and MARK NEUMAN, :

Defendants and Third-Party Plaintiffs, :

-against- :

CCC EQUITIES, LLC, PROJECT EQUITY :  
CONSULTING, THE CONGRESS COMPANIES, :  
HOWARD FENSTERMAN, WILLIAM :  
NICHOLSON, and METROPOLITAN :  
COMMERCIAL BANK :

Third-Party Defendants

-----X

**MEMORANDUM OF LAW  
IN SUPPORT OF MOTION SEEKING INJUNCTIVE RELIEF**

**MICHELMAN & ROBINSON, LLP**

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Alex Barnett-Howell, Esq.  
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*Attorneys for Defendants and Third-Party Plaintiffs*

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**I. PRELIMINARY STATEMENT**

This is an application for a preliminary injunction restraining Plaintiff and Third-Party Defendants (collectively, “White Plains”) from auctioning or otherwise selling the majority ownership interest in a nursing home facility to which White Plains has no relationship whatsoever. As addressed herein, White Plains’ Notification of Disposition of Collateral is simply another tactic designed to harm Defendants. The background for White Plains’ wrongful actions is set forth in detail in this Memorandum.

As this Court knows, White Plains is the landlord of a single-purpose building in which Defendants and Third-Party Plaintiffs, as tenants, operate a nursing home. White Plains and Defendants and Third-Party Plaintiffs are actively engaged in complex litigation before this Court involving multiple claims arising from the development and leasing of the property and the misappropriation of funds by White Plains.

White Plains seeks to sell the ownership interest in an unrelated, separate business enterprise owned by Defendant Lizer Jozefovic, the majority owner of a nursing home. Together with Defendant Mark Neuman, Jozefovic owns and operates a well-established and successful skilled nurse management company known as Epic Healthcare Management (collectively with HBL SNF, LLC, “Epic”). Established more than 20 years ago, Epic successfully manages six high quality skilled nursing and rehabilitation facilities including the two facilities which are the subject of this litigation: Waterview Hills Rehabilitation and Healthcare, located in Purdys, New York (“Waterview”), and Epic Rehabilitation and Nursing of White Plains (“White Plains Nursing Home”).

The primary dispute between White Plains and Epic involves multiple claims and counterclaims arising from the development of the White Plains Nursing Home project, as

demonstrated in the Complaint, the Answer with Counterclaims and Third-Party Claims, and the Complaint from the consolidated action.

White Plains cannot utilize a collateral assignment executed in 2017 to sell the membership interests in Waterview. There are at least ten reasons to grant the proposed Order:

- 1) Epic performed all of its obligations under the collateral assignment;
- 2) White Plains failed to perform under the collateral assignment;
- 3) The collateral assignment terminated by its own terms in 2017;
- 4) White Plains waived its rights under the collateral assignment at least four years ago;
- 5) White Plains is in breach of the lease agreement and cannot demand performance;
- 6) White Plains diverted millions of dollars advanced by Epic;
- 7) White Plains defaulted on its mortgage loan causing harm to Epic;
- 8) White Plains modified the requirements of the security deposit;
- 9) Metropolitan Commercial Bank has a first priority security interest; and
- 10) Any sale or transfer of a nursing home must receive prior approval from NYSDOH.

Moreover, the proposed Order not only restrains White Plains from selling the membership interest in Waterview, it also preserves the disputed funds by restraining Epic from making any transfers out of the rent security account. By granting the Order, the Court will preserve the status quo for all parties pending the resolution of the substantial claims in this action.

Furthermore, if the Court is not prepared to issue the Order maintaining the rent security account balance, Epic is prepared to grant White Plains a security interest in the rent security account pursuant to the same terms and requirements previously proposed by White Plains.

White Plains' sudden effort to foreclose on the Waterview ownership interest is yet another underhanded attempt to disadvantage and leverage Epic before the issues in the primary action before this Court can be adjudicated. As described herein, in addition to the Notification of sale of Waterview, White Plains unilaterally approached the New York Department of Health, in violation of the specific provisions of the Lease Agreement and attempted to remove Epic from the

management of the White Plains Nursing Home. Given its unclean hands, White Plains must not be allowed to proceed with this extrajudicial pre-judgment execution on Epic’s assets.

**II. STATEMENT OF FACTS**

In August 2009, Epic proposed the development of a new, state-of-the-art 160-bed skilled nursing facility in White Plains, New York (the “Facility”) to the New York State Department of Health (“NYSDOH”). Affirmation of John Giardino in Support of Order to Show Cause (“Giardino Aff.”) ¶ 15.

At this time, White Plains and Third-Party Defendants Howard Fensterman, (“Fensterman”), William Nicholson, CCC Equities LLC (“CCCE”), Project Equity Construction, and The Congress Companies, proposed to Epic that they act as turn-key developers for the new Facility and provide all necessary financing and construction for the project. Giardino Aff. ¶ 16. White Plains submitted a development proposal to Epic and NYSDOH with (1) a total Project cost of \$56,631,759; (2) a thirty-year, \$42,240,000 HUD-insured mortgage with an interest rate of 5.5%; and (3) \$9,863,246 in project equity contributed by CCCE. Giardino Aff. ¶ 17.

In October 2012, White Plains submitted the application to NYSDOH and represented that the Project would be completed in 20 months, after which Epic would pay \$360,000 per month in rent. Giardino Aff. ¶ 18. On November 15, 2015, Epic executed a development agreement (the “Development Agreement”) and lease (the “Lease”) with White Plains which constitute an integrated agreement. Giardino Aff. ¶ 19. Pursuant to the Development Agreement, White Plains was required to deliver a “turn-key” facility, *i.e.*, the Facility was to be (1) fully constructed; (2) authorized to operate as a skilled nursing facility; (3) with permanent financing in place; and (4) all financing and construction was to be completed in accordance with the approval granted by NYSDOH. Giardino Aff. ¶ 20.

Despite their representations, White Plains lacked the necessary capital to complete the Project. Giardino Aff. ¶ 21. To overcome the capital shortfall, White Plains induced Epic to withdraw its equity in Waterview, an entirely separate nursing facility, and contribute that equity to the Project. Giardino Aff. ¶ 22. As memorialized in a term sheet dated November 20, 2015, Epic provided the following capital contributions to the Project:

- (1) \$2,200,000 paid to White Plains to be used by Congress for pre-development costs;
- (2) \$197,072 to CCCE to be used in the discretion of Fensterman; and
- (3) \$1,595,368.32 into a control account as rent security in the name of Epic.

Giardino Aff. ¶ 23. Importantly, these funds constituted a loan to be repaid to Epic. Giardino Aff.

¶ 24. In fact, White Plains agreed to repay a portion of the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the “FF&E”) for payment in the amount of \$1,500,000 for the Project and by giving a future credit against Lease payments in the amount of \$700,000. Giardino Aff. ¶ 25.

Despite repeated requests, White Plains has refused to convey title to the FF&E, to provide an accounting of the use of these predevelopment and discretionary funds, to provide evidence of purchases of the required FF&E, or to credit \$700,000 against Epic’s Lease payments.<sup>1</sup> As such, White Plains has already converted or diverted the monies paid by Epic. In addition, interest accrued on this \$2,200,000 loan must be calculated from November 2015 and either paid to Epic or credited to payments due under the Lease.<sup>2</sup> Giardino Aff. ¶¶ 26-29.

**1. Epic Fulfilled Its Obligations Under The Collateral Assignment**

On August 11, 2017, White Plains and Epic entered into the Collateral Assignment. The

<sup>1</sup> The \$700,000 can be credited as an advance on the rent security as these funds are already in the White Plains’ hands.

<sup>2</sup> The interest amount at 4% per annum would be equal to more than \$450,000. Consequently, the Landlord is in receipt of funds in the amount of \$1,140,000.

stated purpose of the Collateral Assignment was “to add Howard Fensterman as a signatory to such account so as to ensure no withdrawal may be made so as to reduce the amount of the account below \$1.6 Million.” Section 2 of the Collateral Assignment required Epic to deposit \$1,600,000 into a dedicated rent security account and provide Fensterman with signatory authority after which the Collateral Assignment “shall automatically terminate and be void and of no further effect.”<sup>3</sup> Giardino Aff. ¶¶ 31-32.

On August 10, 2017, in compliance with the Collateral Assignment, an email was sent to Fensterman (the “August 10 Email”). The August 10 Email states, in relevant part, that the following:

[R]eflects what we agreed to...[w]ith respect to the Waterview account...Howard Fensterman and Lizer Jozefovic shall be co-signatories to the Waterview account, provided however that Howard Fensterman shall be the sole signatory authorized on any direction for the account to be diminished below 1.6 million dollars. This authority shall be relegated to removal of the funds pursuant to the terms of the lease between HBL SNF, LLC as Tenant And White Plains Healthcare Property I, LLC as Landlord. Lizer and Waterview agree to maintain at least \$1.6 M in account. Howard Fensterman agrees that he shall consent to all sums in excess 1.6 million being withdrawn from the account by the direction of Lizer Jozefovic.

<sup>3</sup> Fensterman was a signatory on the First Account. On November 19, 2015, White Plains received an email stating that “\$1,595,368.32 is going to be held until such time as we give them instructions to deposit in an Account in the Name of HBL-SNF to be opened at Chase Private Banking.” On December 14, 2015, Fensterman signed the Business Account Signature Form for the First Account:

The image shows two Business Account Signature Forms for account number 7272. The top form is signed by Lizer Jozefovic, Member, on 12/14/15. The bottom form is signed by Howard Fensterman, Signer, on 12/14/15. Both forms include fields for Name of the Signer to Add, Title, ID Number, and Expiration Date.

(emphasis added). One week later, on August 17, 2017, an email was sent to Fensterman (the “August 17 Email”), which stated that “I need [Fensterman’s] signature on the last page.” In 2017, the Rent Security was transferred to the Chase account ending in xxxx-xxx-xxxx-0885 (the “Second Account”).

Giardino Aff. ¶¶ 39-40.

Consistent with the terms of the August 17<sup>th</sup> email, the Members and Managers of Waterview Acquisition I, LLC adopted the following resolution dated August 11, 2017:

THEREFORE, BE IT RESOLVED, that

1. The Company add Howard Fensterman as a co-signatory to the following account Waterview Acquisition I, LLC Account Number 7002 and Account Number 0885 at JP Morgan Chase together with Marc Neuman and Lizer Jozefovic;
2. Howard Fensterman’s signature shall be required on any withdrawal or any direction to the Bank on the account where such withdrawal or direction shall cause the balance and value of the account to fall below 1.6 million dollars.

To satisfy these terms, Epic corresponded with Fensterman on August 16<sup>th</sup> and 17<sup>th</sup> and provided everything required to authorize him as an account signatory:

Please note that the Certification requires that the Resolution that we prepared be annexed as an exhibit. What I need from Howard is original signature cards from Howard with wet ink signatures

...

Howard I need your signature on the last page.

(emphasis added) Giardino Aff. ¶¶ 41-43.

Member Signature(s)	
Authorized Members All Members/Managers have signed below	
Member Signature <input checked="" type="checkbox"/> <i>Howard Fensterman</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <input checked="" type="checkbox"/> <i>[Signature]</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <input checked="" type="checkbox"/> <i>[Signature]</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <input checked="" type="checkbox"/>	Date (mm/dd/yyyy) / /

MANAGERS:

  
 Name: Herbert (Lizer) Jozefovic  
 Title: Manager

AUTHORIZED SIGNATORY

Howard Fensterman

As of August 17, 2017, Epic had fulfilled its obligations by providing White Plains with the bank authorizations for the account. All Fensterman had to do was sign and submit the forms to JPMorgan Chase to become a signatory on the Second Account. Giardino Aff. ¶¶ 46-50. Inexplicably, Fensterman never transacted these documents, and White Plains never raised the issue or took any further action to become a signatory on the Second Account until this action.

**2. The Project Was Two Years Late And \$5M Over Budget**

The Development Agreement required the Project be completed no later than September 2017. However, the Project was not completed until December 2019, resulting in Epic commencing operations at the onset of the COVID-19 pandemic. Giardino Aff. ¶¶ 51-52.

Not only was the Facility completed more than two years late, but it was also substantially overbudget. The Development Agreement required that the Project be delivered at the NYSDOH-approved budget of \$57 million, and Epic would only be responsible for additional costs caused by authorized change orders. Giardino Aff. ¶ 53. Importantly, Epic never authorized one change order, yet the total costs exceeded the approved budget by more than \$5 million. Giardino Aff. ¶ 54. These cost overruns had a serious impact on Epic, as it is now unable to obtain full reimbursement of its monthly rent payments as originally intended. Giardino Aff. ¶ 55.

More importantly, as part of the “turn-key” delivery of the Project, White Plains was obligated to provide permanent financing for the Project in the form of the HUD-insured loan

approved by NYSDOH. Giardino Aff. ¶ 56. Yet White Plains has breached the Development Agreement and the Lease by failing to provide permanent financing. Giardino Aff. ¶ 57. As a consequence, Epic is currently losing \$68,000 per month on NYSDOH reimbursements for an annualized loss of \$816,000. Giardino Aff. ¶ 58.

**3. The 2019 Letter Of Intent**

On November 20, 2019, Epic entered into a letter of intent with White Plains (the “LOI”) to address these defaults. The LOI provided a simple exchange pursuant to which Epic made a \$2.2 million payment to White Plains to resolve all prior disputes, including the structure of the Rent Security, and White Plains would transfer the property to “a newly formed Delaware Statutory Trust.” Giardino Aff. ¶¶ 59-61.

Epic alone performed its obligations under the LOI by making the \$2.2 million payment to White Plains. Giardino Aff. ¶ 62. Beyond this initial payment, Epic also paid and continues to pay rent to White Plains on time every month. Since December of 2019, Epic’s monthly rent payments of \$506,096.50 have totaled more than \$12 million:

<b>Date</b>	<b>Amount Paid by Epic to White Plains</b>
10/30/2019	\$509,000.00
11/18/2019	\$509,000.00
12/5/2019	\$506,096.50
1/2/2020	\$506,096.50
1/31/2020	\$506,096.50
3/2/2020	\$506,096.50
5/6/2020	\$506,096.50
5/20/2020	\$63,914.56
5/26/2020	\$506,096.50
6/2/2020	\$506,096.50
7/1/2020	\$506,096.50
8/7/2020	\$506,096.50
9/4/2020	\$506,096.50
10/2/2020	\$506,096.50
11/2/2020	\$506,096.50

12/2/2020	\$506,096.50
1/4/2021	\$506,096.50
2/4/2021	\$506,096.50
3/2/2021	\$506,096.50
4/5/2021	\$506,096.50
5/6/2021	\$506,096.50
6/4/2021	\$506,096.50

Giardino Aff. ¶¶ 63-64.

**4. White Plains Defaults With Security Benefit**

Notwithstanding Epic’s rent payments to White Plains, White Plains defaulted on its mortgage with Security Benefit Life Insurance Company (“Security Benefit”). Security Benefit has declared White Plains to be in default of its mortgage for having failed to make necessary mortgage payments, charges, interest, and other required fees. Giardino Aff. ¶ 66. In a notice dated April 16, 2020, Security Benefit states that White Plains has breached the terms of the mortgage and White Plains is solely at fault:

[White Plains] executed and delivered the Note to Lender. The Note evidences the obligation of [White Plains] to pay the Loan...[White Plains] has failed to make, or cause to be made, the monthly payment of interest due under the Note and under Section 2.12 of the Loan Agreement on April 1, 2020, which failure constitutes an Event of Default.

Giardino Aff. ¶ 67.

On May 22, 2020, Security Benefit sent a second letter, reiterating that White Plains remains in default and raising two additional breaches. First, White Plains was supposed to “send a Tenant Direction Notice to direct the sole tenant, HBL, to pay rent directly to Lender.” Second, and most importantly:

[White Plains] failed to deposit all revenue generated by the Property into the Cash Management Account....Among other things, we recently learned that [Epic] may have paid [White Plains] approximately \$2,200,000 in late 2019 or early 2020. Any such revenue should have been deposited with [Security Benefit].

Notably, Security Benefit makes no reference to Epic’s obligations. Giardino Aff. ¶¶ 68-70.

On May 1, 2021, Security Benefit brought a foreclosure action against White Plains for nonpayment of rent in the action captioned *Security Benefit Life Insurance Company, et al. v. White Plains Healthcare Properties I, LLC et al.*, No. 55883/2021. Although Security Benefit temporarily discontinued the action on May 28, 2021, Security Benefit will likely foreclose on the mortgage, jeopardizing Epic’s tenancy and continued operations. Publicity about the foreclosure has created uncertainty about the Facility’s future in the marketplace. Giardino Aff. ¶¶ 71-73.

The breach of White Plains’ mortgage agreement with Security Benefit is especially prejudicial because Epic has made, and continues to make, rent payments. On the other hand, White Plains has failed to pay its mortgage to Security Benefit and has not accounted for Epic’s payments to White Plains. Neither the mortgage agreement with Security Benefit nor the Lease Agreement with Epic provide White Plains with the right to seize and sell the Membership Interest in Waterview.

**5. White Plains Wrongfully Sought To Appoint A Receiver**

As stated above, in or about March 2021, White Plains contacted NYSDOH and claimed that the appointment of an emergency receiver was necessary because Epic was facing certain and immediate financial ruin as a result of this action. Notably, White Plains failed to inform the Court or Epic of this request. Instead, Epic was contacted by NYSDOH Director Marthe JB Ngwashi who requested further information about the situation. When Epic contacted White Plains regarding this request, White Plains’ counsel responded by claiming that White Plains was pursuing its rights under the Lease. Giardino Aff. ¶¶ 74-77.

This is both false and improper. The only section of the Lease which references receivership is Article XVI, Section 16.1, which states, in relevant part:

[White Plains], in addition to all other remedies given to [White Plains] at law or in equity, may by written notice to [Epic], without terminating this Lease, cause [Epic] to apply to the DOH to install a manager and/or management consultant and/or a receiver having the necessary approvals from Governmental Authorities, of [White Plains'] choice, at [Epic's] sole cost and expense or to the extent permitted by applicable law, reenter the Leased Premises by summary proceedings or otherwise.

This remedy, like the other remedies given to White Plains, only arises upon an actual default by Epic. However, despite White Plains' allegations, there has been no default under the Lease, as Epic has made, and continue to make, their monthly rental payments. Moreover, pursuant to Section 16.1 of the Lease, White Plains is required to provide notice to Epic, which they failed to do, and White Plains is solely limited to requesting that Epic apply to NYSDOH for a receiver. Giardino Aff. ¶¶ 78-80.

White Plains had no right to unilaterally request that NYSDOH appoint a receiver under the Lease, nor were there any grounds that would require receivership. Instead, rather than prove their claims before the Court, White Plains once again attempted to avoid judicial scrutiny by asking NYSDOH to improperly intervene. Once Epic was given the opportunity to meaningfully respond, NYSDOH took no further steps to appoint a receiver.

**6. White Plains' Second Attempt To Foreclose On Waterview Interests**

On June 9, 2021, White Plains issued a purported Notification of Disposition of Collateral which announced the intention to sell the "Collateral," defined as "[a]ll rights, title and interest of Lizer Jozefovic as a member of Waterview Acquisition 1, LLC," to the "highest qualified bidder in public" on Thursday, July 1, 2020, at 10:00 AM (the "Notification"). Giardino Aff. ¶¶ 10-11.

The Notification is entirely false, as White Plains have no right to proceed against the Membership Interest, especially in the middle of ongoing litigation. Moreover, the Notification

has been widely distributed to Epic’s current and potential colleagues and business partners, which harms its standing and ability to operate the Facility. Giardino Aff. ¶¶ 12-14.

### III. LEGAL ARGUMENT

#### A. The Preliminary Injunction Maintains the Status Quo Pending Resolution of the Litigation

The purpose of a preliminary injunction is to preserve the status quo until a matter can be fully briefed and resolved. *See, e.g., Koob v. IDS Fin. Serv., Inc.*, 629 N.Y.S.2d 426 (1st Dep’t 1995); *Residential Bd. of Managers of the Columbia Condo. v. Alden*, 576 N.Y.S.2d 859 (1st Dep’t 1991).

To obtain a preliminary judgment, Epic must satisfy three requirements:

- (1) a likelihood of success on the merits of the action;
- (2) the danger of irreparable injury in the absence of a preliminary injunction; and
- (3) a balance of the equities in favor of the party seeking the injunction.

*See, e.g., Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 N.Y.3d 839, 840 (2005); *W. T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981). These factors must be weighed together and in context when determining whether to grant a preliminary injunction. *See Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *see also Chernoff Diamond & Co. v. Fitzmaurice, Inc.*, 651 N.Y.S.2d 504, 506 (1996). As set forth below, Epic satisfies each of these three requirements and is entitled to an injunction preventing the pre-judgment sale of its asset.

#### B. Epic Is Likely To Succeed On The Merits

In order to obtain a preliminary injunction, the moving party is not required to demonstrate “a certainty of success,” but need only provide a prima facie showing of their right to relief. *Bingham v. Struve*, 591 N.Y.S.2d 156, 158 (1st Dep’t 1992); *Parkmed Co. v. Pro-Life Counselling, Inc.*, 457 N.Y.S.2d 27, 29 (1st Dep’t 1982). The moving party establishes a likelihood of success

through credible claims and arguments, regardless of whether the opposing party disputes the facts. *Four Times Square Assocs., LLC v. Cigna Invs., Inc.*, 764 N.Y.S.2d 1, 2 (1st Dep't 2003).

As evidenced by Epic's counterclaims,<sup>4</sup> affirmations, and exhibits, Epic has established credible claims, identified millions of dollars of unaccounted contributions to the Project, and is likely to succeed on the merits of these claims. *See also Promenade Condo. v. J.J. & P. Corp.*, 662 N.Y.S.2d 509, 510 (1997) (holding that an affidavit and basic documentary evidence are sufficient to grant a preliminary injunction).

**i. Epic Performed Its Obligations Under The Collateral Assignment**

Section 2 of the Collateral Assignment required Epic to deposit \$1,600,000 into a dedicated rent security account and provide White Plains with signatory authority for the purpose of ensuring that "no withdrawal may be made so as to reduce the amount of the account below \$1.6 Million" (emphasis added). Once the \$1.6 million was deposited, the Collateral Assignment by its own terms "terminate[s] and [is] void and of no further effect." (emphasis added). Although Epic has satisfied both of these requirements, the proposed Order does exactly what the assignment requires: it prevents withdrawals which reduce the balance below \$1.6 million.

Epic has provided bank records, bank statements, and correspondence demonstrating that in November 2015, the \$1.6 million security account was properly established and the \$1.6 million account balance has been maintained ever since. The evidence also shows that Epic provided

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<sup>4</sup> In its Answer with Counterclaims dated November 5, 2020, Epic has asserted the following counterclaims: (1) An accounting to establish what became of the significant advance payments Epic made prior to commencement of the Project; (2) Imputed interest based upon the \$2.2 million loan Epic provided to White Plains in November 2015; (3) Fraud in the inducement against Fensterman and Nicholson for their misrepresentations regarding the Project's costs, ability to secure financing, ability to timely complete the project, and ability to obtain capital contribution; (4) Bad faith throughout the development and execution of the Project, resulting in Epic suffering losses totaling \$15 million; (5) Fraud based upon the prior and continued misrepresentations that White Plains and Fensterman have made regarding Plaintiff's payments and ability to operate the Project.

White Plains with fully executed bank authorization forms to establish Fensterman as a signatory to the Rent Security and that White Plains took no action.

Again, on August 10, 2017, Epic notified White Plains that the \$1.6 million Rent Security would be transferred to the Second Account for which “Fensterman and [Jozefovic] shall be co-signatories.” In furtherance of this agreement, on August 16 and 17, 2021, Epic provided White Plains with all documents necessary to authorize Fensterman as an account signatory.

As of August 17, 2017, White Plains possessed the bank authorization documents. However, White Plains never transacted these documents, and White Plains never raised this issue until five years later when they filed the current action. Meanwhile, Epic has maintained the Rent Security, which has never fallen below \$1.6 million.

The record establishes that Epic (1) created the Rent Security Account, (2) funded the account with \$1.6 million, (3) executed the bank signatory and authorization forms, (4) secured the signatures of the other account owners to effectuate the authorization, (5) conducted a company meeting to approve the resolution granting Fensterman signatory authority consistent with the Collateral Assignment, and (6) delivered the executed bank forms to White Plains. These acts fully discharged Epic’s obligations under the Collateral Assignment and consequently terminated the agreement.

**ii. White Plains Waived Its Rights Under the Collateral Assignment**

White Plains’ failure to consummate the account transaction in 2017 constitutes a complete waiver of contractual rights. *See* 13 Williston on Contracts § 39:15 at 621 (4th ed.) (the doctrine of waiver is “designed to prevent the waiving party from lulling the other party into a belief that strict compliance with a contractual duty will not be required and then either suing for noncompliance or demanding compliance”).

Courts have routinely held that “[c]ontractual rights may be waived if they are knowingly, voluntarily and intentionally abandoned,” as established “by failure to act so as to evince an intent not to claim a purported advantage” or by “undisputed acts...inconsistent with [the party’s] purpose to stand upon [their] rights.” *Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Mgmt., L.P.*, 7 N.Y.3d 96, 104 (2006) (citations omitted); *Alsens Am. Portland Cement Works v. Degenon Contracting Co.*, 222 N.Y. 34, 37 (1917); *CT Chemicals (U.S.A.), Inc. v. Vinmar Impex, Inc.*, 81 N.Y.2d 174, 179, (1993). By their lack of action since 2017, White Plains has waived their rights under the Collateral Assignment.

**iii. Modification Of The Security Deposit Requirement**

Not only have they waived their rights under the Collateral Assignment, White Plains modified any rights with respect to the Rent Security by accepting a \$2.2 million payment from Epic. On November 20, 2019, in an attempt to resolve certain disputes, White Plains and Epic entered into the LOI, under which Epic paid \$2.2 million to White Plains, and in exchange White Plains agreed to transfer the Property to “a newly formed Delaware Statutory Trust.” White Plains accepted the \$2.2 million from Epic and thereby extinguished any and all previous disputes. Yet, in what is becoming a pattern, White Plains failed to perform its obligations under the LOI, despite having benefited from the \$2.2 million payment from Epic, and now seeks to enforce the Collateral Assignment.

**iv. White Plains Is Not In Possession Of The Membership Interest And Cannot Sell It**

White Plains is publishing fraudulent statements claiming that the Membership Interest will be sold at auction, despite not possessing the Membership Interest, nor having any right to sell the Membership Interest. White Plains intends to induce third parties to rely on the Notification and attempt to purchase the Membership Interest, a transaction that will lead to certain injury to

Epic, MCB, and any other parties who may erroneously attempt to purchase the Membership Interest.

Notably, MCB entered into a security agreement with Epic in 2019. Epic granted MCB a security interest in the Membership Interest and MCB subsequently perfected its security interest by taking possession of the related certifications and filing a Uniform Commercial Code (“UCC”) Financing Statement on December 23, 2019. In contrast, White Plains failed to file a UCC Financing Statement until September 15, 2020.

Consequently, MCB has a senior security interest in the Membership Interest. MCB has perfected its security interest in the Membership Interest and maintains physical possession of the membership certificates. White Plains cannot sell the Membership Interest which is properly assigned to MCB.

**v. White Plains’ Publication Is Defamatory**

Defamation occurs when an entity makes “a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and, it must either cause special harm or constitute defamation per se.” *Dillon v. City of New York*, 704 N.Y.S.2d 1, 5 (1999).

The Notification identifies Jozefovic as an “assignor” and states that White Plains will sell the Membership Interest at a public auction to satisfy Epic’s debts. These statements are false—Epic does not owe White Plains or Fensterman anything, and White Plains has no right to sell the Membership Interest. White Plains and Fensterman knew that the statements in the Notification were false at the time it was issued, and they purposefully distributed the Notification to Epic’s current and potential colleagues and business partners, harming Epic’s reputation.

vi. **Fensterman, As Epic's Former And Current Legal Counsel, Breached His Fiduciary Duties To Epic, Committing Legal Malpractice, And Violated Judiciary Law § 487**

To state a claim for breach of fiduciary duty, a plaintiff must allege that “(1) defendant owed them a fiduciary duty, (2) defendant committed misconduct, and (3) they suffered damages caused by that misconduct.” *Burry v. Madison Park Owner LLC*, 924 N.Y.S.2d 77, 78 (2011). An attorney breaches their fiduciary duties to their client when they violate their attorney-client obligations, such as by disclosing confidential information or acting in conflict with the client’s interests. *See Napoli v. New York Post*, 107 N.Y.S.3d 279, 282 (2019), *leave to appeal denied*, 35 N.Y.3d 906 (2020).

Fensterman acted as legal counsel to Epic in connection with the refinancing of Waterview and the execution and delivery of Collateral Assignment. As Fensterman previously and currently represents Epic in certain matters, Fensterman owes a fiduciary duty to Epic, including the duties of loyalty, good faith, and care.

C. **Epic Will Suffer Irreparable Harm**

Courts have long held that membership in, or ownership of, a corporation constitutes a specific asset that cannot be replaced or compensated through money alone. *See, e.g., Walker & Zanger v Zanger*, 245 AD2d 144, 145 (1st Dept 1997); *Vanderminde v Vanderminde*, 226 AD2d 1037, 1041 (3d Dept 1996); *Matter of Brenner v Hart Sys., Inc.*, 114 AD2d 363, 366 (2d Dept 1985); *Cooperstown Capital, LLC v Patton*, 60 AD3d 1251, 1253 (3d Dept 2009). This principle is well settled: irreparable harm will occur and injunctive relief is necessary when the control or management of a closely held corporation is threatened. *See, e.g., Casita, LP v Maplewood Equity Partners (Offshore) Ltd.*, 17 Misc 3d 1137(A) (Sup Ct 2007) (“[The] loss of some or all of its investment...by reason of a forced sale...would constitute irreparable injury.”); *Yemini v*

*Goldberg*, 60 AD3d 935, 937 (2d Dept 2009) (“[B]ecause control and management...were at stake, money damages were not sufficient.”); *Matter of Madelone v Whitten*, 18 Misc 3d 1131(A) (Sup Ct 2008) (“The Court concludes that this contemplated shift in the governance and control...constitutes irreparable harm, particularly where the provisional relief sought by petitioner is to maintain the status quo”); *Louis Foodservice Corp. v Konstantinos Vouyiouklis*, 2002 NY Slip Op 50448(U), 10 (Sup Ct Aug. 26, 2002) (“[A]n opportunity for Epic to shift the balance of power and assume management and control of the corporation, may properly be viewed as irreparable injury”).

Jozefovic is the majority shareholder of Waterview, a closely held corporation, through his ownership of the Membership Interest. Jozefovic has spent years of his life building and operating Waterview, which represents the accumulation of Jozefovic’s efforts, labor, and business acumen. As Waterview is a closely held corporation, the Membership Interest cannot be replaced and its value is impossible to measure. Moreover, Jozefovic is not a minor investor and the Membership Interest is not a fungible asset; Jozefovic cannot be compensated for the loss of the Membership Interest after it has been sold to a third party. Therefore, if White Plains continues with the sale of the Membership Interest, Epic will be irreparably harmed. *See Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862 (1990); *see also Grand Manor Health Related Facility, Inc. v Hamilton Equities, Inc.*, 85 AD3d 695 (1st Dept 2011) (“Without the injunction, plaintiff, which operates a residential health care facility, would be at risk of losing its valuable leasehold and incurring significant permanent damage to more than 30 years of hard-earned goodwill.”).

**D. The Balance Of Equities Favors Epic**

The final requirement requires a balancing of equities. The court should grant a preliminary injunction if “the damage to [Epic] from denial of the preliminary injunction... would [cause]

substantially greater harm [to Epic] if they were ultimately proved right in the action, than the harm that would be caused to [White Plains] by the granting of the preliminary injunction if [Epic] were ultimately proved right.” *Kurtz v Zion*, 61 AD2d 778, 778 (1st Dept 1978). Courts must give greater deference to actual, concrete harm, whereas theoretical concerns are weighted less. *See, e.g., Louis Foodservice Corp.*, 2002 NY Slip Op at 10.

The known, immediate harm that Epic will suffer far outweighs any potential inconvenience to White Plains. The \$1.6 million is in a dedicated account and the proposed Order prevents its withdrawal. *See Maestro West Chelsea SPE LLC v. Pradera Realty Inc.*, 954 N.Y.S.2d 819 (Sup. N.Y. Co. 2012). The proposed Order serves the exact purpose of a preliminary injunction, as it preserves the status quo until the parties' rights can be determined. *See Koob*, 629 N.Y.S.2d 426.

**E. NYSDOH Has Not Approved Of The Sale**

New York State has strict laws about the sale and transfer of nursing homes, especially those certified as Medicaid providers, as is Epic. By way of example, at least 90 days before agreeing to sell a nursing home the owner must provide notification about the sale and the proposed management and operations plan to NYSDOH. Additionally, there are numerous requirements before an owner can complete a proposed sale. *See* N.Y. Pub. Health Law, § 2803-X. If there is a change in ownership of a facility, the new owner must get written approval from NYSDOH in order to receive an operating license. *See* New York Consol. Laws Article 36, § 3611(A). The application process involves submitting a Certificate of Need and undergoing a lengthy approval process. Failure to procure approval via this process bars the sale of a nursing home sale, which occurred in *Putnam Acquisition I, LLC v. KNH Partners*, 21 Misc. 3d 1103(A) (Nassau County

Supreme Court 2008) where the plaintiff’s failure to receive NYSDOH approval of their Certificate of Need application prevented a nursing home purchase from being completed.

Although New York State’s Moratorium on LHCSA licensures officially expired in March 2020, NYSDOH remains focused on the COVID-19 pandemic and continues the freeze on processing LHCSA applications. See <https://www.health.ny.gov/facilities/cons/>. Additionally, New York State’s 2021 Executive Budget continues, effective through March 31, 2022, “a moratorium on the processing and approval of applications for a certificate of authority to operate as a Managed Long Term Care program.” The Managed Long Term Care program is a common New York State Medicaid health plan that provides coverage for various services, including nursing home care.

New license applications, once they are available to be processed, will need to be more extensive than they were in the past, given new amendments to New York Consol. Laws Article 36, § 3605. A LHCSA applicant due to change of ownership will need to: (1) Undergo a character and competence review; (2) Provide proof of financial resources and feasibility to operate the entity; and (3) “such other matters as [the DOH] shall deem pertinent.”

**F. The Court Should Grant Epic A Temporary Restraining Order Pending The Determination Of The Preliminary Injunction**

CPLR § 6301 states, in relevant part, that

“[a] temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.”

Irreparable injury is defined as an injury for which monetary damages are insufficient. *James v. Gottlieb*, 445 N.Y.S.2d 719, 719 (1981). Additionally, the moving party must demonstrate that the harm is specific and imminent. In short, the moving party is required to provide a showing that the requested temporary relief is needed to protect the status quo, as the threatened action will

complicate, diminish, or moot the desired final outcome. *See Atlas MF Mezzanine Borrower, LLC v. Macquarie Texas Loan Holder LLC*, 174 A.D.3d 150, 105 N.Y.S.3d 59 (2019) (holding that while a party may seek to enjoin a sale of collateral *before* the sale occurs, the same party may not unwind a sale after its conclusion, even if a court later finds evidence of bad faith).

As discussed above, Epic has complied with the Collateral Assignment by providing the Rent Security, yet White Plains intends to engage in a fraudulent sale of the Membership Interest on July 1, 2021. For the reasons discussed *supra*, Epic risks suffering irreparable injuries, losses, and damages, unless White Plains is immediately enjoined. Therefore, the Court should grant a temporary restraining order pending a hearing and determination of the preliminary injunction motion.

**G. In The Alternative, Epic Is Prepared To Provide White Plains With A Security Interest In the Rent Security**

White Plains does not have the right to sell the Membership Interest, as Epic has not breached the Collateral Assignment, and the Rent Security remains intact. However, in the interest of resolving this matter without further unnecessary motion practice and as further proof of good will, Epic is prepared to offer White Plains a \$1.6 million security interest in the Rent Security. This additional security interest is sufficient to protect White Plains' interests throughout the course of litigation and would allow the parties to focus on resolving the actual issues and disputes, instead of attempting to leverage long-defunct contracts to engage in wrongful, fraudulent activities. *Giardino Aff.* ¶98.

**IV. CONCLUSION**

For the foregoing reasons, Epic and Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman respectfully request that the Court grant the Order to Show Cause for a preliminary injunction and a temporary restraining order to (1) enjoin White Plains

Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank from taking any action to transfer, assign, convey or sell Jozefovic’s membership interest in Waterview Acquisition I, LLC; and (2) enjoin Epic and Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman from taking any action to reduce the Rent Security below \$1.6 million; be granted in its entirety, together with such other and further relief as this Court deems just, proper and equitable.

Dated: New York, New York  
June 22, 2021

**MICHELMAN & ROBINSON, LLP**

By:  \_\_\_\_\_

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*Attorneys for Defendants and Third-Party Plaintiffs*

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----	X	
WHITE PLAINS HEALTHCARE PROPERTIES	:	Index No.: 60278/2020
I, LLC,	:	
	:	<b>AFFIRMATION OF ROBERT J.</b>
Plaintiff,	:	<b>MALATAK IN PARTIAL</b>
	:	<b>JOINER AND SUPPORT OF</b>
v.	:	<b>DEFENDANTS' / THIRD-PARTY</b>
	:	<b>PLAINTIFFS' ORDER TO</b>
HBL SNF, LLC, LIZER JOZEFOVIC a/k/a	:	<b>SHOW CAUSE</b>
LIZER JOZOFOVIC, and MARK NEUMAN,	:	<b>FOR A TEMPORARY</b>
	:	<b>RESTRAINING ORDER AND</b>
Defendants and	:	<b><u>PRELIMINARY INJUNCTION</u></b>
Third-Party	:	
Plaintiffs.	:	
	:	
v.	:	
	:	
CCC EQUITIES, LLC, PROJECT EQUITY	:	
CONSULTING, THE CONGRESS	:	
COMPANIES, HOWARD FENSTERMAN,	:	
WILLIAM NICHOLSON, and	:	
METROPOLITAN COMMERCIAL BANK	:	
	:	
Third-Party	:	
Defendants.	:	
-----	X	

**ROBERT J. MALATAK**, an attorney duly admitted to practice law before the Courts of this State, affirms the following to be true under penalty of perjury:

1. I am a member of the law firm Windels Marx Lane & Mittendorf, LLP, attorneys for third-party defendant and cross-claimant Metropolitan Commercial Bank (“MCB”), and I am fully familiar with the facts and circumstances set forth herein. I submit this affirmation in partial joinder and support of the motion by defendants / third-party plaintiffs Lizer Jozefovic (“Josefovic”), HBL SNF LLC (“HBL”), and Mark Neuman (“Neuman”) (collectively, “Movants”) for an order pursuant to CPLR Article 63 enjoining plaintiff White Plains Healthcare Properties I,

LLC (“WPHP”) and the third-party defendants (collectively, the “WP Parties”), during the pendency of this action, from, among other things, taking any action to transfer, assign, convey, or sell Josefovich’s membership interests in Waterview Acquisition I, LLC (the “Certificates”).

2. A copy of the Affidavit of Brett Bandazian, sworn to on October 26, 2020 (the “Bandazian Aff.”), along with Exhibits A-H thereto, is annexed hereto as **Exhibit 1**. The Bandazian Aff. was previously e-filed on October 27, 2020 in the action entitled *Josefovich v. White Plains Healthcare Properties I, LLC et. al*, Index No. 655549/2020 (the “New York County Action”), in partial joinder and support of Josefovich’s prior application for a temporary restraining order, and MCB resubmits same in partial joinder and support of this motion.

3. On October 27, 2021, the Court granted Josefovich’s TRO request in the New York County Action pending a determination on the request for a preliminary injunction. A true copy of the conformed Order to Show Cause signed by the Court is annexed hereto as **Exhibit 2**.

4. Notably, the WP Parties admit that MCB has a first priority lien on the Certificates. *See* Emergency Affirmation Of Alfred E. Donnellan In Support Of Order To Show Cause (New York County Action, Doc. No. 8, ¶¶ 12, 15).

5. WPHP and Howard Fensterman subsequently moved to consolidate the New York County Action with this action pending in Westchester County Supreme Court.

6. While the motion was pending, on January 8, 2021, MCB filed in the New York County Action an Answer With Cross-Claim against WPHP and Howard Fensterman. A true copy of the Answer With Cross-Claim is annexed hereto as **Exhibit 3**. MCB’s cross-claim seeks a declaratory judgment that WPHP and Howard Fensterman are prohibited from selling the Certificates because, *inter alia*, (a) they either have no interests in the Certificates, or (b) even if

they do have interests in the Certificates any such interests are trumped by MCB’s interests and related rights.

7. By Decision and Order, dated April 8, 2021 (Bannon, J.S.C.), a true copy of which is annexed hereto as **Exhibit 4**, the New York County Action was consolidated with this action, and the motion for a preliminary injunction was denied *without prejudice* to renewal upon transfer and consolidation in this Court.

8. After the two (2) actions were consolidated, Howard Fensterman, as nominee for White Plains, issued a Notification of Disposition of Collateral, dated June 9, 2021 (the “Second Notice of Sale”), purporting to once again notice a sale of the Certificates, this time on July 1, 2021. A true copy of the Second Notice of Sale is annexed hereto as **Exhibit 5**.

**WHEREFORE**, MCB respectfully requests that the Court issue an order granting (1) Movants’ order to show cause for a temporary restraining order and preliminary injunction, except that the injunction should not be extended to MCB and (2) MCB such other and further relief as this Court deems just and proper.

Dated: New York, New York  
June 25, 2021

Robert J. Malatak

Digitally signed by Robert J. Malatak  
DN: cn=Robert J. Malatak, o=Windels Marx Lane & Mittendorf LLP, ou,  
email=rmalatak@windelsmarx.com, c=US  
Date: 2021.06.25 10:50:16 -0400

**ROBERT J. MALATAK**

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

----- X  
 LIZER JOZEFOVIC, : Index No.: 655549/2020  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, HOWARD FENSTERMAN, and :  
 METROPOLITAN COMMERCIAL BANK, :  
 :  
 Defendants. :  
 ----- X

**AFFIDAVIT OF BRETT BANDAZIAN IN PARTIAL  
 SUPPORT OF PLAINTIFF’S MOTION, BY ORDER TO  
 SHOW CAUSE, FOR AMONG OTHER THINGS,  
A TEMPORARY RESTRAINING ORDER**

STATE OF NEW YORK )  
 ) ss:  
 COUNTY OF NEW YORK )

**BRETT BANDAZIAN**, being duly sworn, deposes and says:

1. I am a Vice President, Commercial Lending, of Metropolitan Commercial Bank (“MCB”), and respectfully submit this affidavit in partial support of plaintiff Lizer Jozefovic’s (“Plaintiff”) motion, by order to show cause, for, among other things, a temporary restraining order (the “Motion”). In my capacity as Vice President, I have personal knowledge of MCB’s business dealings with Plaintiff, as well as non-party Waterview Acquisition I, LLC (“Waterview”). Except as otherwise stated, I have personal knowledge of the matters set forth herein based upon personal knowledge, a review of MCB’s business records and other relevant documents and information, as well as my discussions with other MCB personnel and representatives. Where the facts are on information and belief, I believe them to be true.

**BASIS FOR RELIEF SOUGHT**

2. On October 22, 2020, Plaintiff filed this action and Motion seeking, among other things, a temporary restraining order that restrains defendants White Plains Healthcare Properties I, LLC (“White Plains”), Howard Fensterman (“Fensterman”) and MCB from, among other things, “Taking any action to transfer, assign, convey or sell Plaintiff’s membership interest in Waterview .... (the ‘TRO’).” Because MCB is the fully perfected senior secured creditor in and to Plaintiff’s Membership Interests and Certificates (each defined below) and actually has possession of them, any attempted sale by White Plains and Fensterman -- assuming *arguendo* that White Plains is even a secured creditor which remains an open issue -- cannot be “commercially reasonable” and MCB will suffer significant damages as a result. Accordingly, MCB supports this Court imposing a TRO, but only on White Plains and Fensterman. The TRO should not be expanded to MCB because its rights and remedies under its loan documents (including, without limitation, those identified below), at law and in equity should not in any way be limited because of a dispute that is really between Plaintiff, White Plains and Fensterman.

**PERTINENT FACTS**

3. On or about December 19, 2019, MCB loaned \$3 million (the “Loan”) to, among others, Waterview and in connection therewith Waterview executed and delivered to MCB a Promissory Note (the “Note”) and Loan Agreement (the “Loan Agreement”) each dated December 19, 2019.

4. To secure repayment of Waterview’s obligations to MCB, among other things, Plaintiff executed and delivered to MCB a Guaranty Of Payment dated December 19, 2019 (the “Guaranty”). A true copy of the Guaranty is annexed hereto as **Exhibit A**.

5. Plaintiff secured his obligations under his Guaranty by executing and delivering to MCB, among other things, the Assignment And Pledge Of Membership Interests dated December 19, 2019 (the “Pledge Agreement”). A true copy of the Pledge Agreement is annexed hereto as **Exhibit B**.

6. Pursuant to the Pledge Agreement, Plaintiff, among other things, “pledge[d], collaterally assign[ed], transfer[red] and convey[ed], and grant[ed] a security interest in and lien on, in favor of [MCB], all of [Plaintiff’s] right, title and interest in, to, and under ..., whether now owned or existing or hereafter acquired or arising [‘Seventy and one-tenths percentage (70.1%) of the membership interests ... owned by HERBERT JOZEFOVIC ... in WATERVIEW ACQUISITION I, LLC ....’]” (“Plaintiff’s Membership Interests”). *See* Pledge Agreement, § 2-3 & Annex A.

7. To authorize, permit and facilitate the pledge of Plaintiff’s Membership Interests to MCB, Plaintiff’s Membership Interests were certificated (the “Certificates”) and the Amended And Restated Operating Agreement Of Waterview Acquisition I, LLC was amended pursuant to the Second Amendment To Amended And Restated Operating Agreement Of Waterview Acquisition I, LLC dated December 19, 2019 (collectively, the “Operating Agreement”). A true copy of the Operating Agreement is annexed hereto as **Exhibit C**.

8. After obtaining a senior secured interest in Plaintiff’s Membership Interests and Certificates, MCB fully perfected same by filing a UCC Financing Statement on December 23, 2019 (the “MCB UCC”) and taking possession of the Certificates. A true copy of the MCB UCC is annexed hereto as **Exhibit D**. MCB remains in possession of the Certificates.

9. On or about October 6, 2020, MCB and its counsel Windels Marx Lane & Mittendorf, LLP (“Windels Marx”) received a Notification Of Disposition Of Collateral pursuant

to which White Plains and Fensterman purported to sell White Plains' interests in and to Plaintiff's Membership Interests and Certificates (the "Notice of Sale"). A true copy of the Notice of Sale is annexed hereto as **Exhibit E**.

10. The Notice of Sale allegedly relates to an August 11, 2017 collateral assignment, pledge and security agreement between Plaintiff and White Plains. This is the first time MCB became aware of any such alleged agreement and not surprisingly, since White Plains/Fensterman did not file a UCC Financing Statement until only last month -- September 15, 2020 (the "WP UCC"). A true copy of the WP UCC is annexed hereto as **Exhibit F**.

11. By letter dated October 19, 2020, MCB's counsel wrote to White Plains and Fensterman's counsel demanding that it cease and desist with any and all efforts to sell Plaintiff's Membership Interests and Certificates (the "Windels Letter"). A true copy of the Windels Letter is annexed hereto as **Exhibit G**.

12. By letter dated October 22, 2020, White Plains' counsel, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, in responding to both the Windels Letter, as well as an earlier dated cease and desist letter by Plaintiffs' counsel, reported that White Plains and Fensterman would not cease and desist but rather would proceed with the sale as noticed (the "DelBello Letter"). A true copy of the DelBello Letter is annexed hereto as **Exhibit H**.

13. Thereafter, Plaintiff filed this action and Motion.

**MCB WILL SUFFER SIGNIFICANT  
PREJUDICE IF THE SALE IS  
NOT TEMPORARILY ENJOINED**

20. I am advised by MCB's counsel, Windels Marx, that debtors and secured creditors alike must proceed in good faith under New York's Uniform Commercial Code ("UCC") and that all sales thereunder must be "made in a commercially reasonable manner." I

am further advised that a secured party who is not in possession of the collateral cannot by law conduct a commercially reasonable disposition of that collateral.

21. Based upon the foregoing discussion, MCB is a fully perfected senior secured creditor in and to Plaintiff's Membership Interests and Certificates -- a fact that Plaintiff, White Plains and Fensterman apparently concede. MCB has not, nor will it, turn over the Certificates to White Plains or Fensterman for purposes of conducting a sale or otherwise. MCB's rights in and to Plaintiff's Membership Interests and Certificates are paramount to those of White Plains (assuming it has any) and thus, is under no obligation -- nor can it be compelled -- to turn over the Certificates. Consequently, because neither White Plains nor Fensterman is in a position to conduct a "commercially reasonable" sale of same, they should be enjoined from further proceeding down that path.

22. Additionally, given MCB's paramount interests -- which it will not waive for, but will seek to enforce against White Plains, Fensterman or any potential third-party purchaser -- it is hard to imagine that a legitimate third-party purchaser would be willing to pay anything for Plaintiff's Membership Interests at a sale conducted by White Plains and Fensterman. Therefore, the attempted sale appears to be designed to damage the image of Waterview for some other purpose which in turn reduces the value of MCB's collateral security for the Loan and causes MCB to suffer related significant damages if the sale is not enjoined and otherwise stayed.

23. MCB also notes that Plaintiff raises serious issues about whether or not White Plains even obtained a security interest in Plaintiff's Membership Interests and Certificates given that White Plains did not take the steps necessary (as did MCB) to have the Operating Agreement amended so as to permit a pledge of Plaintiff's interests to White Plains. Plaintiff also raises serious questions about whether the purported security interest in White Plains' favor

(assuming one was even created) had long ago terminated. MCB submits that at a minimum these threshold issues as to White Plains' status (or not) as a secured creditor respectfully must be resolved before any UCC sale by White Plains or Fensterman can even be contemplated. If White Plains/Fensterman have no secured creditor status, then their actions with respect to Plaintiff's Membership Interests and Certificates are nothing more than blatant attempts to interfere with MCB's contractual arrangements with, among others, Waterview and Plaintiff, which this Court respectfully should not permit.

**WHEREFORE**, defendant Metropolitan Commercial Bank respectfully requests that the Court grant (a) Plaintiff's requested TRO, except that MCB should not be subject to the TRO and (b) MCB such other and further relief as the Court shall deem just and proper.

**[The balance of this page is intentionally left blank; notarized signature page follows]**



BRETT BANDAIZAN

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On this 26 day of OCTOBER, 2020, before me, the undersigned, personally appeared Brett Bandazian personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



NOTARY PUBLIC

**WILLIAM HOPKINS**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**No. 01HO8283840**  
**Qualified in Orange County**  
**My Commission Expires 06-17-2021**

# EXHIBIT A

WMLM  
307780/52  
Execution

**GUARANTY OF PAYMENT**

**THIS GUARANTY OF PAYMENT** (this “**Guaranty**”) is made as of the 19<sup>th</sup> day of December, 2019, by

**HERBERT JOZEFOVIC**, an individual residing at 53 Mariner Way, Monsey New York 10952, (“**HJ**”),

**LORRAINE NEUMAN**, an individual residing at 53 Mariner Way, Monsey New York 10952 (“**LN**”),

**MARK NEUMAN**, an individual residing at 4 Jay Ct., Monsey NY 10952 (“**MN**”),

**DENISE NEUMAN**, an individual residing at 4 Jay Ct., Monsey NY 10952 (“**DN**”, and jointly and severally, collectively with HJ, LN and MN, the “**Individual Guarantors**” or the “**Guarantor Parties**”, and each respectively a “**Guarantor Party**”),

in favor of **METROPOLITAN COMMERCIAL BANK**, a New York State chartered bank, having an office at 99 Park Avenue, 4<sup>th</sup> Floor, New York, New York 10016, administrative agent for itself and certain lending institutions (in such capacity “**Administrative Agent**”), as more particularly set forth in the Loan Agreement (as hereinafter defined). All capitalized terms not defined herein shall have the meaning set forth in the Loan Agreement.

**RECITALS:**

**WHEREAS**, pursuant to that certain Loan Agreement dated of even date herewith, by and among **WATERVIEW ACQUISITION I, LLC**, a New York limited liability company, **SALEM ACQUISITION I, LLC**, a New York limited liability company (collectively, the “**Borrower**”), the Guarantor Parties, the Administrative Agent (as Administrative Agent) and the Lenders (each as defined in the Loan Agreement) party thereto (together with all extensions, renewals, modifications, substitutions and amendments thereof, the “**Loan Agreement**”), the Lenders have agreed to make a term loan to Borrower in the principal sum of \$3,000,000 (the “**Loan**”), evidenced by the Note (as defined in the Loan Agreement);

**WHEREAS**, the Lenders and Administrative Agent require, as a condition precedent to the making of the Loan that the Guarantor Parties shall have executed and delivered this Guaranty for the benefit of the Administrative Agent on behalf of the Lenders;

**WHEREAS**, this Guaranty is secured by the Pledge Agreements;

**WHEREAS**, each Guarantor Party will benefit from the making of the Loan; and

**WHEREAS**, unless otherwise indicated in this Guaranty, capitalized terms used herein which are not defined herein shall have the respective meanings assigned to them in the Loan Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Lenders to make the Loan to Borrower, each Guarantor Party hereby agrees, as follows:

1. Intentionally Omitted.
2. Obligations Guaranteed.

(a) The Guarantor Parties unconditionally guarantee to the Lenders and Administrative Agent, the due, prompt and unconditional payment of the Loan, and the interest thereon, whether now or hereafter advanced, as the same shall become due and payable under the Note and Loan Agreement, whether at stated maturity, by acceleration or otherwise, and any and all sums of money that, at the time, may have become due and payable under the provisions of the Note, the Loan Agreement, the Pledge Agreements or any such other documents (such documents are hereinafter referred to, collectively, as the “**Loan Documents**”) plus all other amounts, in each case, liquidated or unliquidated, owing by the Borrower to the Administrative Agent and each Lender pursuant to and whether arising under the Note, the Loan Agreement or any other Loan Document at any time, of each and every kind, nature and description, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Borrower to a Lender, Administrative Agent or any of their affiliates; or are due indirectly by the Borrower to Administrative Agent, any Lender or any of their affiliates as endorser, guarantor or other surety, or as Borrower of obligations due third persons which have been endorsed or assigned to any Lender, Administrative Agent or any of their affiliates, or otherwise), absolute or contingent, due or to become due, now existing or hereafter arising or contracted, including, without limitation, payment when due of all amounts outstanding respecting any of the Loan Documents, and the due and prompt performance of all of the terms, agreements, covenants and conditions of the Note, the Loan Agreement or any other Loan Documents (collectively, the “**Guaranteed Obligations**”); and

(b) Each Guarantor Party unconditionally guarantees to all Lenders and Administrative Agent, payment in full of any and all reasonable expenses that may be paid or incurred by Administrative Agent, or any Lender, or their designees, or any of its affiliates in the collection of all or any portion of the Guarantor’s obligations hereunder or the exercise or enforcement of any one or more of the other rights, powers, privileges, remedies and interests of Administrative Agent or such Lenders, under the Loan Documents, including, without limitation, reasonable attorneys’ fees, irrespective of the manner or success of any such collection, exercise or enforcement, and whether or not such expenses constitute part of the Borrower’s obligations.

(c) Notwithstanding anything to the contrary in this Guaranty or any of the Loan Documents, Administrative Agent, the Lenders or their designees shall not be deemed to have waived any right which the Lenders and Administrative Agent, or their designees, may have under Section 506(a), 506(b), or 1111(b) of the Bankruptcy Code or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Guaranteed Obligations or to require that all collateral shall continue to secure all of the Guaranteed Obligations owing to the Administrative Agent or any Lender in accordance with the Loan Documents.

3. Unconditional Guaranty. This Guaranty is an absolute, unconditional, present and continuing guaranty of payment and not of collection and is in no way conditioned or contingent upon any attempt to enforce Administrative Agent's, Lenders' or any of its affiliates rights against Borrower or to collect from Borrower or upon any other condition or contingency; accordingly, Administrative Agent shall have the right to proceed against the Guarantor Parties immediately upon any Event of Default (as defined in the Loan Agreement) under the Loan Agreement without taking any prior action or proceeding to enforce the Loan Documents or any of them or for the liquidation or foreclosure of any security the Administrative Agent or its affiliates may at any time hold pursuant thereto. Each Guarantor Party hereby waives and releases any claim (within the meaning of 11 U.S.C. § 101) that any Guarantor Party may have against Borrower arising from a payment made by any Guarantor Party under this Guaranty and agrees not to assert or take advantage of any subrogation rights of any Guarantor Party or any right of any Guarantor Party to proceed against Borrower for reimbursement. It is expressly understood that the waivers and agreements of each Guarantor Party constitute additional and cumulative benefits given to each of Administrative Agent and each Lender and their respective affiliates for its security and as an inducement for its extension of credit to Borrower. Administrative Agent may at any time and from time to time take any and/or all actions and enforce all rights and remedies available to it and Lenders hereunder or under applicable law to collect from any Guarantor Party any amounts then due and payable hereunder by any Guarantor Party and/or to cause any Guarantor Party to fulfill his, her or its obligations hereunder.

4. Liability Unimpaired. Each Guarantor Party's liability hereunder shall in no way be limited or impaired by, and each Guarantor Party hereby consents to and agrees to be bound by, any amendment or modification of the provisions of any of the Loan Documents, or any other instrument or agreement made to or with the Administrative Agent, any Lenders, or any of its respective affiliates, by Borrower or any Guarantor Party. In addition, no Guarantor Party's liability hereunder shall in any way be limited or impaired by (i) any extensions of time for performance required by any of said documents, (ii) any sale, assignment or foreclosure of the Note or any sale or transfer of all or part of the collateral pledged to the Administrative Agent, (iii) any exculpatory provision in any of said documents limiting the Administrative Agent's or any Lender's recourse to the collateral or to any other security, or limiting the Administrative Agent's or any Lender's rights to a deficiency judgment against Borrower, (iv) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of said documents including any other Guarantor Party under this Guaranty or any other guaranty, for any reason, including by the Administrative Agent's or any Lender's election, by operation of law (including, but not limited to the Commodity Exchange Act (the "CEA") and any successor statute or any other rule, regulation or order of the Commodity Futures Trading Commission), or otherwise, (v) the release or substitution in whole or in part of any security for the Obligations, (vi) the Administrative Agent's or any Lender's failure to record or file any UCC financing statements (or the Administrative Agent's or any Lender's improper recording or filing of same) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Guaranteed Obligations, (vii) the invalidity, irregularity or unenforceability, in whole or in part, of any of the Loan Documents, this Guaranty or any other instrument or agreement executed or delivered to the Administrative Agent on behalf of the Lenders in connection with the Obligations, except to the extent that there is a final adjudication by a court of competent jurisdiction of a valid defense to the applicable Borrower's obligations under the Loan Documents to payment of the Guaranteed

Obligations, (viii) the inaccuracy of any of the representations and warranties made by Borrower in the Loan Agreement or the other Loan Documents, or (ix) any other action or circumstance whatsoever that constitutes, or might be construed to constitute, a legal or equitable discharge or defense (except full payment and satisfaction) of Borrower for their obligations under any of the Loan Documents or of any Guarantor Party under this Guaranty; and, in any such case, whether with or without notice to each Guarantor Party and with or without consideration.

5. Preservation of Loan Documents. Each Guarantor Party will cause the Borrower to maintain and preserve the enforceability of any of the Loan Documents, as the same may be modified and will not permit Borrower to take or to fail to take actions of any kind which might be the basis for a claim that any Guarantor Party has a defense to any Guarantor Party's obligations hereunder.

6. Each Guarantor Party Event of Default. Upon the occurrence of any of the following events which is continuing after all applicable cure periods (each a "**Guarantor's Event of Default**"): (a) any Guarantor Party defaults following any applicable notice and cure period under this Guaranty or any Loan Document to which any Guarantor Party is a party; (b) any representation or warranty made by any Guarantor Party herein or in any other Loan Document to which any Guarantor Party is a party is materially false or untrue as of the date such representation or warranty is made; (c) any Guarantor Party commences any case, proceeding, or other action under any law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief of debtors or seeks to have an order for relief entered with respect to any Guarantor Party or seeks to be adjudicated a bankrupt or insolvent, or seeks reorganization, arrangement, adjustment, liquidation, dissolution, composition or other relief with respect to any Guarantor Party or any Guarantor Party's debts, or seeks the appointment of a receiver, trustee, custodian, or other similar official for any Guarantor Party or for all or any substantial part of any Guarantor Party's property; (d) any Guarantor Party makes a general assignment for the benefit of creditors; (e) there is commenced against any Guarantor Party, any case, proceeding or other action of the type referred to in clause (c) above or seeking the issuance of a warrant of attachment, execution, distraint, or similar process against all or any substantial part of any Guarantor Party's property, which case, proceeding or other action results in an entry of an order for relief or is not dismissed, discharged or bonded within thirty (30) days of the commencement thereof; (f) any Guarantor Party takes any action indicating any Guarantor Party's consent to, approval of, or acquiescence in or in furtherance of, any of the acts set forth in clause (c) and (e) above; (g) in the case of the Individual Guarantors, the death or incapacity of such Guarantor, except if a replacement guarantor acceptable to the Administrative Agent in all respects in its sole and absolute discretion assumes each of the obligations of such Guarantor hereunder within twenty (20) days from the date of the death or incapacity of such Guarantor; (h) any Guarantor Party admits in writing any Guarantor Party's inability to pay such Guarantor Party's debts as they mature; (i) any Guarantor Party terminates or dissolves or suspends such Guarantor Party's usual business activities or conveys, sells, leases, transfers or otherwise disposes of all or a substantial part of any Guarantor Party's property, business or assets other than in the ordinary course of business; (j) a breach of the Liquidity Covenant; or (k) the existence or occurrence at any time of one or more conditions or events that, in the sole opinion of the Lenders, has resulted or is reasonably likely to have a Material Adverse Effect on any Guarantor Party; then, any or all of the obligations of any Guarantor Party shall, at the Required Lenders' option, become (for the purpose of this Guaranty) immediately due and payable by Guarantor Parties, without demand or

notice. In addition, upon the occurrence of any Event of Default or a Guarantor's Event of Default, the Administrative Agent shall have all of the rights and remedies provided to a secured party by the Uniform Commercial Code as in effect in New York State at that time.

7. No Contest with Administrative Agent; Subordination. So long as any Guaranteed Obligation hereby guaranteed remains unpaid or undischarged, no Guarantor Party will, by paying any sum recoverable hereunder (whether or not demanded by the Administrative Agent) or by any means or on any other ground, claim any set-off or counterclaim against Borrower in respect of any liability of any Guarantor Party to the Borrower or, in proceedings under federal bankruptcy law or insolvency proceedings of any nature, prove in competition with the Administrative Agent in respect of any payment hereunder or be entitled to have the benefit of any counterclaim or proof of claim or dividend or payment by or on behalf of the Borrower or the benefit of any other security for any obligation hereby guaranteed which, now or hereafter, the Administrative Agent may hold or in which it may have any share. Until the Guaranteed Obligations are paid in full, each Guarantor Party hereby subordinates any and all indebtedness of Borrower now or hereafter owed to any Guarantor Party to all indebtedness of Borrower to the Administrative Agent and any Lenders, and agrees with the Administrative Agent that no Guarantor Party shall (a) demand or accept any payment from the Borrower on account of such indebtedness (except for payments expressly authorized in the Loan Agreement, if any), (b) claim any offset or other reduction of any Guarantor Party's obligations hereunder because of any such indebtedness, and (c) take any action to obtain any interest in any of the security described in and encumbered by the Loan Documents because of any such indebtedness; provided, however, that, if the Administrative Agent so requests, such indebtedness shall be collected, enforced and received by any Guarantor Party as trustee for the Administrative Agent and be paid over to the Administrative Agent and the Lenders on account of the indebtedness of Borrower to the Administrative Agent and Lenders, but without reducing or affecting in any manner the liability of any Guarantor Party under the other provisions of this Guaranty except to the extent the principal amount of such outstanding indebtedness shall have been reduced by such payment.

8. Indemnification; Payments; Certain Waivers. Each Guarantor Party (i) waives any rights or claims of right to cause a marshalling of Borrower's assets or to cause the Administrative Agent or any Lender to proceed against any of the security for Guaranteed Obligations, or for the obligations guaranteed hereby before proceeding against any Guarantor Party, (ii) agrees that any payments required to be made by Guarantor Parties hereunder shall become due on demand in accordance with the terms of Section 2 hereof and without presentment to Borrower, demand for payment or protest, or notice of non-payment or protest, and (iii) except as hereinafter provided, expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors. Without limiting the generality of the foregoing, the Guarantor Parties hereby waive all rights (x) to participate in any claim or remedy the Administrative Agent or any Lender or any of their affiliates may now or hereafter have against the Borrower or in any collateral that Administrative Agent or any Lender has or hereafter may acquire for the Guaranteed Obligations guaranteed hereby and (y) except as provided below, to contribution, indemnification, set-off, exoneration or reimbursement, whether from Borrower, any Guarantor Party, or any other Person now or hereafter primarily or secondarily liable for any of the Borrower's obligations to the Administrative Agent or any Lender and whether arising by contract or operation of law or otherwise by reason of such Guarantor Party's execution, delivery

or performance of this Guaranty. Each Guarantor Party retains its rights of subrogation, contribution, indemnification, set-off or reimbursement against each Borrower or any other Guarantor Party that any Guarantor Party may have (the “**Undersigned’s Rights**”); provided, however, that (i) this Guaranty shall neither be contingent upon the existence of the Undersigned’s Rights nor subject to any claims or defenses whatsoever that may be asserted in connection with the enforcement or attempted enforcement of the Undersigned’s Rights including, without limitation, any claim that the Undersigned’s Rights were abrogated by any of the Administrative Agent’s or any Lenders’ acts, and (ii) until the Guaranteed Obligations shall have been indefeasibly paid in full each Guarantor Party hereby fully postpones and subordinates (A) the exercise of any and all of the Undersigned’s Rights to Administrative Agent’s and each Lender’s rights against such Guarantor Party under this Guaranty or against Borrower under any of the Loan Documents, and (B) any of the Undersigned’s Rights to any collateral securing the Guaranteed Obligations.

9. Reinstatement. This Guaranty shall continue to be effective, or be reinstated automatically, as the case may be, if at any time payment, in whole or in part, of any of the obligations guaranteed hereby is rescinded or otherwise must be restored or returned by Administrative Agent or any Lender or any affiliate (whether as a preference, fraudulent conveyance or otherwise) upon or in connection with the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, any Guarantor Party or any other Person, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower, any Guarantor Party or any other Person or for a substantial part of the Borrower’s, any Guarantor Party’s or any of such other person’s property, as the case may be, or otherwise, all as though such payment had not been made. The Guarantor Parties further agree that in the event any such payment is rescinded or must be restored or returned, all costs and expenses (including, without limitation, legal fees and expenses) incurred by or on behalf of Administrative Agent or any Lender in defending or enforcing such continuance or reinstatement, as the case may be, shall constitute costs of enforcement, the payment of which is guaranteed by Guarantor pursuant to Section 2 above and covered by Guarantor Parties’ indemnity pursuant to Section 7 above.

10. Guarantor Parties’ Representations and Warranties. Each of the Guarantor Parties, with respect to himself or itself only, represents and warrants as follows:

(a) Litigation; Compliance with Judgments. There are no actions, suits or proceedings pending or threatened against or affecting such Guarantor Party, at law, in equity or before or by any governmental authorities that would have a material effect on such Guarantor Party’s ability to perform his or her obligations hereunder; to the best of each Guarantor Party’s knowledge, such Guarantor Party is not in default with respect to any order, writ, injunction, decree or demand of any court or governmental authorities.

(b) Authorization and Enforceability; No Conflicts. Each Guarantor Party has the full power and authority to enter into and perform his or its obligations under this Guaranty and this Guaranty is a legal, valid and binding instrument, enforceable against each Guarantor Party in accordance with its terms. The consummation of the transactions contemplated hereby and the performance of this Guaranty, the other Loan Documents to which each Guarantor Party is a party have not resulted and will not result in any breach of, or constitute a default under, any

mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, by-laws, operating agreement, partnership agreement or other instrument to which any Guarantor Party is a party or by which such Guarantor Party may be bound or affected.

(c) Compliance with Laws. Such Guarantor Party is in compliance with, and the transactions contemplated by the Loan Documents, and this Guaranty do not and will not violate any provision of, or require any filing, registration, consent or approval under, any federal, state or local law, rule, regulation, ordinance, order, writ, judgment, injunction, decree, determination or award (hereinafter, "**Laws**") presently in effect having applicability to such Guarantor Party, and agrees that such Guarantor Party will comply promptly with all Laws now or hereafter in effect having applicability to such Guarantor Party.

(d) Accuracy of Information; Full Disclosure. Neither this Guaranty nor any documents, financial statements, reports, notices, schedules, certificates, statements or other writings furnished by or on behalf of such Guarantor Party to Administrative Agent or Lenders in connection with the negotiation of the Loan Documents or the consummation of the transactions contemplated thereby, or required herein or by the Loan Documents to be furnished by or on behalf of such Guarantor Party, contains any untrue or misleading statement of a material fact; there is no fact that such Guarantor Party has not disclosed to the Administrative Agent or Lenders in writing that materially affects adversely any of the property covered by the business affairs or financial condition of such Guarantor Party, or the ability of such Guarantor Party to perform this Guaranty and the other Loan Documents to which such Guarantor Party is a party.

11. Loan Agreement. By its execution of the Loan Agreement, each Guarantor Party acknowledges that he or it has received a copy of and agrees to comply with his or its obligations under and in connection with the Loan Agreement and the Loan Documents, including without limitation the requirement to deliver the financial statements and information set forth in Section 6.03 of the Loan Agreement.

12. Non-Waiver Remedies Cumulative. No failure or delay on the Administrative Agent's or Lender's part in exercising any right, power or privilege under any of the Loan Documents, this Guaranty or any other document made to or with Administrative Agent or any Lender in connection with the Guaranteed Obligations shall operate as a waiver of any such privilege, power or right or shall be deemed to constitute the Administrative Agent's or any Lender's acquiescence in any default by Borrower or Guarantor Parties under any of said documents. A waiver by the Administrative Agent or any Lender of any right or remedy under any of the Loan Documents, this Guaranty or any other document made to or with the Administrative Agent or any Lender in connection with the Guaranteed Obligations shall not be construed as a bar to any right or remedy which Administrative Agent or any Lender otherwise would have on any future occasion. The rights and remedies provided in said documents are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

13. Transfers of Interests in Loan. Each Guarantor Party acknowledges that each Lender, in its sole discretion, may sell, assign or transfer interests in the Loan, this Guaranty and the other Loan Documents to one or more participants, purchasers and/or assignees (collectively,

“Participants”), and agrees in connection therewith, all Loan Documents and other documentation, financial statements, appraisals and other data, or copies thereof, relevant to Borrower, Guarantor Parties or the Loan Agreement, may be provided to and retained by any such participant, purchaser or assignee or prospective participant, purchaser or assignee. Guarantor Parties agree that Administrative Agent and/or Lenders shall have no obligation to give Guarantor Parties written notice of any sale, assignment or transfer of any interest or participation in the Loan or any part thereof.

14. Separate Indemnity. Each Guarantor Party acknowledges and agrees that the respective rights of Administrative Agent or any Lender and any of their respective affiliates (and Guarantor Parties’ obligations) under this Guaranty shall be in addition to all of Administrative Agent’s or any Lender’s rights (and all of Guarantor Parties’ obligations) under any indemnity agreement executed and delivered to Administrative Agent or any Lender by Borrower and/or any Guarantor Parties in connection with the Guaranteed Obligations, and payments by any Guarantor Party under this Guaranty shall not reduce any of any Guarantor Party’s obligations and liabilities under any such indemnity agreement.

15. Severability. Any provision of this Guaranty, or the application thereof to any Person or circumstance (including any invalidation of any other guarantor’s obligations under or in connection with the CEA), that, for any reason, in whole or in part, is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Guaranty (or the remaining portions of such provision) or the application thereof to any other person or circumstance, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision (or portion thereof) or the application thereof to any person or circumstance in any other jurisdiction.

16. Entire Agreement; Amendments. This Guaranty contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to such subject matter, and none of the terms and provisions hereof may be waived, amended or terminated except by a written instrument signed by the Person against whom enforcement of the waiver, amendment or termination is sought.

17. Successors and Assigns. This Guaranty shall be binding upon and shall inure to the benefit of Administrative Agent, Lenders and any of their respective affiliates and each Guarantor Party and their respective heirs, personal representatives, successors and assigns. This Guaranty may be assigned by Administrative Agent, any Lender or any of their respective affiliates with respect to all or any portion of the obligations guaranteed hereby, and when so assigned Guarantor Parties shall be liable under this Guaranty to the assignee(s) of the portion(s) of the obligations guaranteed hereby so assigned without in any manner affecting the liability of Guarantor Parties hereunder to Administrative Agent or any Lender or their affiliates with respect to any portion of the Guaranteed Obligations guaranteed hereby retained by Administrative Agent or any Lender or any of their respective affiliates.

18. WAIVER OF TRIAL BY JURY. EACH OF THE GUARANTOR PARTIES, AND BY THE ACCEPTANCE HEREOF, THE ADMINISTRATIVE AGENT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY

JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GUARANTOR PARTIES AND THE ADMINISTRATIVE AGENT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. GUARANTOR PARTIES AND THE ADMINISTRATIVE AGENT ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

19. ADDITIONAL WAIVERS IN THE EVENT OF ENFORCEMENT. GUARANTOR PARTIES HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVE, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF THE ADMINISTRATIVE AGENT ON THIS GUARANTY, ANY AND EVERY RIGHT ANY GUARANTOR PARTY MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (III) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT ANY GUARANTOR PARTY FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST THE ADMINISTRATIVE AGENT WITH RESPECT TO ANY ASSERTED CLAIM.

20. Governing Law; Submission to Jurisdiction. This Guaranty and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York. Each Guarantor Party hereby irrevocably submits to the nonexclusive jurisdiction of any New York state or federal court sitting in the City of New York and County of New York over any suit, action or proceeding arising out of or relating to this Guaranty, and each Guarantor Party hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any New York state or federal court sitting in the City of New York and County of New York may be made by certified or registered mail, return receipt requested, directed to the Guarantor Parties at the address indicated below, and service so made shall be complete three (3) days after the same shall have been so mailed.

21. Paragraph Headings. Any paragraph headings and captions in this Guaranty are for convenience only and shall not affect the interpretation or construction hereof.

22. Liability Unaffected by Release. Any other Person liable upon or in respect of any obligation hereby guaranteed may be released without affecting the liability of Guarantor Parties hereunder.

23. Joint and Several Obligations. If more than one Person comprises Guarantor Parties, then each such Person's obligations and liability under this Guaranty shall be joint and several.

24. Notices. Notices shall be given in the manner provided in the Loan Agreement, with all notices to Guarantor Parties being delivered to the Borrower.

25. Principles of Construction. All references to sections, paragraphs, schedules and exhibits are to sections, schedules and exhibits in or to this Guaranty unless otherwise specified. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty. The recitals to this Guaranty shall be deemed a part hereof and all exhibits and schedules attached hereto, if any, are incorporated herein by reference for all purposes. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined and “including” means including without limitation. Whenever the context requires, each gender shall include all other genders.

26. Counterparts. This Guaranty may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement. Any signature delivered by a party by facsimile or email transmission shall be deemed to be an original signature hereto.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO GUARANTY OF PAYMENT]

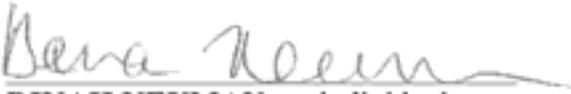
IN WITNESS WHEREOF, each Guarantor Party has caused this Guaranty to be duly executed and delivered by its duly authorized official as of the date first above stated.

GUARANTOR PARTIES:

  
HERBERT JOZEFOVIC, an individual

  
LORRAINE NEUMAN, an individual

  
MARK NEUMAN, an individual

  
DINAH NEUMAN, an individual

[ACKNOWLEDGMENTS TO GUARANTY OF PAYMENT]

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF Westchester )

On the 10 day of December, in the year 2019, before me, the undersigned, personally appeared **HERBERT JOZEFOVIC**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



# EXHIBIT B

WMLM  
307780/52  
Execution

**ASSIGNMENT AND PLEDGE OF MEMBERSHIP INTERESTS**  
**(Herbert Jozefovic in Waterview OpCo)**

**THIS ASSIGNMENT AND PLEDGE OF MEMBERSHIP INTERESTS** (this “Agreement”), dated as of December 19, 2019, is made by and between **HERBERT JOZEFOVIC**, an individual (“Pledgor”), and **METROPOLITAN COMMERCIAL BANK**, a New York State chartered bank (together with its successors and assigns, the “Administrative Agent” or the “Pledgee”).

**WITNESSETH:**

- A. Pledgor is a member of WATERVIEW ACQUISITION I, LLC, a New York limited liability company (the “Company”).
- B. Pursuant to the terms of that certain Loan Agreement of even date herewith (as amended and/or restated from time to time, the “Loan Agreement”), by and among the Administrative Agent; the Company, Salem Acquisition I, LLC (collectively, the “Borrower”); each Guarantor (as such term is defined in the Loan Agreement); and the Lenders (as such term is defined in the Loan Agreement), Lenders have agreed to make a loan to Borrower in the original principal amount of Three Million and No/100 Dollars (\$3,000,000.00) (the “Loan”).
- C. The Loan is secured by, among other things, the Guaranty and this Agreement.
- D. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Loan Agreement.
- E. Pledgor is a member of the Company and shall derive direct and indirect benefits (financial and otherwise) from the Loan made to the Borrower by the Lenders as contemplated by the Loan Agreement, and it is and will be to Pledgor’s advantage to assist the Borrower in procuring the Loan from the Lenders; and
- F. As further security for the Pledgor’s obligations under the Guaranty, Pledgor grants and executes this Agreement.
- G. It is a condition precedent to the Loan Agreement that Pledgor executes and delivers this Agreement and shall have made the pledge contemplated hereunder.

**NOW, THEREFORE**, in consideration of the premises hereinabove, and to induce the Lenders to make the Loan identified hereinabove pursuant to the Loan Agreement and in consideration of the benefits accruing to Pledgor, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Pledgor hereby covenants and agrees with the Pledgee as follows:

1. SECURITY FOR OBLIGATIONS, ETC. This Agreement is for the benefit of the Pledgee to secure the prompt and complete payment and performance when due of all obligations, liabilities, indebtedness (whether for principal, interest, charges, or fees, including, without limitation, attorneys' fees), costs, expenses, covenants, indemnities and agreements of every nature whatsoever of the Company, and Pledgor to the Pledgee now existing or hereafter arising under or in connection with the Loan Agreement, this Agreement, the Guaranty, and any and all other Loan Documents (as defined in the Loan Agreement, and as each may be from time to time amended, supplemented, extended, renewed and/or modified), including, without limitation, all Obligations (all of the foregoing collectively referred to herein as the "Secured Obligations").

2. DEFINITION OF PLEDGED COLLATERAL. As used herein, the term "Pledged Collateral" shall mean Pledgor's membership interests in the Company, as more particularly described on Annex A attached hereto and made a part hereof, and any additional Pledged Collateral acquired pursuant to Section 3.2 below (whether by purchase, distribution, merger, consolidation, sale of assets, split, spin off, or any other dividend or distribution of any kind or otherwise), which Annex A may be supplemented from time to time pursuant to Section 3.2 below. Pledgor represents and warrants that on the date hereof (a) Annex A attached hereto correctly identifies the Pledged Collateral owned by Pledgor with respect to its direct interest in the Company; (b) Pledgor is the holder of record and sole beneficial and legal owner of such Pledged Collateral; and (c) no other Person owns or has any interest in or claim to, whether actual or contingent, the Pledged Collateral.

3. PLEDGE OF PLEDGED COLLATERAL AND OTHER COLLATERAL.

3.1 Pledge. To secure the Secured Obligations and for the purposes set forth in Section 1 hereof, Pledgor hereby pledges, collaterally assigns, transfers and conveys, and grants a security interest in and lien on, in favor of the Pledgee, all of Pledgor's right, title and interest in, to, and under each of the following, whether now owned or existing or hereafter acquired or arising: (A) the Pledged Collateral, (B) any additional Pledged Collateral acquired pursuant to Section 3.2 below (whether by purchase, dividend, distribution, merger, consolidation, sale of assets, split, spin-off, or any other dividend or distribution of any kind or otherwise), (C) all distributions, dividends, cash, certificates, liquidation rights and interests, options, rights, warrants, instruments or other property (whether real, personal or mixed) from time to time received, receivable or otherwise distributed in respect of or in exchange or substitution for any and all of the Pledged Collateral, and all rights to receive any and all income, gain, profit, loss or other items allocated or distributed to Pledgor by, to or from the Company (including, without limitation, under or pursuant to the Company's operating agreement), and (D) all proceeds, products, replacements and substitutions for any of the foregoing, in each case whether now owned or hereafter acquired by Pledgor (collectively, the "Collateral"). If the Collateral or any interest in the Collateral is evidenced by certificates, Pledgor shall deposit with the Pledgee the Collateral owned by Pledgor on the date hereof and the certificates representing the Collateral and any interest therein accompanied by "Assignment Separate From Certificate," in form and substance reasonably acceptable to Pledgee, duly executed in blank by Pledgor. Pledgor hereby delivers to the Pledgee: (i) assignments of its interest in the Collateral duly executed in blank by Pledgor substantially in the form of Annex B attached hereto, (ii) UCC Financing Statements, naming Pledgor as debtor and the Pledgee as secured party with respect to the Collateral in any

jurisdiction reasonably required by the Pledgee (including with the appropriate Secretary of State), in form and substance satisfactory to the Pledgee in its sole and absolute determination, and without the requirement of Pledgor's signature, and (iii) notice of the pledge of the Collateral to be recorded on the books of the Company substantially in the form of Annex C attached hereto. Notwithstanding anything to the contrary contained in this Agreement, the Pledgee shall not as a result of this Agreement be responsible or liable for any obligations or liabilities of Pledgor in Pledgor's capacity as a member or manager of the Company, if any, and the Pledgee shall not be deemed to have assumed any of such obligations or liabilities.

3.2 Subsequently Acquired Pledged Collateral. If at any time or from time to time after the date hereof during the term of this Agreement, Pledgor shall acquire any additional Collateral, including any further membership interests or units in the Company (whether by purchase, distribution, merger, consolidation, sale of assets, split, spin-off, or any other dividend or distribution of any kind or otherwise), Pledgor will forthwith pledge and, if applicable, deposit such additional Collateral with the Pledgee and deliver to the Pledgee certificates or instruments therefor, endorsed in blank by Pledgor or accompanied by an "Assignment Separate From Certificate" duly executed in blank by Pledgor, and will promptly thereafter deliver to the Pledgee a certificate (which shall be deemed to supplement Annex A attached hereto) executed by Pledgor describing such Collateral and the other Collateral pledged to the Pledgee, and certifying that the same have been duly pledged with the Pledgee hereunder. Whether or not such additional Collateral is evidenced by certificates, Pledgor shall permit the Pledgee to file a UCC Financing Statement naming Pledgor as debtor and the Pledgee as secured party with respect to the additional Collateral in any jurisdiction reasonably required by the Pledgee (including with the appropriate Secretary of State), in form and substance satisfactory to the Pledgee in its sole and absolute determination, and without the requirement of Pledgor's signature.

3.3 Certificated Collateral. In addition to anything contained in Sections 3.1 and 3.2 hereof, if any Collateral or interest in any Collateral (whether now owned or hereafter acquired) is or becomes evidenced by a certificated security, Pledgor shall promptly notify the Pledgee thereof and shall promptly take all actions required to perfect the security interest and pledge in favor of the Pledgee under applicable law (including, in any event, delivery of physical possession of all certificates to the Pledgee, and take any other action required or appropriate under this Agreement or the Uniform Commercial Code as in effect in the State of New York or equivalent provisions of any other applicable jurisdiction (the "UCC")). Pledgor further agrees to promptly take such actions as the Pledgee deems necessary or desirable to effectuate the foregoing and to permit the Pledgee to exercise any of its rights and remedies hereunder.

4. VOTING, ETC. Unless and until an Event of Default (as defined in the Loan Agreement) shall occur and be continuing, Pledgor shall be entitled to vote, if applicable, and exercise any other consensual rights (or managerial rights, if applicable) pertaining to any and all of the Pledged Collateral; provided, however, that no vote shall be cast or any action taken by Pledgor which would, or would cause the Company to, violate or be inconsistent with any of the terms of this Agreement, the Loan Agreement, any other Loan Document or any other instrument or agreement relating to the Secured Obligations, or which would have the effect of impairing the positions or interests of the Pledgee or which would authorize or effect actions prohibited under the terms of the Loan Agreement or any other Loan Document. All such rights of Pledgor

to vote (and exercise managerial rights, if applicable) shall cease in case an Event of Default shall occur and be continuing, if the Pledgee so directs and notifies the Pledgor. Upon and after an Event of Default and during its continuance, Pledgor irrevocably designates, makes, constitutes and appoints the Pledgee (and all Persons designated by the Pledgee) as its true and lawful attorney (and agent-in-fact) and the Pledgee, or the Pledgee's agent, may, without notice to Pledgor, and at such time or times thereafter as the Pledgee or said agent, in its discretion, shall have the sole and exclusive right to exercise, all voting powers pertaining to any and all of the Collateral (and to give written consents in lieu of voting thereon) and may exercise such power in such manner as the Pledgee, in its sole discretion, shall determine. The exercise by the Pledgee of any of its rights and remedies under this Section 4 shall not be deemed a disposition of Collateral under Article 9 of the Uniform Commercial Code nor an acceptance by the Pledgee of any of the Collateral in satisfaction of any of the Secured Obligations. THIS PROXY IS COUPLED WITH AN INTEREST AND IS IRREVOCABLE. THERE IS NO INTENTION OF THE PARTIES HERETO, WHETHER UNDER THIS AGREEMENT OR ANY LOAN DOCUMENT, THAT THE PLEDGEE'S ACCEPTANCE OF THIS PROXY OR THIS PLEDGE OF COLLATERAL IS INTENDED TO BE OR IMPLY ANY ELECTION OF REMEDIES BY THE PLEDGEE.

5. PAYMENTS AND OTHER DISTRIBUTIONS. Notwithstanding anything herein to the contrary, unless and until an Event of Default (as defined in the Loan Agreement) shall occur and be continuing, all cash dividends or distributions payable in respect of the Collateral (to the extent such payments shall be permitted pursuant to the terms and provisions of the Loan Agreement, each Loan Document, and applicable subordination agreement) shall be paid to Pledgor; provided, however, upon an Event of Default and so long as such Event of Default is continuing, all cash dividends or distributions payable in respect of the Collateral, shall be paid to the Pledgee for application to the Secured Obligations (with any excess to be paid to Pledgor). The Pledgee shall be entitled to receive directly, and to retain as part of the Collateral:

(a) all other or additional securities or investment property, or rights to subscribe for or purchase any of the foregoing, or property (other than cash) paid or distributed by way of dividend in respect of the Collateral;

(b) all other or additional securities, investment property or property (including cash) paid or distributed in respect of the Collateral by way of split, spin-off, split-up, reclassification, combination of shares or similar rearrangement; and

(c) except for cash dividends or distributions payable in respect of the Pledged Collateral which may be paid to Pledgor so long as no Event of Default has occurred and is continuing pursuant to the terms of this Section 5, all other or additional securities, investment property or property which may be paid in respect of the Collateral by reason of any consolidation, merger, exchange, dividend, split, or distribution, conveyance of assets, liquidation or similar reorganization or other disposition of Collateral (to the extent any of the foregoing actions are permitted under the Loan Agreement).

If at any time Pledgor shall obtain or possess any of the foregoing Collateral described in this Section, Pledgor shall be deemed to hold such Collateral in trust for the Pledgee and the Pledgor shall promptly surrender and deliver such Collateral to the Pledgee.

6. REMEDIES IN CASE OF AN EVENT OF DEFAULT. Upon the occurrence and during the continuance of an Event of Default, the Pledgee shall be entitled to exercise all of the rights, powers and remedies (whether vested in it by this Agreement, the Loan Agreement, any other Loan Documents, and/or in equity or by law, and including, without limitation, all rights and remedies of a secured party of a debtor in default under the UCC) for the protection and enforcement of its rights in respect of the Collateral, and to the fullest extent permitted by applicable law, the Pledgee shall be entitled, without limitation, to exercise the following rights, which Pledgor hereby agrees to be commercially reasonable:

(a) to receive all amounts payable in respect of the Collateral otherwise payable under Section 5 hereof to Pledgor;

(b) to transfer all or any part of the Collateral into the Pledgee's name or the name of its nominee or nominees;

(c) to vote all or any part of the Collateral and otherwise act with respect thereto as though it were the outright owner thereof;

(d) at any time or from time to time to sell, assign and deliver, or grant options to purchase, all or any part of the Collateral in one or more parcels, or any interest therein, at any public or private sale at any exchange, broker's board or at any of the Pledgee's offices or elsewhere, without demand of performance (which, except as may be required by mandatory provisions of applicable law, is hereby expressly and irrevocably waived by Pledgor) for cash, on credit or for other property, for immediate or future delivery without any assumption of credit risk, and for such price or prices and on such terms as the Pledgee may determine in its reasonable business credit judgment exercised in good faith. Pledgor agrees that at least ten (10) calendar days' prior written notice to Pledgor of the time (which shall be during normal business hours) and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification of such sale. The Pledgee shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Pledgee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and any such sale may, without further notice, be made at the time and place to which it was so adjourned. Pledgor hereby waives and releases to the fullest extent permitted by law any right or equity of redemption with respect to the collateral, whether before or after sale hereunder, and all rights, if any, of marshalling the Collateral and any other security for the Secured Obligations or otherwise. At any public sale, and at any private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed price quotations, Pledgee may bid for and purchase all or any part of the Collateral so sold free from any such right or equity of redemption. The Pledgee shall not be liable for failure to collect or realize upon any or all of the Collateral or for any delay in so doing nor shall the Pledgee be under any obligation to take any action whatsoever with regard thereto;

(e) to settle, adjust, compromise and arrange all accounts, controversies, questions, claims and demands whatsoever in relation to all or any part of the Collateral;

(f) in respect of the Collateral, to execute all such contracts, agreements, deeds, documents and instruments, to bring, defend and abandon all such actions, suits and proceedings,

and to take all actions in relation to all or any part of the Collateral as the Pledgee in its reasonable business credit judgment exercised in good faith may determine;

(g) to appoint managers, sub-agents, officers and servants for any of the purposes mentioned in the foregoing provisions of this Section and to dismiss the same, all of the Pledgee in its reasonable business credit judgment exercised in good faith may determine; and

(h) generally, to take all such other action as the Pledgee in its reasonable business credit judgment exercised in good faith may determine as incidental or conducive to any of the matters or powers mentioned in the foregoing provisions of this Section and which the Pledgee may or can do lawfully and to use the name of Pledgor for the purposes aforesaid and in any proceedings arising therefrom.

Pledgor recognizes that the Pledgee may be unable to effect a public sale of any or all the Collateral, by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the "Securities Act"), and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Pledgor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Pledgee shall be under no obligation to delay a sale of any of the Collateral for the period of time necessary to permit the issuer thereof to register such securities or other interests for public sale under the Securities Act, or under applicable state securities laws, even if such issuer would agree to do so. Pledgor agrees to use its best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Collateral pursuant to this Section valid and binding and in compliance with applicable law. Pledgor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Pledgee, that the Pledgee has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against Pledgor, and Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Loan Agreement. Pledgor hereby waives its rights, claims or defenses, after any Event of Default, with respect to any voting rights Pledgor may have with respect to the admission of any new members or any delay in time for the admission of new members that may be required under the operating agreement or other formation documents of the Company.

7. REMEDIES, ETC., CUMULATIVE. Each right, power and remedy of the Pledgee provided for in this Agreement, the Loan Agreement, any Loan Document or any other security agreement, mortgage, guaranty now or hereafter existing at law or in equity or by statute shall be cumulative and concurrent and shall be in addition to every other such right, power or remedy. The acceptance as of this date of this Agreement and the pledge of Collateral contained herein is not intended as an exercise of any remedy under the Loan Documents and exercise or beginning of the exercise by the Pledgee of any one or more of the rights, powers or remedies provided for in this Agreement, the Loan Agreement, or any other Loan Document or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the

simultaneous or later exercise by the Pledgee of all such other rights, powers or remedies, and no failure or delay on the part of the Pledgee to exercise any such right, power or remedy shall operate as a waiver thereof.

8. APPLICATION OF PROCEEDS. Subject to any mandatory requirements of applicable law and the terms of the Loan Agreement, all moneys collected by the Pledgee upon sale or other disposition of the Collateral, together with all other moneys received by the Pledgee hereunder, shall be applied as follows:

(a) To the payment of any and all costs, expenses and fees (including reasonable attorneys' fees and disbursements) incurred by the Pledgee directly or indirectly in connection with such sale or other disposition, the delivery or taking possession of the Collateral or the collection of any such moneys;

(b) Next, to the payment of the Secured Obligations and any other amounts due or owing to the Pledgee in accordance with the Loan Agreement in any order that the Pledgee shall determine; and

(c) Any surplus then remaining shall be paid to Pledgor.

9. INDEMNITY. Without duplication of any amounts payable under any other similar indemnity provision set forth in the Loan Agreement or any other Loan Documents, Pledgor shall: (i) pay all out-of-pocket costs and expenses of the Pledgee actually incurred in connection with the administration of and in connection with the preservation of rights under, and enforcement of, and any renegotiation or restructuring of this Agreement and any amendment, waiver or consent relating thereto (including, without limitation, the reasonable fees and disbursements of counsel for the Pledgee); (ii) pay and hold the Pledgee harmless from and against any and all present and future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to this Agreement and save the Pledgee harmless from and against any and all liabilities with respect to or resulting from any delay or omission to pay any such taxes, charges or levies (excluding income taxes of the Pledgee); and (iii) indemnify the Pledgee, and each of its officers, directors, shareholders, employees, representatives and agents from and hold each of them harmless against any and all costs, losses, liabilities, claims, damages or expenses actually incurred by any of them (whether or not any of them is designated a party thereto) arising out of or by reason of any investigation, litigation or other proceeding related to this Agreement or any transaction contemplated hereby, including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding. Notwithstanding anything in this Agreement to the contrary, Pledgor shall not be responsible to the Pledgee for any costs, losses, damages, liabilities or expenses which result from the Pledgee's gross negligence or willful misconduct. Pledgor's obligations under this Section shall survive any termination of this Agreement. If and to the extent that the obligations of Pledgor under this Section are unenforceable for any reason, Pledgor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law.

10. FURTHER ASSURANCES. Pledgor agrees that, at any time and from time to time, Pledgor will join with the Pledgee in executing and, at Pledgor's own expense, will file and

refile under the UCC such financing statements, amendment statements, continuation statements and other documents in such offices as the Pledgee may deem necessary or appropriate and wherever required or permitted by law in order to perfect and preserve the Pledgee's security interest in the Collateral, and hereby authorizes the Pledgee to file financing statements, continuation statements and amendments thereto relative solely to the Collateral without the signature of Pledgor, and agrees to do such further acts and things and to promptly execute and deliver to the Pledgee such additional conveyances, assignments, agreements and instruments as the Pledgee may require or deem advisable to carry into effect the purpose of this Agreement or to further assure and confirm unto the Pledgee its rights, powers and remedies hereunder.

11. REASONABLE CARE BY PLEDGEE. The Pledgee shall be deemed by Pledgor to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Pledgee accords its own similar property.

12. TRANSFER BY THE PLEDGOR. Pledgor shall not sell, transfer or otherwise dispose of, grant any option with respect to, or pledge or otherwise encumber any of the Collateral or any interest therein.

13. REPRESENTATIONS AND WARRANTIES OF THE PLEDGOR. Pledgor hereby represents and warrants to the Pledgee, which representations and warranties shall survive the execution and delivery of this Agreement, as follows:

13.1 Validity, Perfection and Priority. The pledge and security interests in the Collateral granted to the Pledgee constitute valid and continuing security interests in the Collateral. Upon the filing of a UCC Financing Statement naming Pledgor as debtor and the Pledgee as secured party with the appropriate Secretary of State or the physical delivery of the certificates evidencing the Pledged Collateral to the Pledgee, the security interests in the Collateral granted to the Pledgee hereunder constitute valid and perfected security interests therein superior and prior to the rights or claims of any other person or entity therein.

13.2 No Liens; Other Financing Statements.

(a) Except for the liens and security interests granted to the Pledgee, Pledgor is the legal and beneficial owner of, and has good and marketable title to, the Pledged Collateral and is the lawful owner of all of the other Collateral whether now existing or hereafter acquired and will continue to own each item of the Collateral free and clear of any and all pledges, liens, mortgages, hypothecations, security interests, charges, rights, options, claims and other encumbrances of all other Persons and Pledgor shall defend the Collateral against all claims and demands of all Persons at any time claiming the same or any interest therein adverse to the Pledgee.

(b) No financing statement or other evidence of lien covering or purporting to cover any of the Collateral or any interest therein is on file in any public office. Pledgor is a member of the Company.

13.3 Pledged Collateral.

(a) The Pledged Collateral described in Annex A attached hereto is and all other Pledged Collateral in which Pledgor shall hereafter grant a lien or security interest pursuant to Section 2 hereof will be, duly authorized, validly issued, and, except for the pledge provided in Section 3.1 hereof in favor of Pledgee and the terms of the Company's Operating Agreement (a true and complete executed copy of which has been delivered to the Pledgee on or prior to the date hereof), none of such Collateral is or will be subject to any legal or contractual restriction. The Collateral is, as of the date hereof, and shall be at all times hereafter during the term of this Agreement, freely transferable without restriction or limitation (except as limited by the terms of this Agreement or applicable law).

(b) The Pledged Collateral described in Annex A hereto constitutes all of the issued and outstanding securities, membership interests and investment property legally and beneficially owned by Pledgor on the date hereof in or relating to the Company and no other Person has any interest, whether actual or contingent, direct or indirect, in the Company.

13.4 Power and Authority. Pledgor has the power and authority to pledge and assign all of the Collateral pursuant to this Agreement. Pledgor has executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding obligations of Pledgor, enforceable against Pledgor in accordance with the terms herein, except as such enforceability may be limited by bankruptcy, insolvency, reorganization and other similar laws affecting the enforceability of agreements and by general principles of equity.

13.5 No Violation. Neither the execution, delivery or performance by Pledgor of this Agreement, nor compliance with the terms and provisions hereof by Pledgor nor the consummation of the transactions contemplated hereby will conflict or be inconsistent with or result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under any agreement or other instrument to which Pledgor is a party.

13.6 Litigation. There are no actions, suits or proceedings pending or, to Pledgor's knowledge, threatened against or involving Pledgor before any court with respect to any of the transactions contemplated by this Agreement or the ability of the Pledgor to perform any of the obligations of the Pledgor hereunder, including those disclosed to Pledgee on Schedule II of the Loan Agreement.

13.7 Copies of Loan Agreement. Pledgor has received and reviewed true and complete, fully-executed copies of the Loan Agreement and any and all other Loan Documents requested to be received by Pledgor.

13.8 Miscellaneous. There are no outstanding options, warrants or other rights to subscribe for or purchase membership interests of the Company, nor any notes, bonds, debentures or other evidences of indebtedness that (a) are at any time convertible into membership interests of the Company, or (b) have or at any time would have voting rights with respect to the Company.

14. COVENANTS OF THE PLEDGOR. Pledgor covenants and agrees with the Pledgee that on and after the date hereof and until all of the Secured Obligations shall have been indefeasibly paid in full:

14.1 Collateral. (a) Pledgor will defend the Pledgee's right, title and security interest in and to the Collateral against the claims and demands of all Persons whomsoever; (b) Pledgor will have good and marketable title to and right to pledge any other property at any time hereafter constituting Collateral and will likewise defend the right thereto and security interest therein of the Pledgee; and (c) Pledgor will not without the advance written consent of the Pledgee, with respect to any Collateral, enter into any shareholder type agreements, voting agreements, voting trusts, trust deeds, irrevocable proxies or any other similar agreements or instruments which would be inconsistent with the terms of this Agreement or adversely affect the Pledgee's interest in any Collateral.

14.2 Right of Inspection. Subject to any state or federal privacy laws, including without limitation the HIPAA, the Pledgee and its representatives shall upon reasonable advance notice (but in any event, not less than two (2) Business Days) prior to an Event of Default, or at any time if an Event of Default (as defined in the Loan Agreement) occurs and is continuing, have full and free access to all the books, correspondence and records of Pledgor relating to the Collateral, if any, and the Pledgee and its representatives may examine the same, take extracts therefrom and make photocopies thereof.

14.3 Compliance with Laws. Pledgor will comply in all material respects with all requirements of law applicable to the Collateral or any part thereof.

14.4 Payment of Obligations. Pledgor will pay promptly when due all taxes, assessments and governmental charges or levies imposed upon the Collateral or in respect of any income or profits therefrom, as well as all claims of any kind against or with respect to the Collateral, provided that the foregoing shall not require Pledgor to pay any such tax or charge so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP and, in the case of a claim which could become a Lien on any of the Collateral, such contest proceedings shall stay the foreclosure of such Lien or the sale of any portion of the Collateral to satisfy such claims.

14.5 No Impairment. Pledgor will not take or permit to be taken any action which could impair the Pledgee's rights in the Collateral. Pledgor will not create, incur or permit to exist, will defend the Collateral against and will take such other action as is necessary to remove, any lien or claim on or to the Collateral, other than the liens created hereby, and will defend the right, title and interest of the Pledgee in and to any of the Collateral against the claims and demands of all Persons whomsoever.

14.6 Performance by Pledgee of Pledgor's Obligations; Reimbursement. If Pledgor fails to perform or comply with any of the agreements contained herein within a reasonable time after receipt of notice from Pledgee describing the action to be taken, the Pledgee may, without further notice to or consent by Pledgor, perform or comply or cause performance or compliance therewith, and the expenses of the Pledgee incurred in connection with such performance or compliance shall be payable by Pledgor to the Pledgee on demand, and such reimbursement obligation shall be secured hereby; provided, however, the Pledgee shall not be under any obligation to taken any such action.

14.7 Further Identification of Pledged Collateral. Pledgor will furnish to the Pledgee from time to time such reports in connection with the Pledged Collateral as the Pledgee may reasonably request from time to time.

14.8 Continuous Perfection. Pledgor will not change Pledgor's name, in any manner which might make any financing or continuation statement filed hereunder seriously misleading within the meaning of any applicable provision of Article 9 of the UCC unless Pledgor shall have given the Pledgee at least fifteen (15) days prior written notice thereof and shall have taken all action necessary or reasonably requested by the Pledgee to amend such financing statement or continuation statement so that it is not seriously misleading. Pledgor will not change Pledgor's residence unless Pledgor shall have given the Pledgee at least fifteen (15) days prior written notice thereof and shall have taken such action as is necessary to cause the security interest of the Pledgee in the Pledged Collateral to continue to be perfected.

14.9 Stay or Extension Laws. Pledgor will not at any time claim, take, insist upon or invoke the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral prior to any sale or sales thereof to be made pursuant to the provisions hereof or pursuant to the decree, judgment, or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by a state to redeem the property so sold or any part thereof, and, to the extent permitted by applicable law, the Pledgor hereby expressly waives, on behalf of Pledgor and each and every Person claiming by, through and under Pledgor, all benefit and advantage of any such law or laws, and covenants that Pledgor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power, right or remedy herein or hereby granted and delegated to the Pledgee, but will authorize, allow and permit the execution of every such power, right or remedy as though no such law or laws had been made or enacted.

14.10 Company's Records. Pledgor shall cause the Company to make a notation on the records of Company indicating the interest granted hereby in favor of the Pledgee.

14.11 Operating Agreement. Pledgor will not (a) suffer or permit any amendment or modification of the operating agreement of the Company ("Operating Agreement") without the prior written consent of the Pledgee, or (b) waive, release, or compromise any material rights or material claims Pledgor may have against any other party which arises under any such Operating Agreement.

14.12 Miscellaneous. Pledgor shall not file or authorize or authenticate or permit to be filed in any jurisdiction any financing statements under the UCC or any like statement relating to the Collateral in which the Pledgee is not named as the sole secured party.

15. PLEDGOR'S OBLIGATIONS ABSOLUTE, ETC. The obligations of Pledgor under this Agreement shall be absolute and unconditional in accordance with its terms and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation: (a) any change in the time, place or manner of payment of, or in any other term of, all or any of the Secured Obligations, any waiver, indulgence, renewal, extension, amendment or modification of or addition, consent or supplement to or deletion from or any other action or inaction under or in respect of the Loan

Agreement or any other Loan Document, or any of the other documents, instruments or agreements relating to the Secured Obligations or any other instrument or agreement referred to therein or any assignment or transfer of any thereof; (b) any lack of validity or enforceability of the Loan Agreement, or any other Loan Document, or any other documents, instruments or agreement referred to therein or any assignment or transfer of any thereof; (c) any furnishing of any additional security or collateral to the Pledgee or its assignees or any acceptance thereof or any release of any security by the Pledgee or its assignees; (d) any limitation on any party's liability or obligations under any such instrument or agreement or any invalidity or unenforceability, in whole or in part, of any such instrument or agreement or any term thereof; (e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Pledgor, as applicable, or any action taken with respect to this Agreement by any trustee or receiver, or by any court, in any such proceeding, whether or not Pledgor shall have notice or knowledge of any of the foregoing; (f) any exchange, release or nonperfection of any other collateral, or any release, or amendment or waiver of or consent to departure from any guaranty or security, for all or any of the Secured Obligations; or (g) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Pledgor.

16. NOTICES, ETC. Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in the form and manner specified below, and shall be addressed to the party to be notified as follows:

If to the Pledgee at: Metropolitan Commercial Bank  
99 Park Avenue, 4th Floor  
New York, New York 10016  
Attn: Matthew McNeill  
Phone: (212) 365-6737  
Email: [mmcneill@metropolitanbankny.com](mailto:mmcneill@metropolitanbankny.com)

with a copy to: Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019-3877  
Attn: Michele Arbeeny, Esq.  
Phone: (212) 237-1024  
Email: [marbeeny@windelsmarx.com](mailto:marbeeny@windelsmarx.com)

If to Pledgor: Herbert Jozefovic  
c/o EPIC Healthcare Management  
1280 Albany Post Road  
Croton-On-Hudson, New York 10520  
Attn: Danielle Feninella  
Phone: (914) 471-1022  
Email: [danielleF@watersedgeusa.com](mailto:danielleF@watersedgeusa.com)

with a copy to: Michelman & Robinson, LLP  
675 Third Avenue, 8<sup>th</sup> Floor  
New York, New York 10022  
Attn: Mark H. Zafrin, Esq.  
Email: [mzafrin@mrlp.com](mailto:mzafrin@mrlp.com)

or to such other address as each party designates to the other in the manner herein prescribed or to such other address as each party designates to the other in the manner herein prescribed. Notice shall be deemed given hereunder if (i) delivered personally or otherwise actually received, (ii) sent by overnight mail, (iii) sent by U.S. mail, postage prepaid, registered or certified, with return receipt requested, or (iv) sent via email or facsimile with a duplicate signed copy sent on the same day as provided in clause (ii) above. Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) days after its deposit in the United States mail, and notice via email or facsimile as provided in clause (iv) above shall be effective upon delivery of such email or facsimile if the duplicate signed copy is sent under clause (ii) above. Notice given in any other manner described in this Section shall be effective upon receipt by the addressee thereof; provided, however, that if any notice is tendered to an addressee, such notice shall be effective upon such tender unless expressly set forth in such notice.

17. POWER OF ATTORNEY. Pledgor hereby absolutely and irrevocably constitutes and appoints the Pledgee as Pledgor's true and lawful agent and attorney-in-fact with full power of substitution, in the name of Pledgor upon the occurrence and during the continuance of an Event of Default (as defined in the Loan Agreement): (a) to execute and do all such assurances, acts and things which Pledgor ought to do but has failed to do under the covenants and provisions contained in this Agreement; (b) to take any and all such action as the Pledgee or any of its sub-agents, nominees or attorneys may, in its or their reasonable business credit judgment exercised in good faith, determine as necessary or advisable for the purpose of maintaining preserving or protecting the security constituted by this Agreement or any of the rights, remedies, powers or privileges of the Pledgee under this Agreement; and (c) generally, in the name of Pledgor, exercise all or any of the powers, authorities, and discretions conferred on or reserved to the Pledgee by or pursuant to this Agreement, and (without prejudice to the generality of any of the foregoing) to deliver or otherwise perfect any deed, assurance, agreement, instrument or act as the Pledgee may deem proper in or for the purpose of exercising any of such powers, authorities or discretions. Pledgor hereby ratifies and confirms, and hereby agrees to ratify and confirm, whatever lawful acts the Pledgee or any of the Pledgee's sub-agents or attorneys shall do or purport to do in the exercise of the power of attorney granted to the Pledgee pursuant to this Section, which power of attorney, being coupled with an interest and given for security, is irrevocable until this Agreement shall have expired or been terminated in accordance with the terms hereof.

18. MISCELLANEOUS. Pledgor agrees with the Pledgee that each of the obligations and liabilities of Pledgor to the Pledgee under this Agreement may be enforced against Pledgor without the necessity of joining any other Person (as defined in the Loan Agreement) as a party. This Agreement shall create a continuing security interest in the Collateral and shall be binding upon the heirs and legal beneficiaries, and permitted successors and assigns of Pledgor, as applicable, and shall inure to the benefit of and be enforceable by the Pledgee and its successors and assigns; provided, however, Pledgor may not assign any of its obligations or liabilities

hereunder without the prior written consent of the Pledgee. Unless otherwise defined herein, terms defined in the UCC as in effect in the State of New York are used herein as therein defined. The headings in this Agreement are for convenience of reference only and shall not limit or define the meaning hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument. If this Agreement or any provision of this Agreement shall prove to be invalid or unenforceable or hinder or render any other Loan Document invalid or unenforceable, this Agreement or such provision shall be deemed to be severable from the other Loan Documents or other provisions of this Agreement which shall remain binding on all parties hereto. Pledgor shall have no rights of subrogation as to any of the Pledged Collateral until full and complete performance and payment of the Secured Obligations.

19. TERMINATION. This Agreement shall terminate after the Secured Obligations are indefeasibly paid in full and the Loan Agreement is terminated. Upon the termination of this Agreement, the Pledgee, at the request of Pledgor and at the expense of Pledgor, will promptly execute and deliver to Pledgor the proper instruments acknowledging the termination of this Agreement and will duly assign, transfer and deliver to Pledgor or to whomsoever shall be lawfully entitled to receive the same (without recourse and without any representation or warranty of any kind) such of the Collateral as may be in the possession of the Pledgee and has not theretofore been sold or otherwise applied or released pursuant to this Agreement.

20. AMENDMENTS; MARSHALLING; LIMITATION OF LIABILITY. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by Pledgor and the Pledgee. The Pledgee shall be under no obligation to marshal any assets or collateral in favor of Pledgor or any other person or entity or against or in payment of any or all of the Secured Obligations. No claim may be made by Pledgor or any other Person against the Pledgee or its officers, employees, affiliates, directors, shareholders, attorneys or agents of any of them for any special, indirect, punitive or consequential damages in respect of any claim for breach of contract or any other theory of liability (other than gross negligence or willful misconduct as finally determined by a court of competent jurisdiction) arising out of or related to the transactions contemplated by this Agreement, or any act, omission or event occurring in connection therewith; and Pledgor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

21. DUTY OF PLEDGEE. The Pledgee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as the Pledgee deals with similar property for its own account. Neither the Pledgee nor any of its officers, directors, employees or agents shall be liable for any failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Pledgor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Pledgee hereunder are solely to protect the interests of the Pledgee in the Collateral and shall not impose any duty upon the Pledgee to exercise any such powers. The Pledgee shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to Pledgor or the Company for any act or failure to act hereunder.

22. REVIEW OF AGREEMENT BY PLEDGOR. Pledgor acknowledges that Pledgor has thoroughly read and reviewed the terms and provisions of this Agreement, and that such terms and provisions are clearly understood by Pledgor, and has been fully and unconditionally consented to by Pledgor with the full benefit and advice of counsel chosen by Pledgor, and that Pledgor has freely and voluntarily signed this Agreement without duress. The Pledgee does not have any fiduciary relationship with or duty to the Pledgor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Pledgor, on the one hand, and the Pledgee, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among Pledgor and the Pledgee.

23. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

24. GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF NEW YORK AND THE VALIDITY OF THIS AGREEMENT, ITS CONSTRUCTION, INTERPRETATION AND ENFORCEMENT, AND THE RIGHTS AND OBLIGATION OF PARTIES HEREUNDER, SHALL BE DETERMINED UNDER, GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW OR CHOICE OF LAW PRINCIPLES.

(b) THE PARTIES HERETO AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH OR RELATED TO THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK COUNTY, STATE OF NEW YORK. PLEDGOR WAIVES ANY RIGHT PLEDGOR MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO SUCH VENUE AND HEREBY CONSENTS TO ANY COURT ORDERED RELIEF. NOTHING CONTAINED IN THIS SECTION SHALL AFFECT THE RIGHT OF THE PLEDGEE TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF THE PLEDGEE TO BRING ANY ACTION OR PROCEEDING AGAINST PLEDGOR OR PLEDGOR'S PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION.

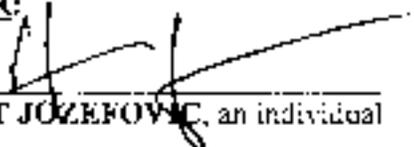
25. WAIVER OF TRIAL BY JURY. PLEDGOR AND THE PLEDGEE KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND WITHOUT COERCION, WAIVE ALL RIGHTS TO TRIAL BY JURY OF ALL DISPUTES BETWEEN THEM. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO OR ARISE OUT OF THIS AGREEMENT OR TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. PLEDGOR AND THE PLEDGEE EACH

**ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. PLEDGOR AND THE PLEDGEE FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.**

**[Signature Pages Follow]**

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Pledge of Membership Interests to be executed and delivered as of the date first above written.

**PLEDGOR:**

  
HERBERT JOZEFOVIC, an individual

**PLEDGEE:**

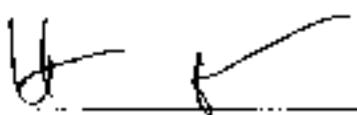
**METROPOLITAN COMMERCIAL BANK,**  
a New York State chartered bank

By: \_\_\_\_\_  
Name: Rob McSwiney  
Title: Vice President

By: \_\_\_\_\_  
Name: William Hopkins  
Title: Vice President

**AGREED AND ACKNOWLEDGED:**

**WATERVIEW ACQUISITION I, LLC,**  
a New York limited liability company

By:  \_\_\_\_\_  
Name: Herbert Jozefovic  
Title: Manager

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Pledge of Membership Interests to be executed and delivered as of the date first above written.

**PLEDGOR:**

HERBERT JOZEFOVIC, an individual

**PLEDGEE:**

**METROPOLITAN COMMERCIAL BANK**,  
a New York State chartered bank

By:   
Name: Rob McSwiney  
Title: Vice President

By:   
Name: William Hopkins  
Title: Vice President

**AGREED AND ACKNOWLEDGED:**

**WATERVIEW ACQUISITION I, LLC**,  
a New York limited liability company

By: \_\_\_\_\_  
Name: Herbert Jozefovic  
Title: Manager

**ANNEX A**

**PLEDGE AGREEMENT**

Seventy and one-tenths percent (70.1%) of the membership interests are owned by HERBERT JOZEFOVIC, pursuant to the table below, in WATERVIEW ACQUISITION I, LLC, a New York limited liability company.

<b><u>Pledgor</u></b>		<b><u>Membership Interest</u></b>
HERBERT JOZEFOVIC	WATERVIEW ACQUISITION I, LLC	70.10%
TOTAL:		70.10%

**ANNEX B**

**ASSIGNMENTS OF MEMBERSHIP INTERESTS**

FOR VALUE RECEIVED, **HERBERT JOZEFOVIC**, an individual, hereby sells, assigns, quitclaims and transfers unto \_\_\_\_\_ (the “**Secured Party**”), all of its membership interest in WATERVIEW ACQUISITION I, LLC, a New York limited liability company, standing in its name on the books of such limited liability company and does hereby irrevocably constitute and appoint the Secured Party its attorney-in-fact coupled with an interest to transfer the membership interests on the books of each such limited liability company with full power of substitution.

Dated: As of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
HERBERT JOZEFOVIC, an individual

ANNEX C

NOTICE TO WATERVIEW ACQUISITION I, LLC

**NOTICE OF PLEDGE OF MEMBERSHIP INTEREST**

TO: THE MANAGER OF WATERVIEW ACQUISITION I, LLC

The undersigned holds 70.1% of the membership interests in **WATERVIEW ACQUISITION I, LLC**, a New York limited liability company (the “**Pledged Entity**”). As used herein, the term “**Interest**” shall include any and all membership interests in such Pledged Entity now owned or hereafter acquired by the undersigned.

The undersigned instructs you to register the pledge of such Interest to **METROPOLITAN COMMERCIAL BANK**, a New York State chartered bank (the “**Secured Party**”), by causing the following to be noted in your records:

**HERBERT JOZEFOVIC** shall not sell, assign, transfer or otherwise dispose of any of its Interest, or create, incur, assume, or suffer to exist any pledge, security interest, mortgage lien or other charge or encumbrance upon or with respect to such Interest, except as provided under the Assignment and Pledge of Membership Interests by and among the undersigned and the Secured Party.

Very truly yours,

\_\_\_\_\_  
HERBERT JOZEFOVIC, an individual

# EXHIBIT C

**AMENDED AND RESTATED OPERATING AGREEMENT  
OF  
WATEVIEW ACQUISITION I, LLC**

THIS OPERATING AGREEMENT ("Agreement") made as of the \_\_\_ day of \_\_\_\_\_, 2005 by and among LIZER JOZEFOVIC, whose address is c/o Waters Edge Healthcare and Rehabilitation Center, 512 Union Street, Trenton, New Jersey 08611 and MARK NEUMAN, whose address is 22 Lyncrest Drive, Monsey, New York 10952 (hereinafter collectively referred to as the "Manager" or the "Managers", who are also members of the Company) and those other parties hereinafter referred to as "Members" who have subscribed to this Agreement where indicated below.

**WITNESSETH:**

WHEREAS, certain Members hereof previously formed a limited liability company known as "Waterview Acquisition I, LLC" and executed an operating agreement in connection therewith (the "Original Operating Agreement");

WHEREAS, the Members now desire to enter into this Amended and Restated Operating Agreement to define and express all of the terms and conditions governing the operation of the Company, a New York State limited liability company; and

WHEREAS, the Members desire to be bound by this Operating Agreement pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

1.1 **Certain Defined Terms.** The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

1.1.1 "Act" will mean the CHAPTER 576 S. 7511-A, A. 11317-A, LIMITED LIABILITY COMPANIES McKinney's New York Session Laws 1994, 217th Legislature.

1.1.2 "Capital Account" as of any given date shall mean the [initial Capital Contribution to the Company by a Member as adjusted thereafter pursuant to Article VIII.

1.1.3 "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year or any shorter period for which a determination is required to be made, after giving effect to the following adjustments:

- (i) credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and
- (ii) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(i)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

1.1.4 "Capital Contribution" shall mean a contribution to the capital of the Company in cash or property by a Member whenever made, including the Initial Capital Contribution. "Initial Capital Contribution" shall mean the initial contribution of the Members to the capital of the Company pursuant to this Operating Agreement.

1.1.5 "Articles of Organization" shall mean the Articles of Organization filed with the Secretary of State of the State of New York as the same may be amended from time to time.

1.1.6 "Class" shall mean any Transferees thereof who are Members.

1.1.7 "Code" shall mean the Internal Revenue Code of 1986, as amended (or corresponding provision or provisions of subsequent superseding federal revenue laws).

1.1.8 "Company" shall mean "Waterview Acquisition I, LLC"

1.1.9 "Company Property" shall mean the property listed on Schedule I attached hereto, and such other real and personal property as may be added to such Schedule including but not limited to a license to operate a 130 - bed skilled nursing facility known as "Waterview Hills Rehabilitation and Nursing Center" which is located at Box 257, Old Route 22, Purdys, New York 10578.

1.1.10 "Distributable Cash" shall mean the excess of cash income over cash outflow. Cash income shall include all cash, revenues and funds received by the company

whether from Company operations, refinancing sale, or otherwise. Cash outflow shall include all of the following to the extent paid or set aside by the Company: (a) all principal and interest payment on indebtedness of the Company and all other sums paid to lenders; (b) all cash expenditures incurred incident to the normal operation of the Company's business; and (c) Reserves.

1.1.11 "Economic Interest" will mean a Member's share of the Company's Profits, Losses and distributions of the Company's assets pursuant to this Operating Agreement and the Act.

1.1.12 "Effective Date" will mean the date of approval by the Department of Health of the State of New York of the Amendment to the Articles of Organization for filing with the Secretary of State of the State of New York.

1.1.13 "Entry" will mean any general company, limited company, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

1.1.14 "Family Transferee" will mean any one of the descendants of any Member and/or any trust whose sole beneficiaries are such descendants as long as any one of such beneficiaries is then surviving, or any company, limited liability company or other entry all of whose partners, Members or other equity holders are descendants of any Member and/or trusts whose sole beneficiaries are such descendants for so long as any one of such descendants is then surviving;

1.1.15 "Fiscal Quarter" will mean the three month periods ending on March 31, June 30, September 30 and December 31 of each year.

1.1.16 "Fiscal Year" will mean the Company's fiscal year, which will be the calendar year.

1.1.17 "Gross Asset Value" means, (i) with respect to any asset other than cash contributed to the Company by a Member, the fair market value of such asset on the date such asset is contributed to Company, as determined by the Managers in their sole but reasonable discretion and (ii) with respect to any other asset other than cash owned by the Company, such asset's adjusted basis for Federal income tax purposes, except that the Gross Asset Value of all Company assets will be adjusted to equal the fair market value of such assets (x) whenever such adjustment is required in order for allocations under this Agreement to have "economic effect" within the meaning of Regulations Section 1.704-1(b)(2)(ii) or (y) in the Managers' discretion, whenever such adjustment is permitted under Regulation Section 1.704-1(b)(2)(ii). If the Gross Asset Value of any Company asset is so adjusted, then such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

1.1.18 "Majority in Interest of the Members" means, unless otherwise provided in the operating agreement, will be the affirmative vote of the Members owning more than 50% of the economic interests owned by all Members.

1.1.19 "Managers" will mean Lizer Jozefovic and Mark Neuman or their successors.

1.1.20 "Member" will mean each of the parties who executes a counterpart of this Operating Agreement as a Member and each Person who hereafter become a Member pursuant to the terms, conditions and requirements of this Operating Agreement. If a Manager is or becomes a Member, the term "Member" will include such Manager in its capacity as a Member.

1.1.21 "Member Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

1.1.22 "Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

1.1.23 "Nonrecourse Liability" has the meaning set forth in Section 1.704-2(c)(3) of the Regulations.

1.1.24 "Partner Nonrecourse Debt" has the meaning set for in Section 1.704-2(b)(4) of the Regulations.

1.1.25 "Partner Nonrecourse Debt Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

1.1.26 "Partner Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(d) of the Regulations.

1.1.27 "Partnership Minimum Gain" has the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

1.1.28 "Operating Agreement" will mean this Operating Agreement as originally executed and as amended from time to time.

1.1.29 "Person" will mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such "Person" where the context

so permits.

1.1.30 "Prime Rate" will be the rate announced from time to time by North Fork Bank, or any successor bank, as its prime rate (or base rate if a prime rate is not announced). Any interest rate referred to in this Operating Agreement which is based upon the Prime Rate will automatically change with any change in the Prime Rate.

1.1.31 "Profits" and "Losses" will respectively mean that net profits and the net losses of the Company, the determination of which will be made pursuant to Article IX hereof and will take into consideration the income (both taxable and exempt from tax), expenditures (both those that is deductible in determining taxable income or loss and those that are not deductible and not capital expenditures), gains and losses of the Company.

1.1.32 "Requisite Consent" will be the unanimous consent of the Members.

1.1.33 "Reserves" will mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which will be maintained in amounts deemed necessary, sufficient or appropriate by the Manager with requisite consent for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

1.1.34 "Transfer" will mean give, sell, assign, transfer, pledge, encumber, bequeath or otherwise voluntarily or involuntarily dispose, whether pursuant to operation of law, court order, levy, attachment or otherwise or the act of so doing.

1.1.35 Intentionally Deleted.

1.1.36 Intentionally Deleted.

1.1.37 "Treasury Regulations" will include proposed, temporary and final regulations promulgated under the Code in effect as the date of filing the Certificate of Formation issued that amend or supersede such regulations.

1.1.38 "Guarantee" will mean any Guarantee of all of the Members given to a lending institution securing the initial operating capital loans or lines of credit and any replacements of same.

1.1.39 "Wrongful Act" will mean an act of fraud, deceit, gross negligence, willful misconduct, breach of fiduciary duty or a wrongful taking by the Manager.

1.1.40 "Initial Capital Contribution" will mean the exact amount of cash paid in by each member of the Company in return for that members economic interest in the Company.

1.1.41 "Affiliate" means any person controlling or controlled by or under common control with the Limited Liability Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any Member or employee of the Limited Liability Company, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this limited liability company, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

**ARTICLE II**  
**FORMATION OF COMPANY; OTHER FILINGS**

2.1 Formation. The Members have caused the Company to be formed by the filing of the Articles of Organization in the office of the Secretary of State of the State of New York in accordance with and pursuant to the Act. This Operating Agreement will be effective as of the Effective Date. The Members will further cause the Company to publish said Articles of Organization in accordance with and pursuant to the Act.

2.2. Names. The name of the Company is: "Waterview Acquisition I, LLC".

2.3 Principal Place of Business. The principal place of business of the Company within the State of New York as of the Effective Date will be located in Westchester County at 537 Route 22, P.O. Box 257, Purdys Station, New York 10578. The Company may locate its place of business at any other approved medical facilities operated by the Company, as the Managers may from time to time deem advisable and as approved by the Department of Health of the State of New York.

2.4 Registered Office and Registered Agent. The Company's registered office as of the Effective Date will be located at 537 Route 22, P.O. Box 257, Purdys Station, New York 10578. The registered office and registered agent may be changed from time to time by the Managers by complying with the provisions of the Act and as approved by the Department of Health of the State of New York.

2.5 Term. The term of the Company will be sixty (60) years from the Effective Date, unless the Company is earlier dissolved in accordance with either the provisions of this Operating Agreement or the Act.

2.6 Other Instruments. The Managers will hereafter, as may from time to time be necessary, cause such other certificates, instruments and documents to be recorded and filed with the office of the Secretary of State of the State of New York and in all offices as, when and to the

extent required by law.

2.7 Reporting Requirements; Maintenance of Limited Liability Company Status

The Managers will take such steps as are necessary to ensure that the Company fulfills reporting requirements imposed upon it by law including, but not limited to, the filing of annual and any other reports with the Secretary of State of the State of New York. All fees for filing and/or recordings will be paid out of Company's assets. The Managers will take all other necessary action required by law to perfect and maintain the Company as a limited liability company under the laws of the State of New York and to assure the limited liability of the Members.

**ARTICLE III  
BUSINESS OF COMPANY**

3.1 Sole Purpose. The sole purpose for which the Company is formed is to own and operate the nursing home to be known as "Waterview Hills Rehabilitation and Nursing Center"; purchase, lease or otherwise acquire, construct, own, use, manage, operate and maintain, and sell or otherwise dispose of any and all machines, purchases of equipment, instruments, systems and devices incidental or necessary for the operation of Wateview Hills Rehabilitation and Nursing Center and services incidental thereto.

3.2 Permitted Activities. The activities of the Company will be:

3.2.1 To accomplish any lawful activities whatsoever, or which will at any time appear conducive to or expedient either for the protection or benefit of the Company and its assets or to further the purposes of the Company.

3.2.2 To exercise all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act.

3.2.3 To engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

**ARTICLE IV  
NAMES AND ECONOMIC INTERESTS OF MEMBERS**

Lizet Jozefovic	80.0%
Mark Neuman	20.0%

**ARTICLE V**  
**MANAGEMENT; RIGHTS AND DUTIES OF MANAGERS**

5.1.1 Subject to the provisions of Sections 5.2 below, the business and affairs of the Company will be managed exclusively by the Managers, all of whom will be members of the Company. The Company will not without the prior written consent of The New York State Department of Health, amend or modify the provisions of this Operating Agreement and its Articles of Organization or similar organizational documents, as the case may be, whichever is applicable. The Managers will direct, manage and control the business of the Company to the best of their ability. Except as specifically set forth in Section 5.2 and such other Sections of this Operating Agreement wherein Requisite Consent is expressly required, the Managers will have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

5.1.2 Unless authorized to do so by the Managers, no attorney-in-fact, employee or other agent of the Company will have any power or authority to bind the Company in any way, to pledge its credit or render it liable pecuniarily for any purpose. No Member will have any power or authority to bind the Company unless the Member has been so authorized by the Managers.

5.2 Certain Powers of Managers. Without limiting the generality of Section 5.1, but subject to the provisions of Section 5.3, the Managers will have all power and authority granted a manager under the Act including, but not limited to, the power and authority on behalf of the Company:

5.2.1 To make appropriate maintenance, repairs and replacements to the Company Property;

5.2.2 To purchase liability and other insurance to protect the Company Property;

5.2.3 To invest any Company funds temporarily in time deposits, short-term governmental obligations, commercial paper or other similar investments, provided same are placed in an FDIC insured account in a Commercial Bank in the City of New York;

5.2.4 To execute on behalf of the Company all instruments and documents, including without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; Company agreements, operating agreements of other limited liability companies; and any other instruments or documents necessary or appropriate, in the opinion of the Managers, to the business of the Company;

5.2.5 To employ accountants, legal counsel, or other experts to perform services for the Company and to compensate them from Company funds;

5.2.6 To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such substance and form as the Managers may approve, including but not limited to a Consulting Agreement's with an entity related to or controlled by the Managers, where the annual compensation will be equal to 3% of annual gross revenues;

5.2.7 To compromise, arbitrate, or otherwise adjust claims in favor of or against the Company and to commence or defend litigation with respect to the Company or any of its assets; and

5.2.8 To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

5.3 Need For Requisite Consent. The Managers will obtain Requisite Consent before taking any of the following actions:

5.3.1 Executing any contract or deed for the sale of the Company Property or any interest therein;

5.3.2 Borrowing money secured by a mortgage or other encumbrance on the Company Property in which case no member may unreasonably withhold his consent to such Borrowing by the Company;

5.3.2.1. The Members may not under any circumstances withhold their consent from the initial proposed purchase or working capital loan or to give their personal guarantees for said loan or for any replacement of said loan.

5.3.3 Borrowing money outside the ordinary course of Company business not secured by a mortgage or other encumbrance on the Company Property;

5.3.4 Any leasing of the Company Property;

5.3.5 Establishing Reserves pursuant to Section 10.1 of this Operating Agreement; and

5.3.6 Making any decisions concerning matters where the manager will have a conflict of interest.

5.4 Number, Tenure and Qualifications of Managers. The Managers of the Company will be Lizer Jozefovic and Mark Neuman or their successors, who may only be terminated as such Manager for cause as defined herein.

5.4.1 Lizer Jozefovic and Mark Neuman each warrant and represent that neither of them shall voluntarily resign as Manager for any reason other than disability as further defined herein for at least five years after the effective date of this Agreement.

5.4.1 Should Lizer Jozefovic and Mark Neuman resign or be terminated as such Manager pursuant to this agreement the Members will appoint a successor Manager by the affirmative vote of the Members owning more than 70% of the interests owned by all Members.

5.5 Liability Only for Certain Acts. Each Manager shall perform his duties as a Manager in good faith, in a manner he reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs the duties as a Manager shall not have any liability by reason of being or having been a Manager of the Company. The Managers do not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. The Managers shall not be liable to the Company or any Member for any loss or damage sustained by the Company or any Member unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, breach of fiduciary duty or a wrongful taking by the Manager or Managers.

5.6 Manager Has No Exclusive Duty to Company. The Managers will not be required to manage the Company as their sole and exclusive function nor will any Manager be required to devote his full time to the Company business, but only such time as in his judgment will be reasonably required. The Managers may have other business interests and may engage in other activities in addition to those relating to the Company, which will not be competitive with the business of the Company. Neither the Company or any Member or any will have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of a Manager or to the income or proceeds derived therefrom. No Manager will incur any liability to the Company or any Member as a result of engaging in any other business or venture.

5.6.i. Neither the Company nor any member will incur any liability due to any outside activities engaged in by a Manager.

5.7 Bank Accounts. The Managers may from time to time open bank accounts in the name of the Company, and the Managers and a member or members designated by the Managers will be the signatory or signatories thereon.

5.8 Indemnity of the Manager and Others. Except with respect to any actions taken as Tax Matters Partner (as defined in Section 11.4.4) as to which the indemnification provisions of Section 11.4.4.3 will govern, the Company will to the maximum extent permitted under section 10 of the Act, (a) indemnify the Managers and hold each of them harmless from and against any and all claims and demands whatsoever, and (b) make advances to each Manager

for all costs, attorneys' fees and expenses of litigation with respect to such indemnifying and holding each Manager harmless including, but not limited to, the enforcement of this Section. The Company will indemnify its employees and other agents who are not Managers only to such extent as permitted by law and as approved by the Managers.

5.8.1 This indemnification will exclude Wrongful Acts of any Manager.

5.9 Resignation. After the five year period during which Lizer Jozefovic and Mark Neuman may not resign as Managers, a Manager of the Company may resign at any time by giving notice to all of the Members of the Company. The resignation of a Manager will take effect (45) days following the giving of such notice or at such later time as will be specified in such notice and, unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective. The resignation of a Manager who is also a Member will not affect his rights as a Member; however no Manager may resign as a member and still be the Manager.

5.10 Removal. A Manager may be removed under the following circumstances:

5.10.1 In the event that he/she shall commit a Wrongful Act or in the event that he/she shall become Disabled as defined in Section 5.10.2 below.

5.10.2 "Disability," as used herein, shall be deemed to have occurred whenever the Manager has suffered physical or mental illness, injury or infirmity of such a nature, degree or effect as to render a Manager, for a substantially continuous period of at least six (6) months, substantially unable to perform his duties as delineated in Section 5.2 and Article 11 hereof. The Members of the Company shall determine, according to the facts then available to them, whether and when Disability has occurred and the date of Disability shall be the date of any such determination. Such determination shall not be arbitrarily or unreasonably made and the Members shall, in making such determination, and if feasible, take into consideration the opinion of such Manager's personal physician. If appropriate, the Members may designate a reputable and qualified physician to examine such Manager for the purpose of determining whether the Manager has in fact suffered Disability within the meaning of that term as set forth above. The fees of any physician designated by a Manager, as well as any other expenses related to such physician's examination of a Manager, shall be paid by Company.

5.10.3 In the event that there is a unanimous vote of the members who are not managers that any Manager is no longer properly performing his duties as set forth herein.

The removal of a Manager who is also a Member will not affect the Manager's rights as a Member and will not constitute a withdrawal of a Member.

### 5.11 Authorized Signatures.

5.11.1 All Company documents, including but not limited to, all leases, deeds, agreements and mortgages may be made, executed and delivered on behalf of the Company by the Managers.

5.11.2 All Company documents made, executed and delivered pursuant to this Section 5.11 will be valid and binding on the Company and on all other Persons, and all Persons may rely on such execution without inquiring into any such authority.

5.12 Reliance by Third Parties. Any Person dealing with the Company or the Managers may always rely on a certificate signed by a Manager:

5.12.1 As to the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Managers or by the Company or in any other manner germane to the affairs of the Company;

5.12.2 As to the authenticity of any signature or any copy of this Operating Agreement; or

5.12.3 As to any act or failure to act by the Company, or its Members, or as to any other matter whatsoever involving the Company or any Member.

5.13. The Managers are required to inform the members of any offers received by them for a sale or lease of the assets of the Company.

## ARTICLE VI RIGHTS AND OBLIGATIONS OF MEMBERS

6.1 Limitation of Liability. Each Member's liability will be limited as set forth in this Operating Agreement, the Act and other applicable law.

6.2 Company Debt Liability. Except as provided in Section 6.5 herein or as otherwise required by law, a Member will not be personally liable for any debts or losses of the Company.

6.3 Acts and Decisions. Except as otherwise expressly provided in this Operating Agreement, all acts and decisions of the Members will be taken by Requisite Consent.

6.4 No Priority and Return of Capital. No Member will have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions except as set forth herein in Section 10.3 with regard to the Managers; provided that this Section will not apply to loans (as distinguished from Capital Contributions) which a

Member has made to the Company.

**6.5 Liability of a Member to the Company.** A Member who receives a distribution (including, but not limited to, a return of all or any part of his Capital Contributions) from the Company in violation of this Operating Agreement will be liable to the Company for a period of six (6) years after such distribution for the amount of the distribution.

**6.5.1 Liability to other Members as a Consequence of the Guarantee.** If any of the Members are called upon to pay the "Guarantee" as defined herein or any portion thereof which exceeds his relative percentage in the aggregate economic interests in the Company, the other members shall be personally liable to that Member or Members who has paid such portion of said "Guarantee" to reimburse that member or members for the monies actually expended pro-rata in proportion to their economic interest notwithstanding anything to the contrary contained herein. In addition, the Members each acknowledge that the New York State Department of Health has required that each Member covenant to: (a) fund any balloon payment on the proposed purchase loan, in the event that financing, acceptable to the New York State Office of Health Systems Management, is not available at the time that such balloon payment is due; (b) stand ready, willing and able to contribute equity to the Company in excess of such Member's stated percentage ownership interest; and (c) notwithstanding any agreement, arrangement or understanding to the contrary with the prior owner of the Facility, to be liable and responsible for any Medicaid overpayments made to the Facility and/or surcharges, assessments or fees due from the prior owner of the Facility pursuant to Article 28 of the New York State Public Health Law with respect to the period of time prior to such Member acquiring its interest herein (without releasing the prior owner of the Facility of its liability or responsibility). In any of such events, each Member shall be personally liable to that Member or Members to reimburse that Member or Members for the monies actually expended by such Member as a result of the occurrence of any of such events.

**6.5.2.1** The failure of any member to make such payment upon 45 days written notice will ipso facto constitute an offer and acceptance to sell the defaulting members interest to the member who has paid on such guarantee without in any way limiting the rights of the member who actually paid to refuse to take such share and pursue any other remedies that he may have against such defaulting party.

**6.6 Resignation.** No Member may resign from the Company prior to the dissolution and winding up of the Company.

## **ARTICLE VII**

### **MEETINGS OF MEMBERS**

**7.1 Quarterly Meetings.** Quarterly meetings of the Members will be held on the third Tuesday of each quarter commencing with the year 2005, for the purpose of transacting

such business as may properly come before the meeting.

7.2 Special Meetings. Special meetings of the Members, for any purpose or purposes, may be called by the Manager or by any Member or Members holding at least thirty-five (35%) percent of the interests.

7.3 Place of Meetings. The Manager may designate any place within the State of New York, as the place of meeting for any annual or special meeting of the Members. If no designation is made, the meeting will be held at the registered office of the Company in the State of New York.

7.4 Notice of Meetings. Except as provided in Section 7.5 and 7.10, notice stating the place, day and hour of a meeting and the purpose or purposes for which the meeting is called will be given not less than ten (10) nor more than sixty (60) days before the date of a meeting, by or at the direction of the Manager or Person calling the meeting, to each Member entitled to vote at such meeting.

7.5 Meeting of all Members. If all of the Members will meet at any time and place, either within or outside of the State of New York, and consent in writing to the holding of a meeting at such time and place, such meeting will be valid without notice and at such meeting lawful action may be taken.

7.6 Record Date. For the purpose of determining Members entitled to notice or to vote at any meeting of Members, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is given or the date on which the resolution declaring such distribution is adopted, as the case may be will be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination will apply to any adjournment thereof.

7.7 Manner of Acting. The Requisite Consent of Members at such meeting will be required to take any action.

7.8 Proxies. At all meeting of Members, a Member may vote in person or by proxy which is executed in writing by the Member or by a duly authorized attorney-in-fact. If such proxy is given to a non-member, the member giving the proxy it may not delegate operating authority and/or responsibility by such proxy. If a non-member is authorized to vote by proxy on behalf of a member, such proxy document must provide specific instructions and directions as to how to vote. A non-member may not be granted discretion by such proxy as to how to vote by proxy concerning the operation and management of the company. Such proxy will be filed with the Managers before or at the time of the meeting. No proxy will be valid after three (3) months from the date of its execution, unless otherwise specifically provided in the proxy.

7.9 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by unanimous consent. Such consent will be delivered to the Managers for inclusion in the minutes or for filing with the Company records. The record date for determining Members entitled to take action without a meeting will be the date the first Member signs a written consent.

7.10 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at, or after the time stated therein, will be equivalent to the giving of such notice.

## ARTICLE VII CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

8.1 Members' Initial Capital Contribution. The Initial Capital Contribution of each member shall be set as of the date of closing and notated on the books and records of the Company.

8.2 Additional Capital Contributions. Additional Capital Contributions, if any, will be made only in cash, only in proportion to the relative Economic Interests of all Members and upon Requisite Consent, which consent may not be unreasonably withheld by any Member.

8.2.1 If a member does not make his additional capital contribution then the other members will loan the additional contribution to that member which will bear interest at the rate of 15% *per annum* and the loan will be repaid out of that member or member's distribution. However, the member shall always remain personally liable for such loan to the member or members who makes same and will sign a note evidencing such obligation.

### 8.3 Capital Accounts.

8.3.1 A separate Capital Account will be maintained for each Member commencing with their initial capital contribution. Each such Capital Account will be increased by (a) the amount of cash contributed by such Person to the Company pursuant to Section 8.2 hereof; and (b) allocations to such Person of Profits. Each such Capital Account will be decreased by (a) the amount of money distributed to such Person by the Company; (b) the fair market value of property distributed to such Person by the Company (net of liabilities secured by such distributed property that such Person is considered to assume or take subject to under Section 752 of the Code); and (c) allocations to such Person of Losses.

8.3.2 The following additional rules will apply in maintaining Capital Accounts.

8.3.2.1 If property is distributed by the Company, Capital Accounts will be adjusted as though such property had been sold on the date of such distribution.

for its then fair market value, and any gain or loss on such sale had been allocated in accordance with Article IX.

8.3.2.2 The Capital Accounts upon the Initial Capital Contribution of the Members will be adjusted in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(d) and will be subsequently adjusted in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g).

8.3.2.3 If, in any Fiscal Year, the Company has in effect an election under Section 754 of the Code, Capital Accounts will be adjusted in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(m).

8.3.2.4 Except as may otherwise be provided in this Agreement, whenever it is necessary to determine the Capital Account of a Person for purposes of Article IX, the Capital Account of such Person will be determined after giving effect to all allocations and distributions for transactions effected prior to the time as of which such determination is to be made.

8.3.2.5 In the event of a Transfer of an Economic Interest, the Capital Account of the Transferor will become the Capital Account of the Transferee to the extent it relates to the transferred Economic Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

8.4 Adjustments to Comply with Code. The manner in which Capital Accounts are to be maintained pursuant to Section 8.3 above and in which the income, gain, loss, deductions and credits of the Company are to be allocated pursuant to Section 9.1 below are intended to comply with the requirements of Section 804(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to Section 8.3 or Profits or Losses, or items included therein, are to be allocated pursuant to Section 9.1 should be modified in order to comply with Section 704(b) of the Code and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in Section 8.3 or 9.1, the method in which Capital Accounts are maintained and/or Profits or Losses, or items included therein, are allocated, will be so modified; PROVIDED HOWEVER, that any change in the manner of maintaining Capital Accounts or allocating Profits or Losses, or items included therein, will not materially alter the economic agreement between or among the Members.

8.5 No Interest on Capital Accounts. No interest will be paid on the amount of any Person's Capital Account.

8.6 Return of Capital. No Person will have the right to demand the return of all or any part of such Person's Capital Account or of such Person's Capital Contributions.

8.7 Borrowing From Members or Economic Interest Owners. In the event the Company has insufficient funds to meet its obligations as they become due and to carry out its routine, day-to-day affairs, then, in lieu of the Company borrowing from third parties or selling assets to provide require funds, the Company may, but will not be required to, borrow such funds from one or more of the Members; provided that the terms of such borrowing will be no less favorable to the Company than for similar borrowing from commercial lending institutions, and the Company will not pledge its assets to secure such borrowing; and further provided that all Members are afforded the opportunity to make such loan to the Company.

8.8 No Obligation to Restore Negative Capital Account. Except only as provided in Section 6.5, no will have any liability to restore all or any portion of a deficit balance in such Member's Capital Account.

**ARTICLE IX**  
**ALLOCATION OF PROFITS, LOSSES AND CERTAIN EXPENSES; ALLOCATION**  
**OF GAIN OR LOSS ON SALE OR LIQUIDATION**

9.1 Profits and Losses

(a) Profits. After giving effect to the special allocations set forth in Sections 9.3 and 9.4 hereof, Profits for each Fiscal Year shall be allocated in the following order and priority:

(i) first, to the Members which have previously been allocated Losses, pro rata, pari passu, in such amounts as shall be required to offset any prior allocations of Losses pursuant to Section 9.1(b)(i) in the reverse order in which such Losses were allocated under such Section, until each such Member has been allocated an aggregate amount of Profits under this Section 9.1(a)(i) equal to the aggregate amount of Losses previously allocated to such Member Pursuant to Section 9.1(b)(i);

(ii) thereafter, to the Members in accordance with their respective Percentage Interests.

(b) Losses. After giving effect to the special allocations set forth in Sections 9.2 and 9.3 hereof, Losses for each Fiscal Year shall be allocated in the following order and priority:

(i) first, to the Members which have previously been allocated Profits, pro rata, pari passu, in such amounts as shall be required to offset any prior allocations of Profits until each such Member has been allocated an aggregate amount of Losses under this Section 9.1(b)(i) equal to the aggregate amount of Profits previously allocated to such Member pursuant to such Sections; and

(ii) thereafter, (A) to the Members in accordance with their Capital Accounts, until such Capital Accounts have been reduced to zero and (B) to the Members in accordance with their respective Percentage Interests.

Notwithstanding anything to the contrary set forth herein, Losses allocated pursuant to this Section 9.1(b) shall not exceed the maximum amount of Losses that can be so allocated to each Member without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year, such limitation to be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b)(2)(i)(d) of the Regulations.

Section 9.2 Special Allocations.

(a) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member's pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 9.2(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, each Person who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Person's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Sections 1.704(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 9.2(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 9.2(c) shall be made only if and to the extent that such Member would have an Adjusted Capital

Account Deficit after all allocations provided for in this Agreement have been tentatively made as if this Section 9.2(c) were not in the Agreement.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of the amount such Member is obligated to restore pursuant to any provision of this Agreement and the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Agreement have been made as if Section 9.2(c) hereof and this Section 9.2(d) were not in the Agreement.

(e) Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any Fiscal Year shall be specifically allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(f) Liquidation of the Company. Upon liquidation of the Company, Profits, Losses and items thereof (including gross income and gross deductions for the year in which such liquidation occurs and the immediately preceding year, if advisable for proper allocation of such Profits, Losses and items thereof) shall be allocated among the Members in such manner as is necessary to adjust the Capital Account of each Member to an amount equal to the amount of distributions each Member would be entitled to receive if liquidating distributions were made in accordance with Section 15.3 hereof.

### Section 9.3 Curative Allocations.

The allocations set forth in the last paragraph of Section 9.1(b) and in Sections 9.2(a), 9.2(b), 9.2(c), 9.2(d) and 9.2(e) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 9.3.

### Section 9.4 Other Allocation Rules

(a) For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a permissible method under Code Section 706 and the Regulations thereunder.

(b) For purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), such Members' interests in Company profits are in proportion to their Percentage

Interests.

(c) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Managers shall endeavor to treat distributions of Available Cash as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

Section 9.5 Tax Allocations Code Section 704(c).

In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Member's so as to take account of any variation between the adjusted basis of such property to the Company for Federal income tax purposes and its initial Gross Asset Value. In the event the Gross Asset Value of any Company asset is adjusted (including, without limitation, the adjustment to the Gross Asset Value of the Company's assets made on the date hereof), subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for Federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Managers in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 9.5 are solely for purposes of Federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

**ARTICLE X  
DISTRIBUTIONS**

10.1 Reserves. Subject to Section 5.5.5, the Managers shall establish and set aside such Reserves as the Managers deems to be in best interests of the Company.

10.2 Reimbursement of Expenses. The Managers shall be entitled at all times, upon presentation of receipts, to reimbursement from the Company for reasonable and ordinary expenses incurred in furthering the Company business.

10.3 Distributions. The Managers shall, make regular distributions of Distributable Cash to the Members. Except as adjusted by Section 10.6 below, the Managers shall not be entitled to receive distributions of Distributable Cash until such time as the Members have had distributions equal to their Initial Capital Contribution.

10.4 Distributions in Cash and Proportionate to Economic Interests. All distributions made pursuant to this Article X shall be made to the Members in proportion to their

respective Economic Interests on the record date of such distributions.

10.5 Distributions upon Refinancing. Upon the Refinancing of any existing (or proposed) mortgage on the Company's property, any surplus proceeds after payment of all outstanding liabilities shall be first applied to the reduction of the members capital accounts in accordance with their respective economic interests.

10.6 Distributions to the Managers for Federal Tax Purposes. If each year that the Managers do not receive a distribution pursuant to Section 10.3 then and in that event, the cash available for distribution to the Members shall be adjusted to provide a loan made by the Company to the Managers sufficient to give them available cash to pay their federal, state and local income tax obligations arising out of their interest in the Company. The loan shall be made no later than April 10 of any year in which it is due. The purpose of the loan is to ensure that the Managers will have available cash to pay their federal, state and local income tax obligations arising out of their interest in the Company.

10.6.1 The loan will be repaid solely out of distributions by the Company to the Managers whenever they are made.

**ARTICLE XI**  
**ACCOUNTING, BOOKS AND RECORDS**

11.1 Accounting Period. The Company's accounting period will be the Fiscal Year.

11.2 Records, Audits and Reports. At the expense of the Company, the Managers will maintain records and accounts of all operations and expenditures of the Company. At a minimum the Company will keep at its principal place of business the following records:

11.2.1 A current list of the full name and last known business, residence, or mailing address of each Member and Manager, both past and present;

11.2.2 A copy of the Articles of Organization and Operating Agreement and all amendments thereto;

11.2.3 Copies of the Company's Federal, state and local income tax returns and financial statements, if any, for the six (6) most recent years;

11.2.4 Minutes of every annual and special meeting; and

11.2.5 Any written consents obtained from Members for actions taken by Members without a meeting.

11.3 **Examination of Books.** The Company's books and records will be open for examination by the Members (and their duly authorized representatives) at any time and from time to time during normal business hours upon reasonable notice to the Managers.

11.4 **Returns and Tax Elections.**

11.4.1 The Managers will cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to applicable law. Copies of such returns, will be furnished to the Members by March 15 of each year.

11.4.2 Upon a Transfer of an Economic Interest or in the event of the distribution of Company Property to a Member, the Managers, on behalf of the Company may (in its sole discretion) file an election in accordance with Section 754 of the Code, and applicable Treasury Regulations, to cause the basis of the Company Property to be adjusted for Federal income tax purposes, as provided by Sections 734 and 743 of the Code.

11.4.3 All elections permitted to be made by the Company under Federal and state tax laws, in addition to the election described in Section 11.4.2, will be made by the Managers on behalf of the Company.

11.4.4 Except as otherwise decided by the Members by the Requisite Consent, Lizer Jozefovic is hereby designated as the "Tax Matters Partner" under Code Section 6221 *et seq.* (the Person serving as the Tax Matters Partner is hereinafter referred to in this subsection as the "Tax Matters Partner").

11.4.4.1(a) Upon receipt of notice from the Internal Revenue Service of the beginning of an administrative proceeding at the Company level with respect to a Company item ("Audit"), the Tax Matters Partner will furnish to the Internal Revenue Service the name, address, profits interests, and taxpayer identification number of each person who was a Member or Economic Interest Owner at any time during the taxable year in issue. If the Tax Matters Partner later discovers that the information furnished to the Internal Revenue Service was incomplete or incorrect, it will furnish such revised or additional information as may be necessary.

(b) After commencement by the Internal Revenue Service of any Audit, the Tax Matters Partner will be responsible for meeting with representatives of the Internal Revenue Service, conducting negotiations and providing information. The Tax Matters Partner will furnish each of the Members with all information regarding the Audit.

(c) The Tax Matters Partner may, on behalf of all Members, enter into an agreement with the Internal Revenue Service extending the period for assessing any income tax attributable to any Company item. It is anticipated that such agreement will be binding on all Members.

(d) In the event the Tax Matters Partner arrives at a settlement with the Internal Revenue Service with respect to a Company item, each Member will choose whether or not to become a party to the settlement agreement. No Member will otherwise be bound by a settlement between the Tax Matters Partner and the Internal Revenue Service.

(e) Upon receipt by the Tax Matters Partner of a final Company administrative adjustment (FPAA), the Tax Matters Partner may, within ninety (90) days of such receipt and subject to jurisdictional requirements, file a petition for readjustment in the Tax Court, the District Court of the United States, or the Court of Claims. Upon commencement of such action by the Tax Matters partner, no Member may commence a similar action and all Members will become parties to such action and will be bound thereby. In the event the Tax Matters partner does not commence an action as above provided, any Notice Partner or any Five (5%) Percent Group (as such terms are defined in Code Section 6231(a)) may, within sixty (60) days after the close of the ninety (90) day period set forth above, and subject to jurisdictional requirements, file a petition for readjustment to the Tax Court, the District Court of the United States, or the Court of Claims. The Tax Matters Partner may intervene in any such action and all Members will become parties to such action and will be bound thereby.

11.4.4.2 The Company will reimburse the Tax Matters Partner for all documented expenses incurred by the Tax Matters Partner in its capacity as Tax Matters Partner.

11.4.4.3 The Company, will indemnify and hold harmless the Tax Matters Partner from and against any claim, loss, expense, liability, action, or damage resulting or arising from its acting or its failure to take any action as the Tax Matters partner, including, without limitation, costs and expenses of litigation and appeal (and fees and expenses of attorneys engaged by the Tax Matters Partner in defense of such act or omission) and including, without limitation, costs and expenses of litigation and appeal (including fees and expenses of attorneys engaged by the Tax matters Partner) related to the enforcement of the Company's indemnification obligation under this Section 11.4.4.3, provided that any such claim, loss, expense, liability, action or damage resulting from other than negligence in its capacity as Tax Matters partner. Any such indemnity will be provided out of and to the extent of Company assets only.

## **ARTICLE XII**

### **TRANSFERS**

12.1 **General Prohibition.** Notwithstanding anything in the Articles of Organization or this Agreement to the contrary, the issuance, transfer or other dispositions of membership interests, economic interests or voting rights in the Company is to be strictly controlled by the provisions of § 2801-a(4)(b) of the New York State Public Health Law No person will own ten (10%) percent or more of the membership interests of the Company unless

he has been approved for such ownership by the Public Health Council of the State of New York. Any transfer, assignment or other disposition of ten (10%) percent or more of the membership interests or of ten (10%) percent of the economic interests thereunder of the Company or the transfer, assignment or other disposition of the membership of economic interest in the Company which results in the ownership or control of ten (10%) percent or more of the membership of economic interest thereunder of the Company by any person will be subject to approval by the Public Health Council; and no membership of economic interest hereunder of the Company may be owned or controlled by another limited liability company or Company. Except as otherwise specifically provided in Sections 12.2 and 12.3, a Member may not Transfer all or any fraction of its entire Economic Interest. Article IX of this Operating Agreement does not authorize special allocations of Profits or Losses and, accordingly, regardless of any consent, no Member may Transfer merely its share, or any part thereof, of Profits or of Losses or of its Capital Account.

**12.2 Permissible Transfer in General.** A Member, upon obtaining the prior consent of the public health council and the prior written unanimous consent of all Members, which consent may be granted or withheld for any reason whatsoever and burdened with further conditions and requirements at the discretion of the Members, may Transfer all of his entire Economic Interest, during his lifetime or upon his death, to any person who is not, at the time of the Transfer, a Family Transferee so long as such person is a Member of the Company. A Member may transfer all or any part of his/her interest to a Family Transferee without the necessity of obtaining the consent of the other members so long as such person is a member of the Company.

**12.2.1** If any Member or (hereinafter called the "Seller") desires to sell the Economic Interest owned by him and such Seller will have received a bona fide arm's length written offer, which is unconditional except as hereinafter provided (hereinafter called the "Bona Fide Offer"), for the purchase of such interest from a party who is not a Member of and pursuant to the terms of this Agreement (hereinafter called the "Outside Party"), the Seller will give a notice in writing (hereinafter called the "Option Notice") to the other Members (hereinafter called the "Remaining Members"), setting forth such desire to sell such interest, which notice will be accompanied by a photocopy of the original executed Bona Fide Offer and will set forth at least the name and address of the Outside Party and the price and terms of such offer.

**12.2.1.1** Within thirty days after the giving of the Option Notice, any or all of the Remaining Members may elect to purchase the entire interest of the Seller for which the Bona Fide Offer was made, at the same price and upon the same terms and conditions as contained in the Bona Fide Offer, in which event the Remaining Members will be obligated to purchase and the Selling Member will be obligated to sell such shares at the same price per share and upon the same terms and conditions as contained in the Bona Fide Offer. Each Member will be required to purchase the Interest of the Seller in proportion to the Interest in the Company of each Remaining Member.

**12.2.1.1.1** If any of the Remaining Members is unable to

purchase his proportionate share of the Selling Members interest then and in that event any other of the Remaining Members may purchase that share.

12.2.1.2 Failure of the Remaining Members to exercise their right of first refusal will not constitute a consent to the sale by the Seller to an outside party however the Remaining Members may not unreasonably withhold their consent from said transfer, and upon such consent the purchaser will become a Member without any further vote being required.

12.2.2 A Member may leave his entire interest or any portion thereof by testamentary devise to one or more distributees or devisees.

12.2.2.1 Such a testamentary devise will not ipso facto constitute a dissolution of the Company or a withdrawal event. For a period of one year after the death of such Member, his Estate or personal representative will be entitled to exercise the deceased Members rights as a Member. However, the Estate will have one year from the date of death of the Member to obtain a bona fide purchaser to purchase the entire interest of the deceased Member. Should said bona fide purchaser make an offer and the remaining Members do not exercise their right of first refusal hereunder and vote to allow such a sale, then the bona fide purchaser will become a Member without the necessity of any further approval by the Members and the Company will become reconstituted with the purchaser as a new Member.

12.3 Permissible Transfer to Family Transferees. A Member after, Public Health Council Approval may Transfer all or any fraction of his Membership Interest to a Family Transferee who will automatically become a Member.

12.4 Conditions Precedent to Permissible Transfer. As a condition to the Company recognizing the effectiveness and binding nature of a permissible Transfer pursuant to Section 12.2 or 12.3, whichever is applicable, the Transferor and the Transferee will execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform such other acts which legal counsel to the Company reasonably deems necessary or desirable to:

12.4.1 in the case of a Transferee who is not a Member, confirm that the Person desiring to acquire an interest or interests in the Company has accepted, assumed and agreed to be subject to and bound by all of the terms, obligations and conditions of the Operating Agreement;

12.4.2 Preserve the Company after the completion of such Transfer under the laws of each jurisdiction in which the Company is qualified, organized or does business;

12.4.3 Maintain the status of the Company as a Partnership for Federal income tax purposes;

12.4.4 Establish a reasonably convenient date for the Company to deem the Transfer effective;

12.4.5 Assure compliance with any applicable state and Federal laws including securities laws and regulations; and

12.4.6 Indemnify the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any such Transfer.

12.4.7 Obtaining requisite approval of that person by the Department of Health.

12.5 Transferee Not Member in Absence of Consent.

12.5.1 A Transferee who is neither a Member nor a Family Transferee may become a Member only upon obtaining prior written unanimous consent to be a Member from all Members, which consent is deemed to have been given as a consequence of the consent to the Transfer given pursuant to Section 12.2 or at any time thereafter.

12.6 Member Ceases to Be Member Upon Transfer of Entire Interest. A Member who Transfers his entire Economic Interest, regardless of whether the Transfer is permissible under this Article XE or whether his Transferee becomes a Member, will cease to be a Member upon such Transfer.

12.6.1. Any non permissible transfer will not be effective as against the Members herein.

12.7 Tag Along Rights If Lizer Jozefovic and Mark Neuman receives a bona fide offer from a third party to purchase both of their interests in the Company, Lizer Jozefovic and Mark Neuman shall give notice ("Notice") of that offer to the other members, and the other members shall have the right to demand by written notice to Lizer Jozefovic and Mark Neuman made within the 15 days of having received such Notice that all of their participation in the Company is to be purchased by the third party on the same terms and conditions (including closing date) as are being given to Lizer Jozefovic and Mark Neuman ; provided however, Lizer Jozefovic and Mark Neuman will get any control premium included in the proceeds of that sale or transfer and the other members have no interest therein and if such sale or transfer is not consummated for any reason, the other members shall not have any rights against Lizer Jozefovic and Mark Neuman or such third party.

**ARTICLE XIII**  
**DISSOLUTION AND TERMINATION**

13.1 Dissolution.

13.1.1 The Company will be dissolved upon the occurrence of any the following events:

13.1.1.1 The expiration of the term set forth in Section 2.5 hereof;

13.1.1.2 Requisite Consent thereto being given; or

13.1.1.3 The death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which pursuant to this Operating Agreement (including, but not limited to the Transfer by a Member of his entire Economic Interest) terminates the continued membership of a Member in the Company (a "Withdrawal Event"), unless the business of the Company is continued by written Requisite Consent within ninety (90) days after the Withdrawal Event and there are then at least two remaining Members; or

13.1.1.4 The sale of all the Company Property.

13.1.1.5 If at any time after the Company will receive a License from the New York State Department of Health and such License and any provider agreement issued to the Company under Title XVIII or Title XIX of the Federal Social Security Act, will be finally withdrawn, revoked, surrendered, annulled, canceled or not renewed with there being no further rights of renewal or appeal as to any involuntary withdrawal, revocation, surrender, annulment, cancellation or non-renewal.

13.1.2 If a Member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling his estate or administering his property.

13.3 Winding Up, Liquidation and Distribution of Assets.

13.3.1 Upon dissolution, an accounting will be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers will immediately proceed to wind up the affairs of the Company.

13.3.2 If the Company is dissolved and its affairs are to be wound up, the

Managers, at the direction of the Members, will:

13.3.2.1 Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Members may determine to distribute any assets to the Members in kind);

13.3.2.2 Allocate any Profit or Loss resulting from such sales to the Members' Capital Accounts in accordance with Article IX hereof;

13.3.2.3 Discharge all liabilities of the Company and establish such Reserves as may be reasonably necessary to provide for contingent or fixed liabilities of the Company;

13.3.2.4 Distribute the remaining assets in the following order:

(a)(i) Every reasonable effort will be made to dispose of the assets of the Company upon dissolution so that the distribution may be made to the Members in cash. If at the time of the dissolution of the Company, the Company owns any assets in the form of notes, deeds of trust or other non-cash assets, such assets, if any, will be distributed in kind to the Members, in lieu of cash, proportionately to their right to receive such remaining assets of the Company. For purposes of determining Capital Accounts, each such non-cash asset will be treated as having been sold at net fair market value and the Capital Accounts of the Members will be adjusted pursuant to the provisions of Sections 8.3 and 9.1 of this Operating Agreement to reflect such deemed sale.

(ii) For purposes of this Section 13.3.2.4, the net fair market value of the non-cash assets of the Company will be determined as follows: The parties will first attempt to agree upon the "net fair market value of the assets." For this purpose, "Net fair market value of the assets" will mean the cash price which a sophisticated purchaser would pay on the financing then encumbering the assets, such valuation to be made on the assumption that those assets which are subject to agreements will not be released from such agreements. A sophisticated purchaser will be one who would take into account the nature, extent, maturity date, and other terms of the liabilities encumbering such assets, whether fixed or contingent, including the favorable or unfavorable nature of any financing, and the prospects that the income from the assets would be sufficient to satisfy such liabilities when due, excluding any liability under any financing already taken into account.

(iii) In the event the Members are unable to agree upon the net fair market value of the non-cash assets of the Company, such value will be settled as provided in Section 14 hereof.

(b) The positive balance (if any) of each Member's Capital Account (after taking into account all Capital Account adjustments for the Company's taxable

year during which the liquidation occurs) will be distributed to the Members, either in cash or in kind, as determined by the Requisite Consent of the Members.

13.3.3 Upon completion of the winding up, liquidation and distribution of the assets, the Company will be deemed terminated.

13.3.4 The Manager and the Members will comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

13.4 Document Holding Period. With the exception of Environmental Documents, which will remain the property of the party to which each is addressed, or, as applicable, the party which originated each, all documents and records will be delivered to the Manager upon dissolution of the Company. The Manager will retain such documents and records for such a period of time ("Document Holding Period") as may be required by any regulation, decree, code, ordinance, rule or law of any city, county, state, or federal government or governmental agency having jurisdiction (including the requirements of the Internal Revenue Service) and will make the documents available during normal business hours to the other Members for inspection and copying at such other Member's cost and expense. In the event any Member ("Withdrawing Member") for any reason ceases to be a Member at any time prior to the dissolution of the Company, and the Company is continued without the Withdrawing Member, the documents for the period prior to the date of the termination of the Withdrawing Member's interest will be maintained by the Manager for the Document Holding Period; provided, however, that if there is an audit or threat of audit, such documents will be retained until the audit is completed and any tax liability finally determined. Said documents will be available for inspection, examination and copying by the Withdrawing Member in the same manner as provided above in this Section 13.4 with respect to a dissolution of the Company.

13.5 Certificate of Dissolution. Upon the filing of the certificate of dissolution, the existence of the Company will cease. The Manager will have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

13.6 Return of Contribution Nonrecourse to Other Members and Managers. Upon dissolution, each Member and Economic Interest Owner will look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the contribution of one or more Members or Economic Interest Owners, such Member(s) or Economic Owner(s) will have no recourse against any Member or the Managers unless such insufficiency arose out of any act of fraud, deceit, gross negligence, willful misconduct, breach of fiduciary duty or a wrongful taking.

**ARTICLE XIV  
RESOLUTION OF DISPUTES**

**14.1 Alternative Dispute Resolution.**

14.1.1 In the event of any dispute, difference or controversy arising under or in connection with this Agreement among the Members, their heirs, executors, legal representatives, successors and assigns, all of such disputes, differences and controversies will be arbitrated in the City of New York in accordance with the laws of the State of New York and the arbitrators will be selected in the following manner:

14.1.1.1 The Member or Members seeking arbitration will serve notice in writing sent by registered mail within 10 days after a dispute, difference or controversy has arisen and said notice will contain the designation of an arbitrator selected by the Member or Members seeking the arbitration. Within 5 days after receiving such notice, the remaining Members will designate an arbitrator and will send notice of such designation in writing by registered mail within said period of time to the Members requesting arbitration. Within 5 days thereafter, the 2 arbitrators so selected will meet and select a 3rd arbitrator. The 3 arbitrators so chosen and selected will hear and determine said dispute within 10 days thereafter and their decision will be in the form required under the applicable provisions of the Civil Practice Law and Rules of the State of New York applying to arbitration. In case any Member fails or refused to designate an arbitrator, or in the event that the 2 designated arbitrators fail to designate or cannot agree upon a 3rd arbitrator within the 5 day period set forth above, such designation will be made by the presiding justice of the Appellate Division, Supreme Court, State of New York, Second Department, and the arbitration will proceed in accordance with the provisions of the Civil Practice Law and Rules of the State of New York. It is specifically understood and agreed that the award of the arbitrators may provide for a judgment or direction compelling a Member to retire or withdraw from the Membership and in the event of such an award or direction, the amount payable to such withdrawing or retiring Member for his Membership interest will be as provided in Section 13.3.2.4 of this Agreement. The arbitration costs will be borne by the losing Member.

**ARTICLE XV  
MISCELLANEOUS PROVISIONS**

15.1 Determination of Amounts Under this Agreement. All determinations with respect to Profits and Losses, Capital Accounts, Distributable Cash and any other amounts payable by or to the Company under this Operating Agreement, except as otherwise specifically provided in this Operating Agreement, will be made by the accountants regularly engaged to maintain the books and records of the Company at the time when such determinations are made, in accordance with the accounting practices and procedures regularly employed by such accountants in preparing financial reports and tax statements for companies conducting the same

business as the Company.

15.2 Notices. Any notice, demand or communication required or permitted to be given by any provision of this Operating Agreement will be in writing and will be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or sent by registered or certified mail, postage and charges prepaid, addressed to the address of the Manager, Company or Member, as the case may be, which is set forth in this Operating Agreement or in a notice given by such Person to the Manager. Except as otherwise provided herein, any such notice will be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

15.3 Application of New York Law. This Operating Agreement, and the application and interpretation hereof, will be construed, governed and enforced exclusively by its terms and by the Act and other laws of the State of New York.

15.4 Waiver of Action for Partition. Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

15.5 Entire Understanding; Amendments. This Operating Agreement constitutes the entire understanding of the Members with respect to the subject matter hereof, and no amendment, modification or alteration hereof will be binding on any Person unless in writing executed by all of the Members of the Company. No amendment, supplement or termination of this Operating Agreement will affect or impair any rights or obligations which have heretofore matured hereunder.

15.6 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designation, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

15.7 Construction. Whenever the singular number is used this Operating Agreement and when required by the context, the same will include the plural and vice versa, and the masculine gender will include the feminine and neuter genders and vice versa.

15.8 Headings. The headings in this Operating Agreement are inserted for convenience only and in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

15.9 Waivers. The failure of any Person to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement will not prevent a subsequent act, which would have originally constituted a violation, from having

the effect of an original violation.

15.10 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party will not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

15.11 Severability. If any provision of this Operating Agreement or the application hereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application hereof will not be affected and will be enforceable to the fullest extent permitted by law.

15.12 Binding Effect. Each and all of the covenants, terms, provisions and agreements herein contained will be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

15.13 Creditors. None of the provisions of this Operating Agreement will be for the benefit of or enforceable by any creditors of the Company.

15.14 Counterparts. This Operating Agreement may be executed in counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument.

15.15 Investment Representations.

15.15.1 The Members understand (a) that the Economic Interests evidenced by this Operating Agreement have not been registered under the Securities Act of 1933, New York securities laws or any other state securities laws (the "Securities Acts") because the Company is relying upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering, (b) that the Company has relied upon the fact that the Economic Interests are to be held by each Member for investment, and (c) that said exemption from registration would not be available if the Economic Interests were acquired by a Member with a view to distribution.

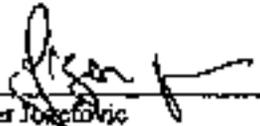
15.15.2 Accordingly, each Member hereby confirms to the Company that such Member is acquiring the Economic Interests for such Member's own account, for investment and not with a view to the resale or distribution thereof.

15.15.3 Prior to acquiring its Economic Interest each Member has made an investigation of the Company and its business and has had made available to it all information with respect thereto which such Member needed to make an informed decision to acquire its Economic Interest. Each Member considers itself to be a Person possessing experience and

sophistication as an investor which is adequate for the evaluation of the merits and risks of such Member's investment in the Company.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the undersigned have signed and sealed this Operating Agreement and do hereby acknowledge and certify that the foregoing Operating Agreement, consisting of 34 pages, including signature pages but excluding attached Schedules, constitutes the Operating Agreement of Waterview Acquisition I, LLC adopted by the Members of the Company as of the Effective Date.

  
Lizer Jozefovic

  
Mark Newman

This Amendment to the Amended and Restated Operating Agreement of Waterview Acquisition I, LLC (the "Operator Operating Agreement") is dated as of November 20, 2015 and amends that certain Amended and Restated Operating Agreement of Waterview Acquisition I, LLC dated 2005. For so long as HUD is the holder or insurer of any indebtedness secured by the Healthcare Facility (as defined below), the provisions of this Amendment shall apply to the Operator Operating Agreement. In the event of any conflict between the terms of this Amendment and the Operator Operating Agreement, the terms of this Amendment shall govern and control.

Covenants. Lessor and Lessee covenant and agree as follows:

**DEFINITIONS.**

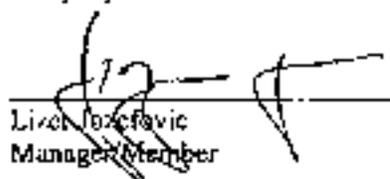
**BUSINESS OF COMPANY**

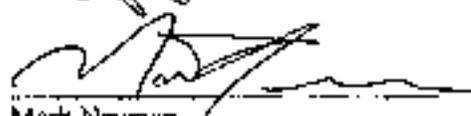
1. HUD Provisions. Notwithstanding any clause or provision in the Operator Operating Agreement to the contrary and so long as the United States Department of Housing and Urban Development ("HUD") or a successor or assign of HUD is the insurer or holder of a loan secured by the Waterview Hills & Salem Hills Rehab & Healthcare project (the "HUD Loan"), the following provisions shall prevail:
  
2. The following terms as used herein shall have the following meanings:
  - a. "HUD Loan Documents" shall mean (i) the Healthcare Regulatory Agreement Operator executed by the Company in connection with the HUD Loan, (ii) the Operator Security Agreement executed by the Company in connection with the HUD Loan and (iii) the Assignment of Leases and Rents executed by the Company in connection with the HUD Loan.
  
  - b. "Healthcare Facility" shall mean that certain skilled nursing facility located in Purdys, New York, known as "Waterview Hills Rehabilitation and Nursing Center" located at 537 Route 22, Purdys, New York 10570.
  
  - c. The business and purpose of the Company shall consist solely of (a) operating and maintaining the Healthcare Facility, (b) executing, delivering and performing its obligations under the HUD Loan Documents, and (c) any lawful activities permitted under the law of the state in which the Company is organized that are incidental to the foregoing or necessary or convenient to accomplish the foregoing, the Company shall not engage in any other business or activity.

- d. The Company shall comply with all applicable Program Obligations, as that term is defined in the HUD Loan Documents, including those related to distributions.
3. Permitted Activities. The activities of the Company will be:
- a. To accomplish any lawful activities whatsoever, or which will at any time appear conducive to or expedient either for the protection or benefit of the Company and its assets or to further the limited purposes of the Company set forth above;
    - i. To exercise all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act; and
    - ii. To engage in all activities necessary, customary, convenient, or incident to any of the foregoing.
4. **COUNTERPART SIGNATURES**. This Amendment may be executed in counterpart.
5. **GOVERNING LAW**. This Amendment and all rights and obligations under this Amendment, including matters of construction, validity and performance, shall be governed by the laws of the state in which the Healthcare Facility is located, without giving effect to conflicts of laws principles.
6. HUD is not a party to this Amendment and has no obligations hereunder; however, it is a third party beneficiary for the sole purpose of enforcing its rights hereunder.

**SIGNATURES ON FOLLOWING PAGE**

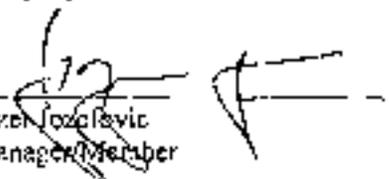
IN WITNESS WHEREOF, the undersigned have signed and sealed this Amendment to the Operator Operating Agreement and do hereby acknowledge and certify that the foregoing Operator Operating Agreement constitutes the Operating Agreement of Waterview Acquisition 1, LLC adopted by the Members of the Company as of the date hereof.

By:   
Ljiljana Jozefovic  
Manager/Member

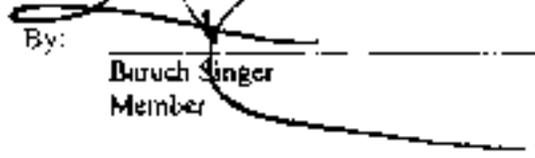
By:   
Mark Neuman  
Manager/Member

By: \_\_\_\_\_  
Baruch Singer  
Member

IN WITNESS WHEREOF, the undersigned have signed and sealed this Amendment to the Operator Operating Agreement and do hereby acknowledge and certify that the foregoing Operator Operating Agreement constitutes the Operating Agreement of Waterview Acquisition I, LLC adopted by the Members of the Company as of the date hereof.

By:   
Liza Jozefovic  
Manager/Member

By: \_\_\_\_\_  
Mark Newman  
Manager/Member

By:   
Baruch Singer  
Member

**SCHEDULE A**  
**NAMES AND MEMBERSHIP INTERESTS OF MEMBERS**

Name	Initial Membership Interest
Lizer Jozefovic	70.10%
Mark Neuman	20.00%
Baruch Singer	9.90%

**SECOND AMENDMENT TO  
AMENDED AND RESTATED OPERATING AGREEMENT  
OF  
WATERVIEW ACQUISITION I, LLC**

**THIS SECOND AMENDMENT TO AMENDED AND RESTATED OPERATING AGREEMENT OF WATERVIEW ACQUISITION I, LLC (this "Amendment") is made as of this 19<sup>th</sup> day of December 2019 (the "Effective Date") by and among Herbert (Lizer) Jozefovic, Mark Neuman and Baruch (Barry) Singer (each a "Member"). This Amendment amends that certain Amended and Restated Operating Agreement dated as of 2005, as amended by that certain Amendment to Amended and Restated Operating Agreement dated November 20<sup>th</sup>, 2015 (the "First Amendment") by and among Herbert (Lizer) Jozefovic, Mark Neuman and Baruch (Barry) Singer (collectively the "Operating Agreement").**

**RECITALS:**

**WHEREAS, WATERVIEW ACQUISITION I, LLC, a New York limited liability company (the "Company") was formed as a limited liability company for the purposes set forth in the Operating Agreement;**

**WHEREAS, a Member of the Company, Baruch (Barry) Singer ("Singer"), has signed the First Amendment to the Operating Agreement dated November 20<sup>th</sup>, 2015 and Singer hereby desires to confirm and ratify his agreement to be bound by all of the terms, obligations and conditions of the Operating Agreement, by executing this Amendment;**

**WHEREAS, the Members of the Company have agreed to further amend the Operating Agreement as set forth herein to allow the Company to take a loan from Metropolitan Commercial Bank, together with its successors and/or assigns (the "Lender"), secured by a guaranty of the loan and pledge of Mark Neuman's and Herbert (Lizer) Jozefovic's (each a "Pledging Member") membership interest in the Company and Economic Interest (as such term is defined in the Operating Agreement), whereby the proceeds of such loan may be used by the Pledging Members (and not by the Company) for matters outside the ordinary course of the Company business;**

**WHEREAS, Section 15.5 of the Operating Agreement provides that no amendment, modification or alteration to the Operating Agreement will be binding on any Person unless in writing executed by all of the Members of the Company; and**

**NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, all of the Members of the Company hereby amend the Operating Agreement with this Amendment and agree to the following terms and conditions:**

1. Section 1.1.9 of the Operating Agreement is hereby deleted in its entirety and replaced with the following:  
**"Company Property"** shall mean the property listed on Schedule I attached hereto and such other real and personal property as may be added to such Schedule including but not

limited to a license to operate a 130 bed skilled nursing facility which is located at 537 Route 22, Purdys, New York 10578.

2. Section 1.1.32 of the Operating Agreement is hereby deleted in its entirety and replaced with the following:  
**"Requisite Consent"** shall mean the consent of a Majority in interest of the Members.
3. Section 1.1.34 of the Operating Agreement is hereby deleted in its entirety and replaced with the following:  
**"Transfers"** means to give, sell, assign, transfer, pledge, encumber, bequeath or otherwise voluntarily or involuntarily dispose, whether pursuant to operation of law, court order, levy, attachment or otherwise or the act of so doing.
4. A new Section 2.8 is added to the Operating Agreement:  
**2.8 Certification of Membership Interests and Opt-In to "Article 8"**. Notwithstanding anything in this Agreement which may (or may be construed to be) to the contrary: (a) the limited liability company membership interests and Economic Interest (as such term is defined in the Operating Agreement) (collectively, the "Membership Interests") in the Company shall be evidenced by a certificate or certificates the form of which is attached to this Agreement as Schedule 2.8 (the "Membership Interest Certificates"); and (b) the Membership Interests in the Company shall (and hereby do) provide that they are securities governed by Article 8 of the Uniform Commercial Code as in effect from time to time in the State of New York and Article 8 of the Uniform Commercial Code of any other jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (and shall be treated as such for all purposes, including, without limitation, perfection of a security interest therein under Article 9 of the Uniform Commercial Code as in effect in such jurisdiction.)
5. Article IV is hereby amended to read:  
 Herbert (Lizer) Jozefovic - 70.1%; Mark Neuman - 20.0%; Baruch (Barry) Singer - 9.9%
6. A new Section 5.2.9 is added to the Operating Agreement:  
**5.2.9** Notwithstanding the provisions of Section 5.3.6, to authorize the Company to borrow money in the Company's name ("Loan") from the Lender pursuant to certain loan documents, which include a guaranty of the Loan and pledge of each of the Pledging Member's Membership Interest in the Company (the "Loan Documents"). The proceeds of such Loan may be used by the Pledging Member and not by the Company for matters outside the ordinary course of the Company business; provided that the Lender grants to any non-Pledging Member a right to purchase the Loan under the Loan Documents pursuant to a control letter signed by all of the Members (the "Control Letter").
7. Section 5.4 of the Operating Agreement is hereby deleted in its entirety and replaced with the following:

5.4 Number, Tenure and Qualifications of Managers. The Managers of the Company will be Lizer Jozefovic and Mark Neuman or their successors, who may only be terminated as such Manager for cause as defined herein.

5.4.1 Lizer Jozefovic and Mark Neuman each warrant and represent that neither of them shall voluntarily resign as Manager for any reason other than disability as further defined herein for at least five years after the effective date of the Amendment.

5.4.2 Should Lizer Jozefovic and Mark Neuman resign or be terminated as such Manager pursuant to this agreement the Members will appoint a successor Manager by the affirmative vote of the Members owning more than 70% of the interests owned by all Members."

8. Section 5.10.1 of the Operating Agreement is hereby deleted in its entirety and replaced with the following:

5.10.1 In the event that he/she shall commit a Wrongful Act as determined by a unanimous vote of the Members not subject to the removal or in the event that he/she shall become Disabled as defined in Section 5.10.2 below.

9. Section 5.10.3 of the Operating Agreement is hereby deleted in its entirety and replaced with the following:

5.10.3 The removal of a Manager who is also a Member will not affect the Manager's rights as a Member and will not constitute a withdrawal of a Member.

10. A new Section 6.7 is added to the Operating Agreement:

6.7 Pledge of Membership Interest. Notwithstanding anything to the contrary in the Operating Agreement, a Pledging Member may grant a continuing lien on and a perfected security interest in such Pledging Member's Membership Interest (and all of the Pledging Member's rights, privileges, authority and power as a member of the Company) ("Pledge") to Lender as security for the due and punctual performance of all its payment obligations to Lender as collateral security for a Loan to the Company secured by the Loan Documents. The proceeds of such Loan may be used by the Pledging Member and not by the Company for matters outside the ordinary course of the Company business; provided that the Lender grant to any non-Pledging Member a right to purchase the Loan pursuant to the Control Letter. The Members also agree that in the event the non-Pledging Member does not elect to purchase the Loan in accordance with the terms of the Control Letter, then solely at the request of the Lender, the Members hereby agree and consent to the sale of the Company Property and all of the assets and property owned by Mokray Acquisition I, LLC pursuant to the terms of the Control Letter. The Members agree that they shall not, without the prior written consent of the Lender, in its sole and absolute discretion: (a) sell, transfer or otherwise dispose of, grant any option with respect to, or pledge or otherwise encumber any of the Membership Interests or any interest therein; (b) suffer or permit any amendment or modification of the Operating Agreement, or (c) waive, release, or compromise any material rights or material claims the Members may have against any other party which arises under the Operating Agreement.

11. Sections 12.1 and 12.3 are hereby amended to substitute the phrase "Public Health and Health Planning Council" in lieu of the phrase "Public Health Council."

12. Section 12.2 of the Operating Agreement is hereby deleted in its entirety and replaced with the following:

**12.2 Permissible Transfer in General.** A Member, upon obtaining the prior consent of the Public Health and Health Planning Council and the prior written unanimous consent of all Members, which consent may be granted or withheld for any reason whatsoever and burdened with further conditions and requirements at the discretion of the Members, may Transfer all of his entire Economic Interest, during his lifetime or upon his death, to any person who is not, at the time of the Transfer a Family Transferee so long as such person is a Member of the Company. A Member may transfer all or any part of his/her interest to a Family Transferee or pledge his interest to the Lender to secure a Company loan without the necessity of obtaining the consent of the other Members, so long as such action would not be in violation of the then Loan Documents in connection therewith. The pledge of a membership interest is not defined as a Transfer under this agreement that would require the prior approval of the Public Health and Health Planning Council. Such a pledge will not ipso facto constitute a dissolution of the Company or a withdrawal event.

13. Section 13.1.1.3 of the Operating Agreement is hereby deleted in its entirety and replaced with the following:

**13.1.1.3** The death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which pursuant to this Operating Agreement (including, but not limited to the Transfer by a Member of his entire Economic Interest) terminates the continued membership of a Member in the Company (a "Withdrawal Event"), unless the business of the Company is continued by written Requisite Consent within ninety (90) days after the Withdrawal Event and there is then at least one remaining Member; or

14. Section 15.5 of the Operating Agreement is hereby deleted in its entirety and replaced with the following:

**15.5 Entire Understanding; Amendments.** This Operating Agreement constitutes the entire understanding of the Members with respect to the subject matter hereof, and no amendment, modification or alteration hereof will be binding on any Person unless in writing executed by all of the Members of the Company. No amendment, supplement or termination of this Operating Agreement will affect or impair any rights or obligations which have heretofore matured hereunder. At any time which the Loan is outstanding, the Members will not (a) suffer or permit any amendment or modification of the Operating Agreement without the prior written consent of the Lender, it being understood that any such amendment or modification shall be void or (b) waive, release, or compromise any material rights or material claims a Member may have against any other party which arises under this Operating Agreement.

15. A new Section 15.16 is added to the Operating Agreement:

15.16 Control Letter. The undersigned and the Members agree that the Control Letter shall be binding upon the Members and the heirs and legal beneficiaries, and permitted successors and assigns of undersigned and the Members, as applicable, and shall inure to the benefit of and be enforceable by the Lender and its successors and assigns. If any provision contained in the Operating Agreement conflicts with any provision in Control Letter, the provision contained in the Control Letter shall govern and control.

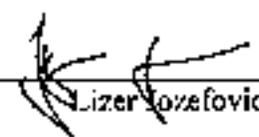
16. Reference to and Effect on Operating Agreement. Upon and after the effectiveness of this Amendment, each reference in the Operating Agreement to "this Agreement," "hereunder," "hereof," or words of like import referring to the Operating Agreement shall mean and be a reference to the Operating Agreement as modified hereby. Except as modified in this Amendment, the Operating Agreement is and shall continue to be in full force and effect and is hereby, in all respects, ratified and confirmed. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any party under the Operating Agreement, nor, except as expressly provided herein, constitute a waiver or amendment of any provision of the Operating Agreement.

17. Construction. All references in the Operating Agreement shall heretofore be deemed to refer to the Operating Agreement as amended by this Amendment. Except as otherwise specified in this Amendment, the Operating Agreement is hereby ratified and shall remain in all respects unchanged and in full force and effect.

18. Counterparts and Electronic Signatures. This Amendment may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed signature page to this Amendment by facsimile or other electronic transmission shall be as effective as delivery of a manually signed signature page to this Amendment.

*[Remainder of page intentionally left blank. Signatures to follow]*

IN WITNESS WHEREOF, the undersigned have signed and sealed this Second Amendment to the Amended and Restated Operating Agreement of WATERVIEW ACQUISITION I, LLC as of the date first written above, agreeing to be bound by all of the term's obligations and conditions of the Operating Agreement and all of the term's obligations and conditions as amended by this Amendment.

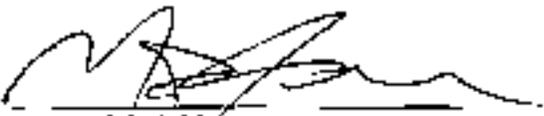
  
Lizer Lovafovic

\_\_\_\_\_  
Mark Neuman

\_\_\_\_\_  
Baruch ("Barry") Singer

IN WITNESS WHEREOF, the undersigned have signed and sealed this Second Amendment to the Amended and Restated Operating Agreement of WATERVIEW ACQUISITION I, LLC as of the date first written above, agreeing to be bound by all of the term's obligations and conditions of the Operating Agreement and all of the term's obligations and conditions as amended by this Amendment.

\_\_\_\_\_  
Lizer Jozefovic

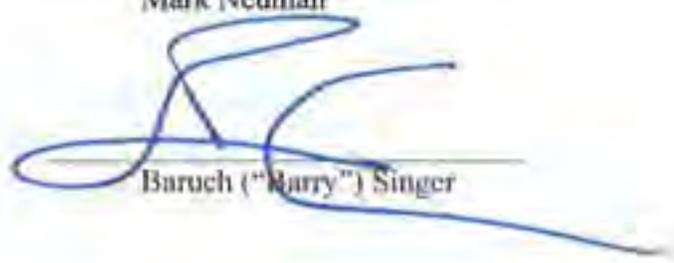
  
\_\_\_\_\_  
Mark Neuman

\_\_\_\_\_  
Baruch ("Barry") Singer

IN WITNESS WHEREOF, the undersigned have signed and sealed this Second Amendment to the Amended and Restated Operating Agreement of WATERVIEW ACQUISITION I, LLC as of the date first written above, agreeing to be bound by all of the term's obligations and conditions of the Operating Agreement and all of the term's obligations and conditions as amended by this Amendment.

\_\_\_\_\_  
Lizer Jozefovic

\_\_\_\_\_  
Mark Neuman



\_\_\_\_\_  
Baruch ("Barry") Singer

**Schedule I**  
**Company Property**

I. 537 Route 22, Purdys, New York 10578

**EXHIBIT D**



224591 2019 DEC 23 PM 1:45

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)  
**Michele Arbeny, Esq. (212) 237 1000**

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Windels Marx Lane & Mittendorf, LLP  
 156 West 56th Street  
 New York, New York 10019  
 Attention: Michele Arbeny, Esq.**

**CSC 50  
 DRAW DOWN**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - (omit only org debtor name (1 and 2) - do not abbreviate or substitute names)**

1a. ORGANIZATION'S NAME

OR 1b. INDIVIDUAL'S LAST NAME: **Jozefovic** FIRST NAME: **Herbert** MIDDLE NAME: \_\_\_\_\_ SUFFIX: \_\_\_\_\_

1c. MAILING ADDRESS: **53 Mariner Way** CITY: **Monsey** STATE: **NY** POSTAL CODE: **10952** COUNTRY: **USA**

1d. TYPE OF ORGANIZATION: \_\_\_\_\_ 1e. ADDRESS OF ORGANIZATION: \_\_\_\_\_ 1f. ORGANIZATIONAL CH. # (any): \_\_\_\_\_  NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - (omit only org debtor name (1a or 2) - do not abbreviate or substitute names)**

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME: \_\_\_\_\_ FIRST NAME: \_\_\_\_\_ MIDDLE NAME: \_\_\_\_\_ SUFFIX: \_\_\_\_\_

2c. MAILING ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTAL CODE: \_\_\_\_\_ COUNTRY: \_\_\_\_\_

2d. ADDRESS TYPE: \_\_\_\_\_ 2e. TYPE OF ORGANIZATION: \_\_\_\_\_ 2f. ADDRESS OF ORGANIZATION: \_\_\_\_\_ 2g. ORGANIZATIONAL CH. # (any): \_\_\_\_\_  NONE

**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR (SP) - omit only org secured party name (3a or 3b))**

3a. ORGANIZATION'S NAME: **Metropolitan Commercial Bank**

OR 3b. INDIVIDUAL'S LAST NAME: \_\_\_\_\_ FIRST NAME: **New York** MIDDLE NAME: \_\_\_\_\_ SUFFIX: \_\_\_\_\_

3c. MAILING ADDRESS: **99 Park Avenue, 4th Floor** CITY: **New York** STATE: **NY** POSTAL CODE: **10016** COUNTRY: **USA**

**4. This FINANCING STATEMENT covers the following collateral:**

See Schedule A annexed hereto and made a part hereof.

5. ALTERNATIVE DESIGNATION (if applicable)  LESSEE/LESSOR  DONOR/BENEFICIARY  BAILLEOR/BORROWER  SELLER/BUYER  AD. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed (or refiled) in the FINAL STATE DIVISION.  Check to REQUEST SEARCH REPORT(s) on Debtor(s)  All Debtor(s)  Debtor 1  Debtor 2

B. OPTIONAL FILER REFERENCE DATA  
 File NYS DOS (Assignment & Pledge of Membership Interests - Jozefovic in Watervliet) (WMLM 307780/052)

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**SCHEDULE A TO UCC FINANCING STATEMENT**

Pledgor hereby pledges, collaterally assigns, transfers and conveys, and grants a security interest in and lien on, in favor of the Pledgee, all of Pledgor's right, title and interest in, to, and under each of the following, whether now owned or existing or hereafter acquired or arising: (A) the Pledged Collateral, (B) any additional Pledged Collateral acquired pursuant to Section 3.2 of the Agreement (whether by purchase, dividend, distribution, merger, consolidation, sale of assets, split, spin-off, or any other dividend or distribution of any kind or otherwise), (C) all distributions, dividends, cash, certificates, liquidation rights and interests, options, rights, warrants, instruments or other property (whether real, personal or mixed) from time to time received, receivable or otherwise distributed in respect of or in exchange or substitution for any and all of the Pledged Collateral, and all rights to receive any and all income, gain, profit, loss or other items allocated or distributed to Pledgor by, to or from the Company (including, without limitation, under or pursuant to the Company's operating agreement), and (D) all proceeds, products, replacements and substitutions for any of the foregoing, in each case whether now owned or hereafter acquired by Pledgor (collectively, the "Collateral").

"Company" means Waterview Acquisition I, LLC, a New York limited liability company.

"Person" means any individual, partnership, joint venture, firm, corporation, limited liability company, association, central bank, trust or other enterprise or any governmental or political subdivision or any agency, department or instrumentality thereof.

"Pledged Collateral" shall mean Pledgor's membership interests in the Company, as more particularly described on Annex A attached hereto and made a part hereof, and any additional Pledged Collateral acquired pursuant to Section 3.2 of the Agreement (whether by purchase, distribution, merger, consolidation, sale of assets, split, spin off, or any other dividend or distribution of any kind or otherwise), which Annex A may be supplemented from time to time pursuant to Section 3.2 of the Agreement. Pledgor represents and warrants that on the date hereof (a) Annex A attached hereto correctly identifies the Pledged Collateral owned by Pledgor with respect to its direct interest in the Company; (b) Pledgor is the holder of record and sole beneficial and legal owner of such Pledged Collateral; and (c) no other Person owns or has any interest in or claim to, whether actual or contingent, the Pledged Collateral.

This financing statement relates to that certain Assignment and Pledge of Membership Interests (the "Agreement"), dated as of December 19, 2019, is made by and between Herbert Jozefovic, an individual ("Pledgor"), and Metropolitan Commercial Bank, a New York State chartered bank (together with its successors and assigns, the "Administrative Agent" or the "Pledgee"), as it may be amended, restated, supplemented or otherwise modified from time to time. Capitalized terms used herein and not otherwise defined herein, shall have the meanings ascribed thereto in the Agreement.

**ANNEX A**

**PLEDGE AGREEMENT**

Seventy and one-tenths percent (70.1%) of the membership interests are owned by HERBERT JOZEFOVIC, pursuant to the table below, in WATERVIEW ACQUISITION I, LLC, a New York limited liability company.

<b><u>Pledgor</u></b>		<b><u>Membership Interest</u></b>
HERBERT JOZEFOVIC	WATERVIEW ACQUISITION I, LLC	70.10%
TOTAL:		70.10%

# EXHIBIT E

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

October 6, 2020

To: Lizer Josefovich (Debtor)  
53 Mariner Way  
Monsey, New York 10952-1248

Metropolitan Commercial Bank  
99 Park Avenue, 4th floor  
New York, New York 10016

Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Attn: Michele Arbeeny, Esq.

From: Howard Fensterman as nominee for White Plains Healthcare Properties, LLC,  
2 Bourbon Street, Peabody, Massachusetts 01960 (Secured Party)

Re: Collateral Assignment and Pledge of Membership Interest and Security Agreement (the  
"Pledge"), dated August 11, 2017, made by and between Lizer Josefovich ("Assignor") and  
Howard Fensterman, as nominee for White Plains Health Care Properties, LLC  
("Assignee") as such agreement may have been further amended or modified from  
time to time.

We will sell the Collateral described in Exhibit A hereto and made a part hereof to the  
highest qualified bidder in public as follows:

**Day and Date:** Friday, October 30, 2020  
**Time:** 10:00 a.m.  
**Place:** DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One  
North Lexington Avenue, White Plains, New York 10601, phone:  
914-681-0200.

You are entitled to, at no charge, an accounting of the unpaid indebtedness secured by the  
collateral that we intend to sell. You may request an accounting by contacting Alfred E. Donnellan  
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP One North Lexington Ave. White  
Plains, NY 10601, Phone: 914-681-0200.

Very truly yours,

/s/ Howard Fensterman  
Howard Fensterman as nominee for  
White Plains Health Care Properties, LLC

**EXHIBIT A**

The Collateral to be sold consists of:

All rights, title and interest of the Debtor as a member in Waterview Acquisition 1, LLC.

**EXHIBIT F**

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**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one full name (1a or 1b) - do not abbreviate or combine names

1a ORGANIZATION'S NAME

OR 1b INDIVIDUAL'S LAST NAME Jozefovic FIRST NAME Lizer MIDDLE NAME SUFFIX

1c MAILING ADDRESS 53 Mariner Way CITY: Montsey STATE NY POSTAL CODE 10952 COUNTRY USA

1d SEE INSTRUCTIONS ADDL INFO RE ORGANIZATION DEBTOR 1e TYPE OF ORGANIZATION 1f JURISDICTION OF ORGANIZATION 1g ORGANIZATIONAL ID# / ID# NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one full name (2a or 2b) - do not abbreviate or combine names

2a ORGANIZATION'S NAME Waterview Acquisition I, LLC

OR 2b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c MAILING ADDRESS 537 Rt 22 CITY: Purdys STATE NY POSTAL CODE 10978 COUNTRY USA

2d SEE INSTRUCTIONS ADDL INFO RE ORGANIZATION DEBTOR 2e TYPE OF ORGANIZATION Limited Liability Company 2f JURISDICTION OF ORGANIZATION New York 2g ORGANIZATIONAL ID# / ID# NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR SEE - insert only one secured party name (3a or 3b))

3a ORGANIZATION'S NAME White Plains Health Care Properties LLC

OR 3b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c MAILING ADDRESS 3 Dakota Dr., Ste 300 CITY: Lake Success STATE NY POSTAL CODE 11842 COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:  
 All rights, title and interest of Lizer Jozefovic as a member in Waterview Acquisition I, LLC. This financing statement relates to that certain Collateral Assignment and Pledge of Membership Interest and Security Agreement, dated August 11, 2017, by and between Lizer Jozefovic and Howard Fensterman, as members of White Plains Health Care Properties LLC, as it may be amended, restated, supplemented or otherwise modified from time to time.

5. ALTERNATIVE DESIGNATION (if applicable) LESSOR/LESSOR OR CONSIGNEE/CONSIGNOR BAILEE/BANDH SELLER/BUYER A/E LIEN NON-UCF PLIND

6. This FINANCING STATEMENT is to be filed (for record) (of record) in the REAL ESTATE RECORDS (State optional) 7. Check to REQUEST SEARCH REPORT (S) (or Debtor's) (Additional Fee) Network AT Debtors Debtor 1 Debtor 2

8. ORIGINAL FILER REFERENCE DATA

Filing Number-202009158394737

# EXHIBIT G



windelsmarx.com

Robert J. Malatak  
212.237.1034  
rmalatak@windelsmarx.com

156 W. 56th Street | New York, NY 10019  
T. 212.237.1000 | F. 212.262.1215

October 19, 2020

VIA E-MAIL  
Alfred E. Donnellan, Esq.  
Managing Partner  
DelBello Donnellan Weingarten Wise &  
Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
[aed@ddw-law.com](mailto:aed@ddw-law.com)

Re: **Waterview Acquisition I, LLC**  
**White Plains Healthcare Properties, LLC**

Dear Mr. Donnellan,

We represent Metropolitan Commercial Bank (“Bank”) and are in receipt of (1) White Plains Healthcare Properties, LLC’s (“White Plains”) Notification Of Disposition Of Collateral dated October 6, 2020 (the “Sale Notice”) and (2) the October 16, 2020 letter from John Giardino, of Michelman & Robinson, LLP, counsel for Waterview Acquisition I, LLC (“Waterview”) (the “Cease & Desist Letter”).

For the reasons, *inter alia*, set forth below, White Plains’ Sale Notice and planned sale of the Pledged Membership Interests (hereinafter defined) is in direct violation of Bank’s rights, and we hereby demand that White Plains immediately rescind the Sale Notice and cease and desist from taking any further action with respect to the Pledged Membership Interests.

**A. Bank’s Rights In And To The Pledged Membership Interests**

As you probably know, on or about December 19, 2019, Bank made a commercial loan to Waterview (the “Loan”). To secure Waterview’s repayment of the Loan, Herbert Jozefovic (“Jozefovic”), among other things, executed and delivered to Bank a Guaranty Of Payment (the “Guaranty”). Jozefovic secured his obligations under the Guaranty by pledging, collaterally assigning, transferring and conveying and granting Bank all of his rights, title and interest in, to and under, *inter alia*, any and all of his membership interests in Waterview (the “Pledged Membership Interests”). Bank immediately perfected its senior secured interests in the Pledged Membership Interests by taking and retaining possession of same and filing a UCC Financing Statement. Accordingly, Bank is a creditor of Jozefovic and has a fully perfected senior secured interest in the Pledged Membership Interests with all of the accompanying rights and remedies available to it under the Uniform Commercial Code, at law and in equity.



October 19, 2020  
Page 2 of 2.

**B. White Plains' Violation Of Bank's Rights**

White Plains' Sale Notice seeks to sell the Pledged Membership Interests at a public sale scheduled for October 30, 2020, in direct violation of Bank's rights.

As an initial matter, assuming *arguendo* the accuracy of the facts set forth in Waterview's Cease & Desist Letter, White Plains has no interest whatsoever in the Pledged Membership Interests. According to Waterview, any and all obligations that Jozefovic may have owed to White Plains that were secured by the Pledged Membership Interests were fully satisfied in 2017 -- long before Jozefovic pledged same to Bank in December 2019. Thus, if the underlying obligations no longer exist, then White Plains cannot now have a security interest in the Pledged Membership Interests and thus, has no right to seek their sale.

Waterview's Cease & Desist Letter also accurately points out that its Operating Agreement in effect at the time the Pledged Membership Interests were supposedly pledged to White Plains did not permit a transfer or pledge of the same to White Plains and thus, White Plains cannot have obtained for itself a security interest in the Pledged Membership Interests. Finally, the Cease & Desist Letter correctly highlights the many defects in White Plains' Sale Notice.

Based upon, *inter alia*, the foregoing, White Plains is not acting in good faith or in a commercially reasonable manner and is otherwise interfering with Bank's contractual relationship with Waterview and Jozefovic. Further note that Bank **does not** authorize the sale of the Pledged Membership Interests (let alone any sale that is free and clear of Bank's senior secured rights) and hereby demands that (1) White Plains immediately withdraw its Sale Notice and (2) you advise my office in writing that it has done so. If we have not been so advised by **5:00 p.m. Eastern Standard Time on Tuesday, October 20<sup>th</sup>**, we will take all steps necessary to protect Bank's interests in and to the Pledged Membership Interests, including the pursuit of any and all legal and equitable claims against White Plains to redress its unlawful actions and seek, among other things, monetary damages for same.

Please be guided accordingly. All rights reserved.

Very truly yours,  
  
Robert J. Malatak

cc.: John Giardino, Esq.  
Michelman & Robinson, LLP  
800 Third Avenue  
New York, New York 10022  
jgiardino@mrlip.com

**EXHIBIT H**

**WISE & WIEDERKEHR, LLP**

COUNSELLORS AT LAW

THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601

(914) 681-0200  
FACSIMILE (914) 684-0288

Connecticut Office  
1111 SUMMER STREET  
STAMFORD, CT 06905  
(203) 298-0000

**Alfred E. Donnellan**  
**Partner**  
aed@ddw-law.com

October 22, 2020

**VIA FEDERAL EXPRESS  
AND EMAIL**

John Giardino, Esq.  
Michelman & Robinson, LLP  
800 Third Avenue, 24th floor  
New York, New York 10022

**Re: Waterview Acquisition I, LLC  
White Plains Healthcare Properties I, LLC**

Dear Mr. Giardino:

This firm represents White Plains Healthcare Properties I, LLC (“WPH Properties”).

I write in response to your letter dated October 16, 2020 (the “Letter”) and Robert J. Malatak’s letter dated October 19, 2020 on behalf of Metropolitan Commercial Bank (the “Bank”). Both letters request the withdrawal of WPH Properties’ Notification of Disposition of Collateral dated October 6, 2020 (the “Notification”) and cancellation of the public sale of collateral identified in that notice, which consists of all rights, title and interest of Lizer Jozefovic (“Debtor” or “Jozefovic”) in Waterview Acquisition I, LLC (“Waterview”).

Your requests are without any basis. As more fully set forth below, Jozefovic is in default under the Collateral Assignment and Pledge of Membership Interest Security Agreement dated August 11, 2017 (the “Pledge Agreement”). Under express provisions of Article 9 of the New York Uniform Commercial Code (the “UCC”), WPH Properties is entitled to sell the Debtor’s interest in Waterview (the “Waterview Membership Interest”) at the public sale scheduled for October 30, 2020. WPH Properties has and will continue to comply with all applicable requirements governing that sale.

**The Debtor has defaulted under the Pledge Agreement,  
which remains in full force and effect.**

The Letter first asserts that “the requirement for a rent security account has been satisfied” and that the Pledge Agreement is null and void. These claims are false.

JOHN GIARDINO, ESQ.  
OCTOBER 22, 2020  
PAGE 2

As you know, the “requirement for a rent security account” referred to in the Letter refers to the Debtor’s obligation under the Pledge Agreement to add Howard Fensterman to two JP Morgan bank accounts entitled Waterview Acquisition I, LLC Account Numbers SI3087002 (“Account 7002”) and 962-90885 (“Account 0885” and, together with Account 7002, the “Waterview JPM Accounts”) in order to ensure that the balance in those accounts was not reduced below \$1.6 million. The Debtor defaulted on his obligations with respect to the Waterview JPM Accounts by failing to take the necessary steps to add Howard Fensterman as a signatory to those accounts.

The documents attached to the Letter do not establish that Howard Fensterman was added as a signatory to the Waterview JPM Accounts. The Letter attaches the account documents for Account 0885, including a Limited Liability Company Certification. The certification states as follows on page 1 (in bold lettering): “Use this form to certify the members/managers authorized to act on an investment account for a Limited Liability Company. A Signatory Information Sheet **MUST BE** provided for all signers.” The documents attached to the Letter do not include a Signatory Information Sheet for Howard Fensterman. Further, there are no account documents attached to the Letter relating to Account 7002.

In any event, the Debtor’s default on his obligations with respect to the Waterview JPM Accounts is not the only outstanding breach under the Pledge Agreement. Contrary to your claim that the Pledge Agreement secured only the obligations concerning the Waterview JPM Accounts, the Pledge Agreement also expressly secured obligations of the Debtor and those of HBL-SNF LLC (“HBL”), an entity controlled by the Debtor, under the Amended and Restated Operating Lease dated November 19, 2015 between HBL, as tenant, and WPH Properties, as landlord. The Pledge Agreement provides:

WHEREAS in order to secure the promises made by Assignor concerning such account Assignor has agreed to deliver to Assignee this Assignment; and the Assignor desires to pledge to Assignee all of his membership interest in Waterview Acquisition I, LLC (the "Company"), **in order to secure the promises made herein and in the Lease** and Security Agreement delivered to the Construction Lender[.]

Pledge Agreement, at 2 (emphasis added). And Section 2 of the Pledge Assignment, referring to the obligations in the Lease, provides in pertinent part:

Upon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the interest in the Company assigned to the Assignee pursuant to Paragraph 1 hereof shall be automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect.

Since the \$1.6 million in additional rent security was never delivered to WPH Properties

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in accordance with Section 7.1(a)(iii) of the Lease, the Pledge Agreement remains in full force and effect. And because the Pledge Agreement, by its express terms, secures the obligations under the Lease, the failure to deliver the \$1.6 million in additional rent security was also a default under the Pledge Agreement.

Your assertion that the transfer of funds into Account 0885 was sufficient to comply with the obligation under the Lease to deliver the \$1.6 million in additional rent security is wrong. As you know, the Waterview JPM Accounts are bank accounts of Waterview, not of the landlord under the Lease, WPH Properties. Section 7.1(a)(iii) of the Lease requires that the \$1.6 million in additional rent security be released by HBL as tenant to WPH Properties as landlord. That was not done.

Further, the Letter ignores that HBL has defaulted on a number of other obligations under the Lease, including by failing to pay rent, failing to meet its other obligations to post security, failing to pay real estate taxes and failing to pay utility charges and deposits. Each of the defaults under the Lease is also a default under the Pledge Agreement.

Given the numerous outstanding defaults under the Pledge Agreement and the Lease, WPH Properties is well within its rights to dispose of the collateral -- the Debtor's membership interest in Waterview -- in accordance with the UCC. Your claims to the contrary are completely without merit.

**The Bank's alleged senior security interest does not preclude  
WPH Properties' disposition of the collateral.**

Your claim that the Bank's alleged senior security interest in the Waterview Membership Interest somehow prohibits WPH Properties from disposing of the collateral in accordance with Article 9 of the UCC is also wrong. UCC § 9-610(a) provides that "[a]fter default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing." The section does not provide that only the most senior secured creditor may conduct a sale. The Official Comments confirm this. Official Comment 5 to UCC § 9-610 states "[d]isposition rights under subsection (a) are not limited to first-priority security interests. Rather, any secured party as to whom there has been a default has the right to dispose of collateral under this subsection."

A junior creditor does have an obligation to notify other creditors with perfected security interests in the collateral of the sale as provided by UCC § 9-611(c)(3)(B). As you know, that was done.

A UCC Article 9 sale discharges only interests junior to the foreclosing creditor and therefore any sale of collateral would be subject to any senior security interest. The terms and conditions of sale clearly indicate that the sale will be subject to the Bank's security interest.

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**The members of Waterview consented to the pledge and assignment of the Waterview Membership Interest.**

Your claim that the pledge and assignment of the Waterview Membership Interest was prohibited by Waterview’s operating agreement is also incorrect. While the operating agreement requires the consent of Waterview’s members for a transfer, the fact that the Pledge Agreement was executed by both Waterview as well as the Debtor clearly indicates that the Waterview members consented to the Pledge Agreement, which expressly provides for the pledge and assignment of the Waterview Membership Interest.

Further, the Waterview resolution attached to the Pledge Agreement, which was executed by all the members of Waterview, resolves that Howard Fensterman would be added as a signatory to the Waterview JPM Accounts and that his signature would be required for any withdrawal that would result in the balance and value of those accounts to fall below \$1.6 million. The resolution provides that the “action is taken pursuant to the applicable New York limited liability company statutory laws and the operating agreement of the Company, by the written consent of a majority of its members and managers of the Company.” The resolution also states that the managers of Waterview were authorized, directed and empowered to execute any agreements required to effectuate the terms of the resolution. Under the resolution, therefore, the members clearly authorized Waterview and its managers to enter into the Pledge Agreement, which set forth the Debtor’s obligations with respect to the Waterview JPM Accounts and pledged the Waterview Membership Interest as collateral. Given the provisions of the resolution, which is dated the same day as the Pledge Agreement, it is indisputable that all of the members of Waterview were aware of and consented to the Pledge Agreement.

Finally, the Letter asserts that “Article 12 specifically prohibited an assignment to Mr. Fensterman as Nominee of White Plains Healthcare Properties LLC.” That is also incorrect. Article 12 of the Pledge Agreement contains no such prohibition.

**The Notification fully complies with the requirements of the UCC.**

Contrary to the claims in the Letter, the Notification is fully compliant with the UCC.

To begin with, your claim that WPH Properties cannot foreclose because the Debtor, the assignor, is not “indebted” to WPH Properties, the assignee, is without any basis. First, Debtor is indebted to WPH Properties as a guarantor. Second, indebtedness to the secured party is not a prerequisite for a UCC sale of collateral. UCC § 9-102 defines “debtor” as a person who has an interest in the collateral, other than a security interest. UCC § 9-102 and UCC § 9-102-73(A) define a secured party as “a person in whose favor a security interest is created or provided for under a security agreement, *whether or not any obligation to be secured is outstanding.*” (emphasis added). Neither of those provisions requires underlying indebtedness, and UCC § 9-102-73(A) expressly provides that no underlying indebtedness is required to qualify as a secured party.

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Second, notwithstanding the Letter’s assertion that you “find no evidence that you have taken any steps to properly conduct this sale as a public sale as required by the UCC,” rest assured that WPH Properties has complied with all UCC requirements with respect to the Notification and the public sale.

Third, lack of possession of the Waterview membership interest certificates is completely irrelevant as the UCC does not require that the secured party possess the collateral in order to foreclose. As previously noted, UCC § 9-102-73(A) defines a secured party, as relevant here, as “a person in whose favor a security interest is created or provided for under a security agreement. . . .” It does not require that the secured party have possession. Nothing in UCC Article 9 provides that possession of certificates is required as a precondition to a UCC Article 9 foreclosure. It requires only that the party foreclosing be a “secured party.” *See* UCC § 9-601(a).

**There is no conflict of interest.**

Your claims concerning conflicts of interest and “significant ethical and legal issues” are false. Howard Fensterman has never represented Waterview or Jozefovic as counsel.

For the reasons set forth herein, the public sale will proceed as scheduled.

Very truly yours,

/s/ ALFRED E. DONNELLAN

cc: Robert J. Malatak, Esq.  
Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, New York 10019

(By Federal Express and Email)

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**60278/2020 - Westchester County Supreme Court**

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
Case Type: **Commercial Division**  
Case Status: **Active**  
eFiling Status: **Full Participation Recorded**  
Assigned Judge: **Gretchen Walsh**

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76	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
77	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Complaint in New York Action</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
78	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Judge Bannon's Interim Order</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
79	<a href="#">AFFIDAVIT OR AFFIRMATION IN REPLY</a> (Motion #3) <i>Reply Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
80	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>NY County Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
81	<a href="#">MEMORANDUM OF LAW IN REPLY</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
82	<a href="#">STIPULATION - DISCOVERY (REQUEST TO SO</a> <a href="#">ORDER</a> ) (Motion #4)	<a href="#">Giardino, J.</a> Filed: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

STIPULATION (Motion #2)

Stipulation regarding document discovery and motion to dismiss

Received: 03/04/2021

83 STIPULATION - SO ORDERED

Court User  
Filed: 03/11/2021  
Received: 03/11/2021

**Processed**  
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84 DECISION + ORDER ON MOTION (Motion #3)

Court User  
Filed: 03/18/2021  
Received: 03/18/2021

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85 NOTICE OF ENTRY (Motion #3)

[Lara-Garduno, N.](#)  
Filed: 03/19/2021  
Received: 03/19/2021

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86 COMPLAINT (AMENDED)

First Amended Verified Complaint

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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87 EXHIBIT(S) - 1

Amended and Restated Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
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88 EXHIBIT(S) - 2

Jozefovic Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
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89 EXHIBIT(S) - 3

Neuman Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
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90 EXHIBIT(S) - 4

Jozefovic Security Agreement  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
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91 EXHIBIT(S) - 5

Letter of Intent  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
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92 EXHIBIT(S) - 6

Notice of Default  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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93 LETTER / CORRESPONDENCE TO JUDGE

[Lara-Garduno, N.](#)  
Filed: 03/26/2021  
Received: 03/26/2021

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94 LETTER / CORRESPONDENCE TO JUDGE

[Donnellan, A.](#)  
Filed: 04/09/2021  
Received: 04/09/2021

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95 DECISION + ORDER ON MOTION (Motion #4)

Motion withdrawn without prejudice

Court User  
Filed: 04/20/2021  
Received: 04/20/2021

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96 ANSWER (AMENDED)

[Barnett-Howell, A.](#)  
Filed: 05/21/2021  
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# Document

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97	<a href="#">EXHIBIT(S)</a> - A <i>Incorporated Complaint from New York County</i>	<a href="#">Barnett-Howell, A.</a> Filed: 05/21/2021 Received: 05/21/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
98	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 05/25/2021 Received: 05/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
99	<a href="#">NOTICE TO ADMIT</a>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
100	<a href="#">EXHIBIT(S)</a> - 1 <i>to Notice to Admit - Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
101	<a href="#">EXHIBIT(S)</a> - 2 <i>to Notice to Admit - Development Agreement</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
102	<a href="#">EXHIBIT(S)</a> - 3 <i>to Notice to Admit - Temporary C of O</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
103	<a href="#">EXHIBIT(S)</a> - 4 <i>to Notice to Admit - AJA form 0704</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
104	<a href="#">EXHIBIT(S)</a> - 5 <i>to Notice to Admit - NYSDOH letter</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
105	<a href="#">ORDER - MEDIATION</a>	Court User Filed: 06/03/2021 Received: 06/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
106	<a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
107	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
108	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>First Notification of Disposition of Collateral, 10.6.20</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
109	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Second Notification of Disposition of Collateral, 6.9.21</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
110	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Term Sheet, 11.20.15</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
111	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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112	<a href="#">EXHIBIT(S)</a> - E (Motion #5) <i>November 19 Email and Account Statement</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
113	<a href="#">EXHIBIT(S)</a> - F (Motion #5) <i>August 10 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
114	<a href="#">EXHIBIT(S)</a> - G (Motion #5) <i>August 16 Emails</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
115	<a href="#">EXHIBIT(S)</a> - H (Motion #5) <i>August 17 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
116	<a href="#">EXHIBIT(S)</a> - I (Motion #5) <i>Letter of Intent</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
117	<a href="#">EXHIBIT(S)</a> - J (Motion #5) <i>Security Benefit Letters</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
118	<a href="#">EXHIBIT(S)</a> - K (Motion #5) <i>NYSDOH Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
119	<a href="#">EXHIBIT(S)</a> - L (Motion #5) <i>Certificate of Amendment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
120	<a href="#">EXHIBIT(S)</a> - M (Motion #5) <i>2020 Monthly Invoices</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
121	<a href="#">EXHIBIT(S)</a> - N (Motion #5) <i>September Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
122	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>Proposed UCC Form</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
123	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
124	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' / Third-Party Plainti ... show more</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
125	<a href="#">EXHIBIT(S)</a> - 1 (Motion #5) <i>Exhibit 1 - Bandazian Affidavit</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
126	<a href="#">EXHIBIT(S)</a> - 2 (Motion #5) <i>Exhibit 2 - Prior Order to Show Cause</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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- |     |  |  |   |
|-----|--|--|---|
| 127 | <a href="#">EXHIBIT(S)</a> - 3 (Motion #5)<br><i>Exhibit 3 - Answer with Cross-Claims</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 128 | <a href="#">EXHIBIT(S)</a> - 4 (Motion #5)<br><i>Exhibit 4 - Decision and Order</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 129 | <a href="#">EXHIBIT(S)</a> - 5 (Motion #5)<br><i>Exhibit 5 - Notice of Sale</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 130 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)<br><i>Third-Party Defendant/Cross-Claimant Metropolitan Commercial Bank's Memorandum of Law in Partial Joi ... show more</i>        | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 131 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Donnellan, A.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 132 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 133 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)<br><i>Affidavit of Lizer Jozefovic</i>   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 134 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5)<br><i>Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' Third-Pa ... show more</i> | <a href="#">Malatak, R.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 135 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 136 | <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5)<br><i>Affidavit of William A. Nicholson</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 137 | <a href="#">EXHIBIT(S)</a> - A (Motion #5)<br><i>Lease</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 138 | <a href="#">EXHIBIT(S)</a> - B (Motion #5)<br><i>Jozefovic Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 139 | <a href="#">EXHIBIT(S)</a> - C (Motion #5)<br><i>Neuman Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 140 | <a href="#">EXHIBIT(S)</a> - D (Motion #5)<br><i>Collateral Assignment and Pledge</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021                         | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

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- 141 [EXHIBIT\(S\)](#) - E (Motion #5)  
*UCC Financing Statement*
- 142 [EXHIBIT\(S\)](#) - F (Motion #5)  
*Notice of Defalt*  
**Redacted** per 22 NYCRR §202.5(e)
- 143 [EXHIBIT\(S\)](#) - G (Motion #5)  
*Construction Loan Agreement*
- 144 [EXHIBIT\(S\)](#) - H (Motion #5)  
*Note*
- 145 [EXHIBIT\(S\)](#) - I (Motion #5)  
*Mortgage*
- 146 [EXHIBIT\(S\)](#) - J (Motion #5)  
*Security Benefit Notice of Default*
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*Security Benefit Notice of Default*
- 148 [EXHIBIT\(S\)](#) - L (Motion #5)  
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- 149 [EXHIBIT\(S\)](#) - M (Motion #5)  
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- 150 [EXHIBIT\(S\)](#) - N (Motion #5)  
*Hebrew Hospital Bankruptcy Filing Notice*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

**Processed**  
[Confirmation Notice](#)

All A.S. Part 92 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York 10007, on the 21 day of October, 2020.

PRESENT:

~~Hon.~~ **HON. NANETTE BANNON**  
Justice

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LIZER JOZEFVIC,

Plaintiff,

Index No. 655549/2020  
Filed via NYSCEF  
Mat. Seq. #001

vs.

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.

-----X

**ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION  
AND TEMPORARY RESTRAINING ORDER**

UPON the annexed complaint dated October <sup>22</sup> 23, 2020, the affirmation of Lizer Jozefovic dated October 21, 2020, the emergency affirmation of Mark Zafra, Esq., dated October 23, 2020, and plaintiff's memorandum of law, dated October 23, 2020, and upon each of the exhibits and all of the papers and proceedings heretofore had herein, and sufficient cause being alleged therefor.

LET THE DEFENDANTS, WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, HOWARD FENSTERMAN, and METROPOLITAN COMMERCIAL BANK, <sup>on their counsel</sup> show cause before this Court located at LAS Part 92 Room 100, 60 Centre Street, New York, New York 10007.

*Revised*  
~~Telephone~~ *conference only*

*20*

on the 14<sup>th</sup> day of Nov., 2020 at 11:30 AM, or as soon thereafter as counsel may be heard;

WHY an order pursuant to Article 63 of the Civil Practice Law and Rules should not be entered, pending determination of this action, preliminary enjoining Defendants and their agents during the pendency of this action from (1) Publishing and distributing false statements about Plaintiff; (2) Taking any action to transfer, assign, convey or sell Plaintiff's membership interest in Waterview Acquisition I, LLC; and (3) Granting such other relief as the Court deems just and proper.

*Sufficient cause being alleged, after oral argument,*  
IT BEING ~~alleged in the Complaint and the Affirmations that temporary relief is necessary~~

~~to prevent irreparable harm to Plaintiff pending the hearing and determination of the motion for a preliminary injunction, and it appearing that Plaintiff may be entitled to a preliminary injunction pursuant to CPLR § 6301 to enjoin Defendants as stated above, it is~~

ORDERED, that pending the hearing ~~and determination~~ of Plaintiff's motion for a preliminary injunction, *White Plains Healthcare Properties LLC and Haverhill Food Service* Defendants are temporarily enjoined and restrained from (1) Continuing to publish and distribute statements alleging that Plaintiff is a debtor; and (2) Taking any action to transfer, assign, convey or sell Plaintiff's membership interest in Waterview Acquisition I, LLC; ~~and it is further~~

AND IT IS FURTHER ORDERED that Defendants' response to this motion, if any, shall be hand delivered or emailed to Plaintiff's counsel and filed with the Court on or before

*20* Nov. 9, 2020;

*NB*  
HON. NANCY M. BANNON



SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

-----	x	
LIZER JOZEFOVIC,	:	Index No.: 65549/2020
	:	
Plaintiff,	:	<b><u>ANSWER WITH CROSS-CLAIM</u></b>
	:	
v.	:	
	:	
WHITE PLAINS HEALTHCARE PROPERTIES	:	
1, LLC, HOWARD FENSTERMAN, and	:	
METROPOLITAN COMMERCIAL BANK,	:	
	:	
Defendants.	:	
-----	x	

Defendant Metropolitan Commercial Bank ("MCB"), by its attorneys, Windels Marx Lane & Mittendorf, LLP, as and for its Verified Answer With Cross-Claim in response to the Summons and Complaint, dated October 22, 2020 (the "Complaint"), filed by plaintiff Lizer Jozefovic ("Plaintiff"), alleges as follows:

**INTRODUCTION**

1. No response is necessary to the allegations in paragraph 1 of the Complaint. To the extent that a response is necessary, MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint.
2. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint.
3. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint.
4. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint.

5. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint, except admits that Plaintiff assigned his interest in Waterview Acquisition 1, LLC to MCB as part of a financing arrangement.

6. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint, except denies the allegations in paragraph 6 of the Complaint concerning the contents of the purported Notification of Disposition of Collateral and respectfully refers the Court to the document for the terms thereof.

7. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint, except admits that defendants White Plains Healthcare Properties 1, LLC ("WPHH") and Howard Fensterman ("Fensterman") have no right or ability to sell Plaintiff's interest in Waterview Acquisition 1, LLC, and respectfully refers all questions of law to the Court.

8. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint.

9. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint.

10. MCB admits the allegations in paragraph 10 of the Complaint.

**THE PARTIES**

11. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint.

12. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint.

13. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint.

14. MCB admits the allegations in paragraph 14 of the Complaint.

15. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint, and respectfully refers all questions of law to the Court.

16. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint, and respectfully refers all questions of law to the Court.

**FACTUAL ALLEGATIONS**

**The Collateral Assignment**

17. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint.

18. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint.

19. MCB denies the allegations in paragraph 19 of the Complaint and respectfully refers the Court to the Collateral Assignment for the terms thereof.

20. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint.

21. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint.

22. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint, and respectfully refers all questions of law to the Court.

23. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Complaint.

24. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint.

25. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint.

26. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint.

27. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Complaint, and respectfully refers all questions of law to the Court.

**Assignment of the Membership Interest to MCB**

28. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint.

29. MCB denies the allegations in paragraph 29 of the Complaint and respectfully refers the Court to the then governing Operating Agreement of Waterview Acquisition 1, LLC for the terms thereof.

30. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint.

31. MCB admits the allegations in paragraph 31 of the Complaint.

32. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Complaint, except admits that in December 2019, Plaintiff assigned the Membership Interest to MCB in connection with a \$3,000,000.00 loan as part of a financing arrangement.

33. MCB admits the allegations in paragraph 33 of the Complaint.

34. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Complaint.

35. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Complaint.

36. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Complaint.

**Distribution of the Notification and Resulting Harm**

37. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

38. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations the allegations in paragraph 38 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

39. MCB denies the allegations in paragraph 39 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

40. MCB denies the allegations in paragraph 40 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

41. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Complaint.

42. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the Complaint.

43. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 of the Complaint.

44. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Complaint.

45. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 of the Complaint.

46. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the Complaint.

47. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Complaint.

48. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 of the Complaint.

49. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 of the Complaint.

50. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaint.

51. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 of the Complaint.

52. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 of the Complaint.

53. MCB admits the allegations in paragraph 53 of the Complaint.

54. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 of the Complaint.

**FIRST CAUSE OF ACTION**  
**Declaratory Judgment**  
**(All Defendants)**

55. In response to paragraph 55 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 54 with the same force and effect as though fully set forth herein.

56. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Complaint and respectfully refers the Court to the Collateral Assignment for the terms thereof.

57. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 of the Complaint.

58. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 of the Complaint.

59. MCB admits the allegations in paragraph 59 of the Complaint.

60. MCB admits the allegations in paragraph 60 of the Complaint.

61. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 of the Complaint, except admits that (a) the Membership Interest has been assigned to MCB and (b) WPHP and Mr. Fensterman have no right or claim to the

Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest.

**SECOND CAUSE OF ACTION**  
**Breach of Contract**  
**(WPHP and Mr. Fensterman)**

62. In response to paragraph 62 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 61 with the same force and effect as though fully set forth herein.

63. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 of the Complaint.

64. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 of the Complaint.

65. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint.

66. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the Complaint.

67. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 of the Complaint.

68. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 of the Complaint.

69. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 69 of the Complaint.

**THIRD CAUSE OF ACTION**  
**Fraud**  
**(WPHP and Mr. Fensterman)**

70. In response to paragraph 70 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 69 with the same force and effect as though fully set forth herein.

71. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Complaint.

72. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 72 of the Complaint, except denies the allegations concerning the content of the Notification, and respectfully refers the Court to the Notification for the contents thereof.

73. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 of the Complaint, except admits that WPHP and Fensterman have no right to sell the Membership Interest.

74. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 74 of the Complaint.

75. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 75 of the Complaint.

**THIRD /SIC/ CAUSE OF ACTION**  
**Defamation**  
**(WPHP and Mr. Fensterman)**

76. In response to paragraph 76 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 75 with the same force and effect as though fully set forth herein.

77. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77 of the Complaint.

78. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78 of the Complaint, except denies the allegations concerning the content of the Notification, and respectfully refers the Court to the Notification for the contents thereof.

79. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 of the Complaint.

80. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 80 of the Complaint.

81. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 of the Complaint.

82. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 82 of the Complaint.

**FOURTH /SIC/ CAUSE OF ACTION**  
**Breach of Fiduciary Duty**  
**(Mr. Fensterman)**

83. In response to paragraph 83 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 82 with the same force and effect as though fully set forth herein.

84. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 of the Complaint and respectfully refers all questions of law to the Court.

85. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 85 of the Complaint.

86. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86 of the Complaint.

87. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87 of the Complaint.

**FIFTH [SIC] CAUSE OF ACTION**  
**Legal Malpractice**  
**(Mr. Fensterman)**

88. In response to paragraph 88 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 87 with the same force and effect as though fully set forth herein.

89. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 89 of the Complaint.

90. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 90 of the Complaint and respectfully refers all questions of law to the Court.

91. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91 of the Complaint and respectfully refers all questions of law to the Court.

92. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92 of the Complaint.

93. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93 of the Complaint.

**SIXTH /SIX/ CAUSE OF ACTION**  
**Judiciary Law Section 487**  
**(Mr. Fensterman)**

94. In response to paragraph 94 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 93 with the same force and effect as though fully set forth herein.

95. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 95 of the Complaint.

96. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 of the Complaint.

97. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 97 of the Complaint.

98. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 98 of the Complaint.

99. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 99 of the Complaint.

**DEFENSES**

100. MCB reserves the right to rely upon any of the following or any additional defenses to the extent that such defenses are supported by information developed through discovery or evidence at trial. MCB presently has insufficient knowledge or information upon which to form a belief as to whether there may be, as yet unstated, defenses available to MCB and thus, expressly reserves the right to (a) amend or supplement this answer, defenses and all other pleadings, and (b) assert any and all additional defenses under any applicable federal and state law in the event that discovery indicates such defenses would be appropriate. By asserting the matters below, MCB

does not admit that Plaintiff is relieved of his burden to prove each element of its claims and the damages or relief sought.

**AS AND FOR A FIRST DEFENSE**

101. MCB has a fully perfected security interest in the Membership Interest and the certificates constituting the Membership Interest that is senior to all other persons.

**AS AND FOR A SECOND DEFENSE**

102. MCB has a possessory right in the certificates constituting the Membership Interest that is superior to all other persons.

**AS AND FOR A THIRD DEFENSE**

103. Given that MCB is the creditor with the fully perfected senior secured interest in the Membership Interests and certificates constituting the Membership Interest, and also has possession of the certificates (and cannot be dispossessed of same), defendants WPHP and Fensterman cannot conduct a commercially reasonable sale of the Membership Interest and thus, they cannot proceed with a sale of said Membership Interest.

**AS AND FOR A FOURTH DEFENSE**

104. Upon information and belief, WPHP and Fensterman never had a valid security interest in the Membership Interest and thus, they cannot foreclose or sell same.

**AS AND FOR A FIFTH DEFENSE**

105. Upon information and belief, assuming *arguendo* WPHP and Fensterman had a valid security interest in the Membership Interest, said security interest has since terminated and thus, they cannot foreclose or sell same.

**AS AND FOR A CROSS-CLAIM  
AGAINST WHITE PLAINS HEALTHCARE  
PROPERTIES I, LLC AND HOWARD FENSTERMAN  
(Declaratory Judgment)**

106. MCB repeats and re-alleges the foregoing paragraphs as though fully set forth herein.

**MCB's Security Interest in the Membership Interest**

107. On or about December 19, 2019, MCB loaned \$3 million to, among others, Waterview Acquisition I, LLC ("Waterview") and in connection therewith Waterview executed and delivered to MCB a Promissory Note and Loan Agreement each dated December 19, 2019.

108. To secure repayment of Waterview's obligations to MCB, among other things, Plaintiff executed and delivered to MCB a Guaranty Of Payment dated December 19, 2019 (the "Guaranty").

109. Plaintiff secured his obligations under his Guaranty by executing and delivering to MCB, among other things, the Assignment And Pledge Of Membership Interests dated December 19, 2019 (the "Pledge Agreement").

110. Pursuant to the Pledge Agreement, Plaintiff, among other things, "pledge[d], collateral[ly] assign[ed], transfer[red] and convey[ed], and grant[ed] a security interest in and lien on, in favor of [MCB], all of [Plaintiff's] right, title and interest in, to, and under ... , whether now owned or existing or hereafter acquired or arising [ 'Seventy and one-tenths percentage (70.1%) of the membership interests ... owned by HERBERT JOZEFOVIC ... in WATERVIEW ACQUISITION I, LLC ... ']. In other words, by the Pledge Agreement, Plaintiff pledged his Membership Interests to MCB.

111. To authorize, permit and facilitate the pledge of Plaintiff's Membership Interests to MCB, Plaintiff's Membership Interests were certificated (the "Certificates") and the Amended

And Restated Operating Agreement Of Waterview Acquisition I, LLC was amended pursuant to the Second Amendment To Amended And Restated Operating Agreement Of Waterview Acquisition I, LLC dated December 19, 2019 (collectively, the "Operating Agreement"). After obtaining a senior secured interest in Plaintiff's Membership Interests and Certificates, MCB fully perfected same by filing a UCC Financing Statement on December 23, 2019 and taking possession of the Certificates.

112. All of Plaintiff's rights and interests in and to the Membership Interests are merged with and in the Certificates.

**The Certificates**

113. MCB remains in possession of the Certificates.

114. MCB has a possessory interest in the Certificates that is superior to all other persons and thus, cannot be dispossessed of the Certificates.

115. The Certificates, moreover, states as follows: "This certifies that Herbert Lizer Jozefovic is the registered owner of Seventy and 1/10 (70.1%) Percent of the membership in the Limited Liability Company transferable only on the books of the Company in accordance with the Company's Operating Agreement and pursuant to the provisions of Section 2801-a(4)(b) of the New York State Public Health Law."

116. Pursuant to Article XII of Waterview's Operating Agreement, a pledge or transfer of a membership interest is prohibited absent consent of the Public Health Council of the State of New York and the members of Waterview.

117. Likewise, Section 2801-a(4)(b) of the New York State Public Health Law requires the consent of the New York Public Health and Health Planning Council.

**The Notice of Sale**

118. On or about October 6, 2020, MCB and its counsel Windels Marx Lane & Mittendorf, LLP received a Notification Of Disposition Of Collateral pursuant to which WPHP and Fensterman purported to sell WPHP's interests in and to Plaintiff's Membership Interests and Certificates (the "Notice of Sale").

119. The Notice of Sale allegedly relates to an August 11, 2017 collateral assignment, pledge and security agreement between Plaintiff and WPHP. However, WPHP did not file a UCC Financing Statement until September 15, 2020.

120. Even if WPHP and Fensterman were to have a valid security interest in the Membership Interest, it would be junior to MCB's security interest by virtue of the fact that MCB perfected its interest before WPHP's September 15, 2020 UCC Financing Statement.

**The UCC Requires that any Sale be "Commercially Reasonable"**

121. Pursuant to NY UCC 9-610(b), "Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable."

122. In order to conduct a commercially reasonable sale of the Membership Interests, WPHP and Fensterman must have possession of the Certificates.

**Declaratory Relief is Necessary**

123. As evidenced by the Notice of Sale, and the subsequent refusal by WPHP and Fensterman to withdraw the Notice of Sale, there exists a genuine controversy and dispute as to whether WPHP and Fensterman have the authority to sell Plaintiff's Membership Interest given that (a) WPHP and Fensterman never had a security interest in the Membership Interests and if they did, then said security interest long ago terminated, and even if they did and still have a security interest in the Membership Interests, then (b) (i) MCB has a fully perfected security

interest in the Membership Interest and Certificates that is senior to all other persons, (ii) MCB is in possession of the Certificates, (iii) MCB has a possessory right in the Certificates that is superior to all other persons, (iv) MCB cannot be dispossessed of the Certificates given its superior possessory right in same, (v) the Certificates limit any transfer of same except in compliance with the Operating Agreement, which requires the consent of Waterview's members, and the Public Health Law, which requires the consent of the Public Health Council; (vi) all of Plaintiff's rights and interests in and to the Membership Interests are merged with and in the Certificates, and (vii) in order to conduct a commercially reasonable sale, WPHP and Fensterman must have possession of the Certificates.

124. A judicial determination of these issues is necessary.

125. This controversy is ripe, genuine, actually justiciable and MCB has no adequate remedy at law.

126. MCB is entitled to a declaratory judgment stating that WPHP and Fensterman are prohibited from selling Plaintiff's Membership Interest pursuant to the Notice of Sale or otherwise because: (a) WPHP and Fensterman never had a security interest in the Membership Interests and if they did, then said security interest long ago terminated, and even if they did and still have a security interest in the Membership Interests, then (b) (i) MCB has a fully perfected security interest in the Membership Interest and Certificates that is senior to all other persons, (ii) MCB is in possession of the Certificates, (iii) MCB has a possessory right in the Certificates that is superior to all other persons, (iv) MCB cannot be dispossessed of the Certificates given its superior possessory right in same, (v) the Certificates limit any transfer of same except in compliance with the Operating Agreement, which requires the consent of Waterview's members, and the Public Health Law, which requires the consent of the Public Health Council; (vi) all of Plaintiff's rights

and interests in and to the Membership Interests are merged with and in the Certificates, and (viii) in order to conduct a commercially reasonable sale, WPHP and Fensterman must have possession of the Certificates.

127. WHEREFORE, MCB demands judgment as follows:

(a) Granting Plaintiff's request for a judgment declaring that (i) the Collateral Assignment to WPHP and Fensterman is null and void following the establishment of the Rent Security; (ii) the Membership Interest has been properly assigned to MCB; and (iii) WPHP and Fensterman have no right or claim to the Membership Interest, nor can WPHP, Fensterman, or counsel sell or otherwise transfer the Membership Interest;

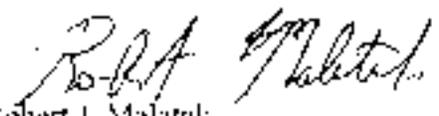
(b) Granting MCB's request for a judgment declaring that WPHP and Fensterman are prohibited from selling Plaintiff's Membership Interest pursuant to the Notice of Sale or otherwise because: (1) WPHP and Fensterman never had a security interest in the Membership Interests and if they did, then said security interest long ago terminated, and even if they did and still have a security interest in the Membership Interests, then (2) (i) MCB has a fully perfected security interest in the Membership Interest and Certificates that is senior to all other persons, (ii) MCB is in possession of the Certificates, (iii) MCB has a possessory right in the Certificates that is superior to all other persons, (iv) MCB cannot be dispossessed of the Certificates given its superior possessory right in same, (v) the Certificates limit any transfer of same except in compliance with the Operating Agreement, which requires the consent of Waterview's members, and the Public Health Law, which requires the consent of the Public Health Council; (vii) all of Plaintiff's rights and interests in

and to the Membership Interests are merged with and in the Certificates, and (viii) in order to conduct a commercially reasonable sale, WPHP and Fensterman must have possession of the Certificates; and

(c) Granting MCB such other relief as the Court may deem fair, just and proper.

Dated: January 8, 2020  
New York, New York

**WINDELS MARX LANE & MITTENDORF, LLP**

By:  \_\_\_\_\_  
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*Attorneys for Defendant/Cross Claimant  
Metropolitan Commercial Bank*

**SUPREME COURT OF THE STATE OF NEW YORK  
 NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

*Justice*

-----X

LIZER JOZEFOVIC,  
 Plaintiff,

- v -

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
 HOWARD FENSTERMAN, and METROPOLITAN  
 COMMERCIAL BANK

Defendants.

-----X

INDEX NO. 655549/2020  
 MOTION DATE 01/04/2021,  
 01/04/2021  
 MOTION SEQ. NO. 001 002

**DECISION + ORDER ON  
 MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 86 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 7, 8, 9, 10, 11, 12, 13, 61, 62, 63, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 89 were read on this motion to/for CHANGE VENUE.

In this action seeking a declaratory judgment and damages in connection with claims sounding in, *inter alia*, breach of contract, fraud, defamation, breach of fiduciary duty, and legal malpractice, the plaintiff moves pursuant to CPLR 6301 for a preliminary injunction enjoining the defendants and their agents from publishing and distributing false statements about the plaintiff and from taking any action to transfer, assign, convey, or sell the plaintiff's membership interest in Waterview Acquisition I, LLC ("Waterview") (SEQ 001). The defendants White Plains Healthcare Properties I, LLC ("WPH Properties"), and Howard Fensterman ("Fensterman") oppose the motion and separately move pursuant to CPLR 511 and 602 to transfer this action to Westchester County and consolidate it with an action pending there entitled White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020 (the "Westchester Action") (SEQ 002). The plaintiff opposes the moving defendants' application. For the following reasons, the moving defendants' motion is granted and the plaintiff's motion is denied without prejudice.

WPH Properties is the developer and owner of a new skilled nursing facility located in Westchester County, New York (the "Facility"). The Facility is operated by HBL SNF, LLC ("HBL"), an entity controlled by the plaintiff. WPH Properties and HBL are parties to an operating lease dated November 19, 2015 (the "Lease"), under which WPH Properties leases the Facility to HBL, as tenant. The plaintiff and nonparty Marc Neuman, as principals of HBL, are HBL's guarantors under the Lease.

Section 7.1(a)(iii) of the Lease provides that HBL was to pay an additional security deposit in the amount of \$1.6 Million 60 days prior to the start of the lease period. As security for that payment, the plaintiff and WPH Properties entered into a collateral assignment agreement (the "Collateral Assignment Agreement"). Pursuant to the Collateral Assignment Agreement, the plaintiff assigned to WPH Properties his 71% membership interest in Waterview, an entity that owns another skilled nursing home in Westchester County (the "Waterview Interest"). The plaintiff also agreed to list Howard Fensterman, attorney for WPH Properties, as a signatory to a Waterview account with JP Morgan (the "Waterview account") where the \$1.6 Million was currently being held. The Collateral Assignment Agreement provided that:

"[u]pon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the [Waterview account] in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the [Waterview Interest] assigned to [WPH Properties] ...shall be automatically reassigned by [WPH Properties] to [the plaintiff] without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect."

The "Landlords Rent Security Account" is not a defined term in the Lease or the Collateral Assignment Agreement. The Collateral Assignment Agreement further provides that the exercise of WPH Properties' rights to sell the Waterview Interest as assignee is authorized upon the plaintiff's violation of the "terms and provisions concerning the maintenance of the [Waterview account]..."

The plaintiff avers that he satisfied his obligations under the Collateral Assignment Agreement and that as a result, the assignment terminated. In 2019, the plaintiff assigned the Waterview Interest to defendant Metropolitan Commercial Bank ("MCB") in connection with a \$3 Million loan as part of a financing arrangement to provide working capital to benefit the Facility, including through the payment of rent to WPH Properties.

On September 18, 2020, WPH Properties commenced the Westchester Action, in which it contends, *inter alia*, that HBL breached the Lease by failing to pay rent, municipal and utility deposits, real estate taxes, and other fees associated with the Facility, including the \$1.6 Million security deposit required by Section 7.1(a)(iii). On October 6, 2020, WPH Properties noticed a public sale of the Waterview Interest based upon the plaintiff's alleged default under the Collateral Assignment Agreement. On October 22, 2020, this action ensued.

"Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, 'unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right.'" Raboy v McCrory Corp., 210 AD2d 145 (1<sup>st</sup> Dept. 1994) (quoting Amtorg Trading Corp. v Broadway & 56th St. Assoc., 191 AD2d 212, 213 [1<sup>st</sup> Dept. 1993]). The movants correctly argue that consolidation is warranted here because this action and the Westchester Action share common questions of law and fact. See CPLR 602; DeSilva v Plot Realty, LLC, 85 AD3d 422 (1<sup>st</sup> Dept. 2011); Kern v Shandell, Blitz, Blitz & Bookson, 58 AD3d 487 (1<sup>st</sup> Dept. 2009).

The plaintiff opposes consolidation, observing that while the Westchester Action involves claims regarding HBL's performance of its obligations under the Lease and the plaintiff's performance under the guarantee he signed, the instant action involves claims regarding ownership of the Waterview Interest pursuant to the separate Collateral Assignment Agreement. However, this characterization of the actions ignores the fact that both (a) WPH Properties' claim in the Westchester Action that the additional security was not paid and (b) the plaintiff's central claim in this action that the Collateral Assignment Agreement automatically terminated turn on the same question: whether Section 7.1(a)(iii) of the Lease was effectuated. Allowing this question to proceed in two separate courts risks inconsistent results. Moreover, WPH Properties avers in its moving papers that it has amended its complaint in the Westchester Action to include a claim sounding in violation of the Collateral Assignment Agreement against the plaintiff. Finally, the plaintiff, who is a resident of Westchester County and a party to the Westchester Action, which was commenced prior to the instant action, would not suffer prejudice to any substantial right as a result of consolidation and transfer.

The court notes that transfer is also appropriate because it appears that venue is improper in New York County. CPLR 503 provides that "[e]xcept where otherwise prescribed by

law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff.” Here, the only entity residing in New York County is MCB, which the plaintiff has included as a defendant but against which the plaintiff has not asserted any claim. Conversely, several parties, including the plaintiff, reside in Westchester County. Since venue properly lies in Westchester County, the court declines to retain venue on the basis of MCB, a nominal defendant against whom there is no claim. See Espinoza v Concordia Intl. Forwarding Corp., 39 AD3d 258 (1<sup>st</sup> Dept. 2007).

The plaintiff’s motion for preliminary injunctive relief is denied without prejudice to renewal upon transfer and consolidation in Westchester County.

Accordingly, it is

ORDERED that the plaintiff’s motion pursuant to CPLR 6301 for a preliminary injunction (SEQ 001) is denied without prejudice to renewal upon the transfer and consolidation of this action in Westchester County; and it is further

ORDERED that the motion of White Plains Healthcare Properties I, LLC, and Howard Fensterman pursuant to CPLR 511 and 602 to transfer this action to Westchester County and consolidate it with an action pending there entitled White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020, (SEQ 002) is granted; and it is further

ORDERED this action, Lizer Jozefovic v White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank, Index No. 655549/2020, pending in the Supreme Court, New York County, shall be consolidated in the Supreme Court, Westchester County, with White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020; and it is further,

ORDERED that the consolidation shall take place under Westchester County Index No. 60278/2020; and it is further,

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, Westchester County, for consolidation and shall mark his records to reflect such transfer; and it is further,

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Westchester County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

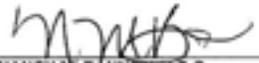
ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the moving defendants shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer and consolidation; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the Decision and Order of the court.

4/8/2021  
DATE

  
NANCY M. BANNON, J.S.C.  
HON. NANCY M. BANNON

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
SEQ 001	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
SEQ 002	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

June 9, 2021

**To:**

Lizer Josefovic  
53 Mariner Way  
Monsey, New York 10952-1248

Metropolitan Commercial Bank  
99 Park Avenue, 4th floor  
New York, New York 10016

Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Attn: Michele Arbeeny, Esq.  
Robert Malatak, Esq.

Michelman & Robinson, LLP  
800 Third Ave., 24<sup>th</sup> Fl  
New York, NY 10022  
Attn: John Giardino, Esq.  
Alex Barnett-Howell, Esq.

**From:** Howard Fensterman as nominee for White Plains Healthcare Properties, LLC,  
2 Bourbon Street, Peabody, Massachusetts 01960 (Secured Party)

**Re:** Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Pledge"), dated August 11, 2017, made by and between Lizer Josefovic ("Assignor") and Howard Fensterman, as nominee for White Plains Health Care Properties, LLC ("Assignee") as such agreement may have been further amended or modified from time to time.

We will sell the Collateral described in Exhibit A hereto and made a part hereof to the highest qualified bidder in public as follows:

**Day and Date:** Thursday, July 1, 2021  
**Time:** 10:00 a.m.  
**Place:** DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, phone: 914-681-0200.

You are entitled to, at no charge, an accounting of the unpaid indebtedness secured by the collateral that we intend to sell. You may request an accounting by contacting Alfred E. Donnellan DelBello Donnellan Weingarten Wise & Wiederkehr, LLP One North Lexington Ave. White Plains, NY 10601, Phone: 914-681-0200.

Very truly yours,

/s/ Howard Fensterman

Howard Fensterman as nominee for  
White Plains Health Care Properties, LLC

**EXHIBIT A**

The Collateral to be sold consists of:

All rights, title and interest of Lizer Josefovic as a member in Waterview Acquisition 1, LLC.

SUPREME COURT OF THE STATE OF NEW YORK  
WESTCHESTER COUNTY

-----	X	
WHITE PLAINS HEALTHCARE PROPERTIES	:	Index No.: 60278/2020
I, LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
HBL SNF, LLC, LIZER JOZEFOVIC a/k/a	:	
LIZER JOZOFOVIC, and MARK NEUMAN,	:	
	:	
Defendants and	:	
Third-Party	:	
Plaintiffs.	:	
	:	
v.	:	
	:	
CCC EQUITIES, LLC, PROJECT EQUITY	:	
CONSULTING, THE CONGRESS	:	
COMPANIES, HOWARD FENSTERMAN,	:	
WILLIAM NICHOLSON, and	:	
METROPOLITAN COMMERCIAL BANK	:	
	:	
Third-Party	:	
Defendants.	:	
-----	X	

**THIRD-PARTY DEFENDANT/CROSS-CLAIMANT  
METROPOLITAN COMMERCIAL BANK'S MEMORANDUM OF  
LAW IN PARTIAL JOINDER AND SUPPORT OF DEFENDANTS / THIRD PARTY  
PLAINTIFFS' ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY INJUNCTION**

Robert J. Malatak, Esq.  
James Tracy, Esq.  
WINDELS MARX LANE & MITTENDORF, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
(212) 237-1000  
*Attorneys for Third-Party Defendant/Cross-Claimant  
Metropolitan Commercial Bank*

**PRELIMINARY STATEMENT**

By this motion, defendants / third-party plaintiffs Lizer Jozefovic (“Josefovic”), HBL SNF LLC (“HBL”), and Mark Neuman (“Neuman”) (collectively, “Movants”) seek to temporarily restrain and preliminarily enjoin the noticed sale – currently set for July 1, 2021 – by plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and third-party defendant Howard Fensterman (“Fensterman”) (collectively, “WP Parties”) of Josefovic’s membership interests in Waterview Acquisition I, LLC (“Waterview”). In their moving papers, Movants set forth a *prima facie* case that they will likely succeed on the merits of their causes of action. Movants have also demonstrated that, absent injunctive relief, they will suffer irreparable injury and the equities tip in their favor.

Third-party defendant/Cross-claimant Metropolitan Commercial Bank (“MCB”) joins and supports this motion for a temporary restraining order and preliminary injunction, but only against the WP Parties and other third-party defendants – not against MCB. The WP Parties have admitted that MCB has a senior security interest in Josefovic’s membership interests. Indeed, the fact is indisputable – MCB entered into a security agreement with Josefovic in 2019 through which he granted MCB a security interest in his membership interests, whereupon MCB perfected its security interest by taking possession of the related certificates and filing a Uniform Commercial Code (“UCC”) Financing Statement on December 23, 2019. To the extent it even had a security interest in the membership interests, the WP Parties did not file a UCC Financing Statement until September 15, 2020, resulting in MCB having priority.

Allowing the WP Parties to proceed with their noticed sale now, or ever for that matter, would unduly prejudice not only Josefovic, but MCB as well, especially since MCB has an unadjudicated cross-claim for a declaratory judgment that, among other things, seeks a declaration

that Josefovic’s membership interests/certificates cannot be sold. First, the threshold questions of whether the WP Parties have a valid security interest in the membership interests must first be resolved first. If after appropriate proceedings the evidence establishes that the WP Parties’ security interest long ago terminated, then they have no right whatsoever to try to sell Josefovic’s membership interests/certificates a/k/a MCB’s collateral. In that case, the WP Parties are nothing more than a stranger who are tortiously interfering with MCB’s contractual relations with Waterview and Josefovic, and otherwise attempting to convert MCB’s collateral to MCB, Josefovic, and Waterview’s detriment.

Second, if the evidence establishes that the WP Parties currently have a junior secured interest in the membership interests/certificates, they are still unable to effectuate a sale of same because MCB has a superior possessory right in and to the interests and related certificates and without possession of the certificates, the WP Parties cannot conduct a commercially reasonable sale as the UCC requires. Not only is this grounded in law, it is not an unfair result, since MCB took many steps to safeguard its loan commitment to Josefovic, including having the membership interest certificated pursuant UCC Article 8, searching for any prior UCC filings, and, finally, taking possession of the certificates and immediately filing a UCC Financing Statement thereby perfecting its own security interest. Despite having an opportunity to do so, the WP Parties took none of these steps – except, of course, filing its own UCC Financing Statement nearly two (2) years after it supposedly became a secured creditor of Josefovic and only a few days before it commenced this lawsuit.

Based upon the foregoing, the Court respectfully must grant the requested temporary restraining order and preliminary injunction to allow for a determination of whether the WP Parties

have a valid security interest and to ensure that MCB's interests in and to its collateral is fully protected and preserved.

## FACTS

### **A. The MCB Loan**

On or about December 19, 2019, MCB loaned \$3 million (the "Loan") to Waterview, and in connection with the Loan, Waterview executed and delivered to MCB a Promissory Note (the "Note") and Loan Agreement (the "Loan Agreement"). To secure repayment of Waterview's obligations to MCB, among other things, Josefovic executed and delivered to MCB a Guaranty Of Payment dated December 19, 2019 (the "Guaranty"). (Bandazian Aff., Ex. A.)<sup>1</sup>

Josefovic secured his obligations under his Guaranty by executing and delivering to MCB, among other things, the Assignment And Pledge Of Membership Interests dated December 19, 2019 (the "Pledge Agreement"). (*Id.*, Ex. B.) Pursuant to the Pledge Agreement, Josefovic, among other things, "pledge[d], collaterally assign[ed], transfer[red] and convey[ed], and grant[ed] a security interest in and lien on, in favor of [MCB], all of [Josefovic's] right, title and interest in, to, and under ..., whether now owned or existing or hereafter acquired or arising [Seventy and one-tenths percentage (70.1%) of the membership interests ... owned by HERBERT JOZEOFVIC ... in WATERVIEW ACQUISITION I, LLC ....]" ("Josefovic's Membership Interests"). (*Id.*, Ex. B, § 2-3 & Annex A.)

Further, the Amended And Restated Operating Agreement Of Waterview Acquisition I, LLC (the "Operating Agreement") was amended to authorize, permit, and facilitate the pledge of Josefovic's Membership Interests to MCB (*see* new Section 6.7) (*Id.*, ¶ 7, Ex. C.), Josefovic's

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<sup>1</sup> "Bandazian Aff." refers to the Affidavit of Brett Bandazian, sworn to on October 26, 2020, which was initially submitted in support of Josefovic's prior motion for a preliminary injunction before the New York County Supreme Court, and is annexed as Exhibit 1 to the Malatak Aff. (defined below).

Membership Interests were certificated (the “Certificates”) and expressly deemed to be governed by Article 8 of the UCC (*see* new Section 2.8) (*Id.*, ¶ 7, Ex. C.) and Section 12.2 of the Operating Agreement was amended to permit the transfer of Josefovic’s interests to MCB (*see* new Section 12.2) (*Id.*, ¶ 7, Ex. C.). After obtaining a senior secured interest in Josefovic’s Membership Interests/Certificates, MCB fully perfected same by filing a UCC Financing Statement on December 23, 2019 (the “MCB UCC”) and taking possession of the Certificates. (*Id.*, ¶ 8, Ex. D.)

Importantly, MCB remains in possession of the Certificates. (*Id.*)

**B. The WP Security Agreement And The First Notice Of Sale**

On or about October 6, 2020, MCB and its counsel, Windels Marx Lane & Mittendorf, LLP (“Windels Marx”), received a Notification Of Disposition Of Collateral, pursuant to which the WP Parties purported to notice a sale of Plaintiff’s Membership Interests/Certificates (the “First Notice of Sale”). (*Id.*, ¶ 9, Ex. E.) The First Notice of Sale purportedly relates to an August 11, 2017 collateral assignment, pledge and security agreement between Josefovic and WPHP (the “WP Security Agreement”). (*See Id.*, Ex. E.)

The WP Security Agreement suffers from a number of fatal infirmities. For instance, the WP Security Agreement is hopelessly ambiguous and vague. Paragraph 1 of the WP Security Agreement provides as follows:

As collateral security for the Borrowers’ obligations under the Lease, the Security Agreement, the Loan, and the Development Agreement, the Assignor hereby pledges and assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member in the Company (the “Collateral”). (Giardino Aff., Ex. D, § 1.)<sup>2</sup>

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<sup>2</sup> “Giardino Aff.” refers to the Affirmation Of John Giardino In Support Of Order To Show Cause, affirmed June 22, 2021 (Doc. No. 107).

It is not clear, however, whose obligations are at issue, as “Borrower” is not defined in the WP Security Agreement. Nor, for that matter, are the terms “Lease,” “Security Agreement,” “Loan,” or “Development Agreement.” (See Giardino Aff., Ex. D.) In other words, the WP Parties are relying on a security agreement pursuant to which Josefovic supposedly pledged his membership interests to secure an unknown person’s obligations under unknown agreements. Further, it appears that the WP Security Agreement terminated pursuant to its own terms prior to Josefovic pledging the interests to the WP Parties. (Giardino Aff., ¶ 31-50.)

MCB had no prior actual notice of the WP Security Agreement. (Bandazian Aff., ¶ 10.) MCB’s UCC search did not locate any prior claims against Josefovic’s Membership Interests/Certificates because the WP Parties did not file a UCC Financing Statement until September 15, 2020 (the “WP UCC”). (Bandazian Aff., Ex. F.)

As will be shown below, even if the WP Parties have a valid security interest, its failure to file a UCC Financing Statement prior to MCB results in MCB having a senior claim to Josefovic’s Membership Interests/Certificates. Indeed, WP Parties admitted as much in their motion in the New York County Action to consolidate and change venue. According to the WP Parties, MCB “holds a prior lien on the Waterview Membership Interest,” and “[t]he Waterview Membership Interest will be sold subject to the lien of Metropolitan Commercial Bank.” (Malatak Aff., ¶ 4.)<sup>3</sup> The WP Parties’ counsel further states that, “The Waterview Membership Interest will be sold subject to Metropolitan Commercial Bank’s first lien. There is no dispute about that.” (*Id.*, ¶ 15.)<sup>4</sup>

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<sup>3</sup> “Malatak Aff.” refers to the accompanying Affirmation Of Robert J. Malatak, affirmed June 25, 2021.

<sup>4</sup> Actually, while there is no dispute that MCB has a senior lien, there is a dispute over whether the collateral will be sold.

**D. The WP Parties Persist Despite Warning**

By letter dated October 19, 2020, MCB’s counsel wrote to the WP Parties’ counsel demanding that it cease and desist with any and all efforts to sell Josefovic’s Membership Interests/Certificates (the “Windels Letter”). (Bandazian Aff., Ex. G.) However, in response, the WP Parties’ counsel refused to cease and desist and asserted they would proceed with the sale (*Id.*, Ex. H), requiring Josefovic to commence an action on October 22, 2020 entitled *Josefovic v. White Plains Healthcare Properties I, LLC et. al*, Index No. 655549/2020 (the “New York County Action”) and file an Order to Show Cause seeking, among other things, a temporary restraining order and preliminary injunction enjoining the WP Parties from, among other things, taking any action to transfer, assign, convey or sell Jozefovic’s Membership Interests/Certificates in Waterview.

**E. The WP Parties’ First Noticed Sale Is Enjoined, And A Second Notice of Sale Is Issued**

On October 27, 2021, the Court issued the requested temporary restraining order in the New York County Action pending a determination on the request for a preliminary injunction. (Malatak Aff., Ex. 2.) The WP Parties responded by moving to consolidate the New York County Action with this action. (Malatak Aff., ¶ 5.) While the motion was pending, on January 8, 2021, MCB filed in the New York County Action an Answer With Cross-Claim against WPHP and Howard Fensterman. (Malatak Aff., ¶ 6, Ex. 3.) MCB’s cross-claim seeks a declaratory judgment that WPHP and Howard Fensterman are prohibited from selling the Certificates because, *inter alia*, (a) they either have no interests in the Certificates, or (b) even if they do have interests in the Certificates any such interests are trumped by MCB’s interests and related rights. Thereafter, by Decision and Order, dated April 8, 2021 (Bannon, J.S.C.), the New York County Action was consolidated with this action, and the motion for a preliminary injunction was denied without

prejudice. (Malatak Aff., Ex. 4.) After the two (2) actions were consolidated, the WP Parties issued a Notification of Disposition of Collateral, dated June 9, 2021 (the “Second Notice of Sale”), purporting to once again notice a sale of the Jozefovic Membership Interests, this time on July 1, 2021. (Malatak Aff., Ex. 5.) Thereafter, Movants filed this motion to again enjoin any sale of the Josefovic Membership Interests/Certificates.

**ARGUMENT**

**POINT I**

**THE COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ENJOINING THE SALE OF THE COLLATERAL**

The Court should grant this motion for a temporary restraining order and preliminary injunction enjoining the WP Parties’ sale of Josefovic’s Membership Interests/Certificates pending a determination of Josefovic’s and MCB’s claims. There are serious threshold questions whether the WP Parties have a valid security interest of any kind. Even if the WP Parties are able to ultimately demonstrate a currently valid security interest, MCB is indisputably the senior creditor and is in possession of the Certificates. Any sale by the WP Parties would be commercially unreasonable and will destroy the value of the collateral in which MCB retains its senior lien. Until all of these issues are determined, the Court respectfully must preserve the *status quo* and enjoin any sale.

The purpose of a temporary restraining order and a preliminary injunction is to maintain the *status quo* pending a determination on the merits. *Segarra v. Ashouin*, 253 A.D.2d 406, 407 (1st Dep’t 1998) (regarding temporary restraining order); *Ying Fung Moy v. Hohi Umeki*, 10 A.D.3d 604, 604 (2d Dep’t 2004) (regarding preliminary injunction). It is well settled that a party is entitled to preliminary injunctive relief upon a showing of (1) a probability of success on the merits; (2) the danger of irreparable injury absent the issuance of the injunction; and (3) a balancing

of the equities in favor of the movant. *See Aetna Insurance Co. & Capasso*, 75 N.Y.2d 860, 862 (1990). Here, Movants have met all three (3) required criteria, and granting the requested injunctive relief would preserve the *status quo*.

**A. Movants And MCB Are Likely To Prevail On The Merits**

While Movants assert several reasons why they will likely prevail on the merits, MCB will focus here only on the fact that MCB has a first priority security interest, and the WP Parties have, at most, a junior security interest. Indeed, for the reasons discussed below just that fact alone is sufficient to demonstrate a likelihood of success on the merits in this case.

To establish “the likelihood of success on the merits, a *prima facie* showing of a right to relief is sufficient; actual proof of the case should be left to further court proceedings.” *McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Co.*, 114 A.D.2d 165, 172-173 (2d Dep’t 1986); *see also Parkmed Co. v. Pro-Life Counselling, Inc.*, 91 A.D.2d 551, 553 (1st Dep’t 1982). The affidavits, documentary evidence and the opposition’s admissions set forth a *prima facie* case that the WP Parties do not currently have, a security interest in the collateral, and even if they did, they cannot conduct a commercially reasonable sale of same because of MCB’s superior possessory rights.

**1. The WP Security Agreement Terminated Pursuant To Its Own Terms**

The WP Security Agreement’s terms provide that upon the provision of \$1.6 million in rent security, the WP Security Agreement automatically terminates. (Giardino Aff., Ex. D, ¶ 2.) Movants have demonstrated that the account was funded and the WP Security Agreement therefore terminated. (Giardino Aff., ¶ 31-50.)

“Security agreements are evaluated by the same principles of construction and interpretation as any contract” and the “parties are deemed to have intended the Security

Agreement provisions to mean what is evident from the language employed.” *Bostwick-Westbury Corp. v. Commercial Trading Co., Inc.*, 94 Misc.2d 401, 406 (Civ. Ct. N.Y. City 1978). Here, the WP Security Agreement unambiguously states that, upon the provision of \$1.6 million in rent security in an account, the agreement automatically terminates, and Movants have made a *prima facie* case that it has complied with that requirement. Thus, it is likely that Movants will prevail in showing that the WP Security Agreement, and with it the WP Parties’ security interest (if any), was terminated long ago.

**2. Without Possessing The Certificates, The WP Parties Cannot Conduct A Commercially Reasonable Sale**

To properly sell collateral pursuant to the UCC, the sale must be “commercially reasonable.” NY UCC 9-610(b) (“Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable.”) A secured creditor cannot sell certificates of membership interests in a commercially reasonable manner, however, without possession of the certificates. *See In re Domestic Fuel Corp.*, 71 B.R. 734 (Br. S.D.N.Y. 1987). In *In re Domestic Fuel Corp.*, a debtor pledged shares in certain companies, but upon execution of the security agreement, the secured party did not take possession of the share certificates. *Id.* at 736. After a default, the secured party, still without possession purported to sell the collateral. *Id.* at 737. The court, however, deemed the sale commercially unreasonable because the creditor did not have possession of the share certificates at the time of the purported sale. *Id.* at 739-40.

In order to sell the Certificates in a commercially reasonable manner, the WP Parties must have possession of them. However, the WP Parties do not possess the Certificates and, as the junior creditor, it is not entitled to them. As an initial matter, the Certificates were first issued in connection with MCB’s Loan and MCB perfected its security interest in them by taking possession

of same, and still maintains possession. (Bandazian Aff., ¶ 8.) Further, as the senior creditor -- and the WP Parties concede MCB is the senior creditor (Malatak Aff., ¶ 4) -- MCB is entitled to continued possession of the Certificates. See NY UCC § 6-906, comment 5 (“a senior secured party is entitled to possession as against a junior claimant”). Finally, MCB has identified no provision of the UCC that would compel it to have to turn over the Certificates to the WP Parties for purposes of conducting a sale. Moreover, the WP Parties cannot, for example, maintain a cause of action against MCB for replevin because it cannot plead, let alone establish, the required elements. “To establish a claim for replevin, the plaintiff must prove two elements: [i] that plaintiff has a possessory right superior to that of the defendant; and [ii] that plaintiff is entitled to the immediate possession of that property.” *Malvar Egerique v. Chowaiki*, 2020 WL 1974228, \*26 (S.D.N.Y. 2020). Because MCB, not the WP Parties, has the superior possessory right in the Interests/Certificates, the WP Parties could not succeed on such a claim. *Id.*; NY UCC § 6-906, comment 5. Accordingly, the WP Parties are unable to conduct a commercially reasonable sale.

**B. Josefovic And MCB Would Be Irreparably Harmed Absent An Injunction**

Movants have also demonstrated irreparable harm absent an injunction. Indeed, if Josefovic’s 70% membership interest is sold, Josefovic will lose his business. The loss of goodwill of a “viable, ongoing business” constitutes irreparable harm. See, *Second On Second v. Hing Sing*, 66 A.D.3d 255, 272-273 (1st Dep’t 2009) (“We reject HST's argument that the loss of the goodwill of a viable, ongoing business does not constitute irreparable harm warranting the grant of preliminary injunctive relief.”); *FTI Consulting, Inc. v. PricewaterhouseCoopers LLP*, 8 A.D.3d 145, 146 (1st Dep’t 2004) (“[T]he agreement's breach entailed irreparable harm, the loss of goodwill not being readily quantifiable.”). More concerning to MCB is that it would also be irreparably harmed if the sale were to proceed. MCB loaned money to Waterview, and the sale of

the Interests/Certificates would effectively allow the WP Parties to choose MCB’s borrower. Even if the WP Parties were legally permitted to sell the Interests/Certificates (and they are not), any sale by the WP Parties subject to MCB’s senior security interest will most certainly fetch a small sale price and devalue Waterview, also to MCB’s detriment (Bandazian Aff., ¶ 22.), not to mention that there might not be any replacement collateral available to MCB.

**C. The Equities Favor An Injunction**

In reviewing a request for a preliminary injunction, “a court must balance the equities. [I]t must be shown that the irreparable injury to be sustained ... is more burdensome [to the plaintiff] than the harm caused to defendant through imposition of the injunction.” *McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Co., Inc.*, 114 A.D.2d 165, 174 (2d Dep’t 1986). Here, there will be no injury to the WP Parties if the sale is enjoined. However, if the Court fails to preliminarily enjoin the sale and it is ultimately determined that the WP Parties do not have a valid security interest, then they will have been permitted to sell property in which they had no rights whatsoever. Conversely, if it turns out that the WP Parties do have a security interest in the collateral, proceeding with a sale without possession of the Certificates (which it has no right to do), will lead to a devaluation of the collateral through a sale that will be commercially unreasonable as a matter of law. Further, if the WP Parties are permitted to sell the Certificates, it would just be dragging that purchaser into this litigation because MCB will be forced to assert an adverse claim against the purchaser. Thus, the equities clearly favor sorting out this mess before a sale, rather than letting the dispute spread to yet new parties. Complain as they may, the WP Parties have no one to blame but themselves for the situation in which they find themselves for failing to protect whatever interests they might have in the Certificates.

**CONCLUSION**

For the foregoing reasons, MCB respectfully requests that this Court grant this motion for a temporary restraining order and preliminary injunction against the WP Parties only, and not against MCB.

Dated: New York, New York  
June 25, 2021

**WINDELS MARX LANE & MITTENDORF, LLP**

By: Robert J. Malatak

Digitally signed by Robert J. Malatak  
DN: cn=Robert J. Malatak, o=Windels  
Marx Lane & Mitterdorf LLP, ou,  
email=malatak@windelsmarx.com, c=US  
Date: 2021.06.25 10:47:11 -0400

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*Attorneys for Third-Party Defendant/Cross-  
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**Alfred E. Donnellan**  
**Partner**  
aed@ddw-law.com

June 28, 2021

**VIA NYSCEF**

Honorable Gretchen M. Walsh  
Westchester County Supreme Court  
111 Dr. Martin Luther King Blvd.  
White Plains, New York 10601

**Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.,  
Westchester County Supreme Court Index No. 60278/2020**

Dear Justice Walsh:

This firm represents plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”) and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson, in connection with the above referenced action.

During the hearing with this Court on Friday, June 25, 2021, in connection with Defendants’ request for a temporary restraining order, the Court directed Defendants HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman to supplement their evidence in support of their motion by noon today Monday, June 28, 2021. It is now approximately two hours past the Court’s deadline and Defendants have not filed any supplemental papers. For this reason, and because the documents originally submitted to this Court by Defendants HBL SNF, LLC, Lizer Jozefovic and Mark Neuman have no evidentiary value, WPH Properties respectfully requests that Defendants’ order to show cause be denied in its entirety. *Warrington v. Ryder Truck Rental, Inc.*, 35 A.D.3d 455, 456 (2d Dept. 2006) (“An attorney’s affirmation that is not based upon personal knowledge is of no probative or evidentiary significance.”)

Respectfully submitted,

/s/ Alfred E. Donnellan  
ALFRED E. DONNELLAN

cc:  
John Giardino, Esq. (By NYSCEF)  
Alexander Barnett-Howell, Esq. (By NYSCEF)  
Robert Malatak, Esq. (By NYSCEF)



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June 28, 2021

**Via NYSCEF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King Blvd.  
White Plains, New York 10601

**Re: *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.***  
***Index No. 60278/2020***

Dear Judge Walsh:

We are working through the technical requirements for issuing a \$1,600,000 Letter of Credit in favor of White Plains supported by the rent security account. J.P. Morgan has confirmed that they can issue this Letter of Credit. We are working with their legal department and will need some additional time.

We will file our supplemental affidavit this afternoon but hope to resolve the matter without further proceedings.

Respectfully yours,

**MICHELMAN & ROBINSON, LLP**

A handwritten signature in black ink, appearing to read 'John Giardino', written over the printed name.

John Giardino

JG:ec

cc: Alfred E. Donnellan, Esq. Via ECF  
Robert Malatak, Esq. Via ECF

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 : Index No. 60278/2020  
 Plaintiff, :  
 :  
 -against- :  
 :  
 HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, WILLIAM :  
 NICHOLSON, and METROPOLITAN :  
 COMMERCIAL BANK :  
 :  
 Third-Party Defendants  
 -----X

**AFFIRMATION OF LIZER JOZEFOVIC  
 IN SUPPORT OF ORDER TO SHOW CAUSE**

LIZER JOZEFOVIC affirms the following to be true under the penalties of perjury:

1. I respectfully submit this affirmation in support of the Motion for an Order to Show Cause preventing the sale of my Membership Interest in Waterview Acquisition I, LLC (“Waterview”). This Affirmation is based upon my personal knowledge.
2. I am the managing member of Waterview and own 70.1% of the company (the “Membership Interest.”)

3. The history of my dealings with White Plains and all other parties is set forth in the Affirmation of John Giardino and the Memorandum of Law.

4. The Waterview facility consists of a 130-bed skilled nursing facility licensed by the State of New York.

5. I acquired Waterview in 2005.

6. There are currently 126 residents in the facility.

7. I am personally involved in managing the daily operations of Waterview and I am in the facility every week.

8. My son, Joseph Jozefovic, has been the administrator of the facility since 2015.

9. I am personally the holder of the nursing home license issued by the New York State Department of Health whose operations are overseen by the Department of Health.

10. In 2015, I refinanced the facility with the U.S. Department of Housing and Urban Development and there is currently a \$25,000,000 HUD loan in place for the Waterview operations.

11. In addition, I borrowed \$3,000,000 from Metropolitan Commercial Bank to fund operations, a loan I personally guaranteed.

12. I also have a line of credit extended by Gemino in the amount of \$1,400,000, which I have also personally guaranteed.

13. The proposed sale of my membership interest in Waterview will cause a default on all of these loans.

14. As set forth in the motion papers, I have invested approximately \$5,000,000 in White Plains. Without the infusion of my capital, the White Plains Project could not have been completed.

15. Specifically, on November 20, 2015, I contributed to the Project: (1) \$2,200,000 paid to White Plains to be used by Congress for pre-development costs; (2) \$197,072 paid to CCCE to be used at the discretion of Fensterman; and (3) \$1,595,368.32 paid into a control account as rent security.

16. During this time, I was represented by Third-Party Defendant Howard Fensterman of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP.

17. These funds are a loan to the developer that has never been paid back to me by White Plains.

18. White Plains agreed to repay \$1,500,000 of the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") for the Project and conveying title to my company.

19. In addition, White Plains agreed to repay \$700,000 of the principal amount of the loan by providing credit against Lease payments.

20. I have never received this rent credit and this amount of \$700,000 could certainly be credited to the rent security which Plaintiff is seeking that sale of the Waterview Membership interest<sup>1</sup>.

21. To date, White Plains has refused to convey title to the FF&E, or to provide an accounting of the use of these predevelopment and discretionary funds.

22. To date, White Plains has refused to provide evidence of purchases of the required FF&E, or to credit \$700,000 against the Lease payments.

23. To date, interest accrued on this \$2,200,000 loan is equal to more than \$450,000.

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<sup>1</sup> The proceeds of the sale can only be used to fund the \$1.6 million account.

24. In short, White Plains has an unpaid obligation to me which totals over \$1,140,000.
25. I have always performed my obligations under the Development Agreement and the Lease.
26. On August 10, 2017, an email was sent to Fensterman (the "August 10 Email"). The August 10 Email states, in relevant part, that the following "reflects what we agreed to. Please confirm...[and] do the paperwork to finalize this." The August 10 Email continues to state that "[w]ith respect to the Waterview account: 1. Howard Fensterman and Lizer Jozefovic shall be co-signatories to the Waterview account...."
27. A true and correct copy of the August 10 Email is attached to the Affirmation of John Giardino as Exhibit F.
28. On or about August 11, 2017, I entered into a Collateral Assignment and Pledge of Membership Interest and Security Agreement, which formalized the rent security account for the Facility (the "Collateral Assignment").
29. The Collateral Assignment contained three relevant sections:
- a. Under Paragraph 2, as soon I deposited \$1,600,000 into the rent security account, the Collateral Assignment "shall automatically terminate and be void and of no further effect";
  - b. Under Section 13, White Plains' rights are limited to a violation of the "terms and provisions concerning the maintenance of the account..."; and
  - c. Under Section 13(c), any proceeds derived from the disposition of the collateral must be applied to the Rent security.
30. A true and correct copy of the Collateral Assignment is attached to the Affirmation of John Giardino as Exhibit D.

31. On August 16, 2017, Fensterman was sent a series of emails (the "August 16 Emails"). The August 16 Emails state, in relevant part, "[e]nclosed please find the Chase Certification that we received today; Please note that the Certification requires that the Resolution that we prepared be annexed as an exhibit. What I need from Howard is original signature cards from Howard with wet ink signatures."

32. True and correct copies of the August 16 Emails are attached to the Affirmation of John Giardino as Exhibit G.

33. On August 17, 2017, an email was sent to Fensterman (the "August 17 Email"). The August 17 Email states, in relevant part, that "I need [Fensterman's] signature on the last page."

34. The purpose of the August 17 Email was to transfer the Rent Security to a new account pursuant to a resolution of Waterview Acquisition I, LLC

35. In 2017, the Rent Security was transferred to the Chase account ending in xxxx-xxx-xxxx-0885 (the "Second Account").

36. Once completed, the resolution and account holder certification form were tendered to Fensterman.

37. True and correct copies of the August 17 Email, account information form, resolution, and account holder form are attached to the Affirmation of John Giardino as Exhibit H.

38. The Collateral Assignment required me to place \$1.6 million into an account and provide Fensterman with signatory authority, after which the Collateral Assignment would automatically terminate.

39. I ensured that the Rent Security was properly deposited in the Second Account and that Fensterman was provided with all necessary forms to become a signatory, thereby completing all of my obligations under the Collateral Assignment.

40. However, following the August 17 Email, White Plains and Fensterman took no actions to become a signatory. From August 2017 until this current action, the Second Account was never discussed, and White Plains never raised it as an issue. As multiple years passed, I reasonably believed that White Plains was satisfied with the Rent Security, especially since the Second Account maintained a balance of well over \$1.6 million.

41. I sent these documents to Mr. Fensterman and never heard anything further until this lawsuit.

42. Previously, the Operating Agreement of Waterview Acquisition I, LLC did not permit its members to assign their membership interests.

43. At the time, the Operating Agreement of Waterview Acquisition I, LLC stated, in relevant part:

- a. Articles 5 and 6 did not provide for any such assignment of the Membership Interest;
- b. Article 12 specifically prohibited an assignment of the Membership Interest to Fensterman as Nominee of White Plains Healthcare Properties LLC.

44. Fensterman is aware of these facts, as well as the limitations on transfer and assignment of the Membership Interest, as Fensterman and Abrams, Fensterman LLP acted as counsel to Waterview Acquisition I, LLC in its formation and execution of its operating agreement.

45. To permit an assignment, the Operating Agreement of Waterview was amended to authorize me, as the Majority Member, to assign the Membership Interest.

46. In December 2019, I assigned the Membership Interest to Metropolitan Commercial Bank ("MCB") as part of a \$3 million loan and financing arrangement to provide working capital to benefit the Project, most of which was paid in the form of rent to White Plains.

47. On December 23, 2019, I granted MCB a security interest in the Membership Interest, and MCB perfected its security interest by taking possession of the related certifications and filing a Uniform Commercial Code Financing Statement.

48. Currently, MCB has perfected its security interest in Membership Interest and has physical possession of the membership certificates. White Plains knew and approved of the loan from MCB, since the proceeds have been used to pay rent on the Facility.

49. Following my performance under the Collateral Assignment, I waited for White Plains to complete the Project. Pursuant to the Development Agreement, White Plains was required to complete the Project by no later than September 2017.

50. However, due to unexplained delays, the Project was not completed until December 2019. Not only was this two-year delay financially burdensome, but it also forced me to open the Facility at the onset of the COVID-19 pandemic.

51. Moreover, the Development Agreement required White Plains to complete the Project at the NYSDOH-approved budget of \$57 million. To guarantee that White Plains stayed within this budget, I was supposed to be responsible only for additional costs pre-authorized via change orders.

52. Throughout the entire Project, I never authorized a single change order. Yet, by the time the Facility was completed, White Plains had incurred more than \$5 million in additional costs.

53. These cost overruns are extremely detrimental, as not only must they be repaid, but they have also prevented me from obtaining full reimbursement of my monthly rent payments as was originally intended under the Development Agreement and Lease.

54. Moreover, White Plains was required to provide permanent financing for the Project in the form of the HUD-insured loan approved by NYSDOH.

55. However, White Plains failed to provide permanent financing, breaching the Development Agreement and the Lease.

56. As a result of White Plains' breach, I am currently losing \$68,000 per month on NYSDOH reimbursements, resulting in an annualized loss of \$816,000.

57. On November 20, 2019, I entered into a letter of intent with White Plains to address certain defaults and issues (the "LOI").

58. A true and correct copy of the LOI is attached to the Affirmation of John Giardino as Exhibit I.

59. Pursuant to the LOI, I paid White Plains an additional \$2.2 million.

60. White Plains has never accounted for these funds.

61. To the extent there were any issues about the Rent Security, the \$2.2 million payment for these funds resolved them.

62. To date, I have paid and continue to pay rent to White Plains on time every month.

63. Since December of 2019, I have made every monthly rent payment of \$506,096.50, totaling more than \$12 million.

64. I understood that White Plains would use my rent payments to pay the mortgage for the Facility, which is owned by Security Benefit Life Insurance Company ("Security Benefit").

65. However, Security Benefit has declared White Plains to be in default of the mortgage for having failed to make necessary mortgage payments, charges, interest, and other required fees.

66. In a notice dated April 16, 2020, Security Benefit stated that White Plains breached the terms of the mortgage.

67. On May 22, 2020, Security Benefit sent another letter to White Plains, reiterating that White Plains remains in default and raising additional breaches.

68. True and correct copies of the Security Benefit letters are attached to the Affirmation of John Giardino as Exhibit J.

69. On May 1, 2021, Security Benefit brought a foreclosure action against White Plains for nonpayment of rent in the action captioned *Security Benefit Life Insurance Company, et al. v. White Plains Healthcare Properties I, LLC et al.*, No. 55883/2021.

70. Although I have paid over \$500,000 per month in rental payments to White Plains each and every month, pursuant to Security Benefit's complaint, White Plains is required to pay Security Benefit approximately \$160,000 per month in mortgage payments. It is inexplicable why White Plains has failed to pay its mortgage, and raises troubling questions concerning what White Plains is doing with my rental payments.

71. The mortgage foreclosure action has harmed the reputation of the facility and has adversely affected business.

72. Rather than address its own failures and breaches under the Development Agreement, Lease, Collateral Assignment, LOI, and mortgage with Security Benefit, White Plains has engaged in extrajudicial tactics to seize the Membership Interest and the Facility.

73. On or about October 6, 2020, I received a purported Notification of Disposition of Collateral issued by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP (“DDW LLP”), dated October 6, 2020 (the “First Notification”).

74. The First Notification claimed that I was a debtor and that the Membership Interest at would be sold “to the highest qualified public bidder in public” at 10:00 am on Friday, October 30, 2020.

75. A true and correct copy of the First Notification is attached to the Affirmation of John Giardino as Exhibit A.

76. The First Notification was negated by the entry of a Preliminary Injunction and Temporary Restraining Order by Judge Bannon in the action captioned *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, No. 655549/2020.

77. On or about March 2021, after the First Notification failed, White Plains contacted NYSDOH and claimed that the appointment of an emergency receiver for the Facility was necessary.

78. White Plains made this request in secret, never informing me or my counsel of this request.

79. I was subsequently contacted by NYSDOH Director Marthe JB Ngwashi who requested further information about the situation and whether the Facility was in financial jeopardy.

80. Once I was given the opportunity to meaningfully respond, NYSDOH took no further steps to appoint a receiver.

81. A true and correct copy of the letter from my counsel to NYSDOH regarding White Plains' improper request for receivership is attached to the Affirmation of John Giardino as Exhibit K.

82. Finally, on or about June 10, 2021, I received a purported Notification of Disposition of Collateral, dated June 9, 2020 (the "Second Notification"), which announced White Plains' renewed intention to sell the Membership Interest at "public auction".

83. A true and correct copy of the Second Notification is attached to the Affirmation of John Giardino as Exhibit B.

84. However, White Plains is not in possession of my Membership Interest.

85. White Plains has widely distributed the Second Notification to my business partners and colleagues. As a result, I have received calls from interested and concerned parties inquiring about the purported sale.

86. I have spent years of my life successfully building and operating nursing homes. Although it is difficult to estimate, the Membership Interest is worth no less than \$6 million.

87. White Plains has no right to sell the Membership Interest under the Collateral Assignment. Moreover, White Plains' rights under the Collateral Assignment are limited to enforcing the Rent Security, which remains intact.

88. I will be irreprovably harmed if the sale is permitted to proceed.

89. Furthermore, under the Assignment, the proceeds of such a sale can only be used to fund the Rent Deposit Account.

90. The continued publication of the Second Notification and any purported sale will irreparably harm me and jeopardize my operations.

91. Because White Plains will attempt to sell the Membership Interest, I will be irreparably harmed if the relief requested is not granted.

92. Moreover, my Membership Interest is essential for the management of Waterview and New York Law. I obtained the proper licensing and authorization to operate these particular nursing homes from NYSDOH. The licensing and authorization cannot be transferred to another party without a thorough analysis and approval from NYSDOH.

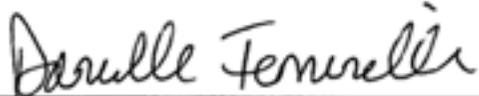
93. In this action, my claims for damages far exceed \$1.6 million.

94. I seek an Order to Show Cause for a preliminary injunction to (1) enjoin White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank from taking any action to transfer, assign, convey or sell the Membership Interest; and (2) enjoin Epic and Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman from taking any action to reduce the Rent Security below \$1.6 million.

Dated: New York, New York  
June 28, 2021

By:   
LIZER JOZEFOVIC

Affirmed before me this  
28 day of June, 2021

  
\_\_\_\_\_  
Notary Public

Danielle Feminella  
Notary Public, State of New York  
No. 01CH5084689  
Qualified in Westchester County  
Commission Expires 9/8/2021

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

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WHITE PLAINS HEALTHCARE PROPERTIES	:	Index No.: 60278/2020
I, LLC,	:	
	:	
	:	<b>SUPPLEMENTAL</b>
Plaintiff,	:	<b>AFFIRMATION OF ROBERT J.</b>
	:	<b>MALATAK IN PARTIAL</b>
v.	:	<b>JOINDER AND SUPPORT OF</b>
	:	<b>DEFENDANTS' / THIRD-PARTY</b>
	:	<b>PLAINTIFFS' ORDER TO</b>
HBL SNF, LLC, LIZER JOZEFOVIC a/k/a	:	<b>SHOW CAUSE</b>
LIZER JOZOFOVIC, and MARK NEUMAN,	:	<b>FOR A TEMPORARY</b>
	:	<b>RESTRAINING ORDER AND</b>
Defendants and	:	<b><u>PRELIMINARY INJUNCTION</u></b>
Third-Party	:	
Plaintiffs.	:	
	:	
v.	:	
	:	
CCC EQUITIES, LLC, PROJECT EQUITY	:	
CONSULTING, THE CONGRESS	:	
COMPANIES, HOWARD FENSTERMAN,	:	
WILLIAM NICHOLSON, and	:	
METROPOLITAN COMMERCIAL BANK	:	
	:	
Third-Party	:	
Defendants.	:	
-----	X	

**ROBERT J. MALATAK**, an attorney duly admitted to practice law before the Courts of this State, affirms the following to be true under penalty of perjury:

1. I am a member of the law firm Windels Marx Lane & Mittendorf, LLP, attorneys for third-party defendant and cross-claimant Metropolitan Commercial Bank (“MCB”), and I am fully familiar with the facts and circumstances set forth herein. I submit this supplemental affirmation in partial joinder and support of the motion by defendants / third-party plaintiffs Lizer Jozefovic (“Josefovic”), HBL SNF LLC (“HBL”), and Mark Neuman (“Neuman”) (collectively, “Movants”) for an order pursuant to CPLR Article 63 enjoining plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and the third-party defendants (collectively, the “WP Parties”),

during the pendency of this action, from, among other things, taking any action to transfer, assign, convey, or sell Josefovic’s membership interests in Waterview Acquisition I, LLC (“Waterview”), which have now been certificated (the “Certificate”).

2. I submit this supplemental affirmation to clarify the status of the Certificate under the Uniform Commercial Code; specifically, the Certificate is a security, not a general intangible, and as such the case *In re Domestic Fuel Corp.*, 71 B.R. 734 (Br. S.D.N.Y. 1987) is instructive.

3. The Operating Agreement was specifically amended to certificate the interests and render said certificate a security under the Uniform Commercial Code (“UCC”) § 8-103(c) and New York Limited Liability Company Law (“LLC Law”) § 603(b).

**LLC Membership Interests Under The UCC**

4. UCC § 8-103, entitled “Rules for Determining Whether Certain Obligations and Interests are Securities or Financial Assets,” governs, for purposes of the UCC, whether a particular interest is considered a security. With respect to membership interests in a limited liability company, UCC § 8-103(c) provides as follows:

(c) An interest in a partnership or **limited liability company is not a security unless** it is dealt in or traded on securities exchanges or in securities markets, **its terms expressly provide that it is a security governed by this Article**, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account. (Emphasis added.)

5. Official Comment 4 to UCC § 8-103 explains that subsection (c) provides that, while the UCC generally treats limited liability company membership interests as general intangibles, a limited liability company may “opt in” and specify that its shares are to be treated as securities under the UCC:

4. Subsection (c) is designed to foreclose interpretive questions that might otherwise be raised by the application of the “of a type”

language of Section 8-102(a)(15)(iii) to partnership interests. Subsection (c) establishes the general rule that partnership interests or shares of limited liability companies are not Article 8 securities unless they are in fact dealt in or traded on securities exchanges or in securities markets. **The issuer, however, may explicitly “opt-in” by specifying that the interests or shares are securities governed by Article 8.** Partnership interests or shares of limited liability companies are included in the broader term “financial asset.” Thus, if they are held through a securities account, the indirect holding system rules of Part 5 apply, and the interest of a person who holds them through such an account is a security entitlement. (Emphasis added.)

6. In summary, the UCC treats LLC membership interests as general intangibles, unless the LLC “opts in” and specifies that the interest are securities.

**Opting In Under LLC Law § 603(b)**

7. LLC Law § 603(b) specifically allows New York LLCs to “opt in” to treatment as securities by the UCC:

**(b) The operating agreement may provide that a member’s interest may be evidenced by a certificate issued by the limited liability company and may also provide for the assignment or transfer of any of the interest represented by such a certificate. A member’s interest may be a certificated security or an uncertificated security within the meaning of section 8-102 of the uniform commercial code if the requirements of section 8-103(c) are met, and if the requirements are not met such interest shall, for purposes of the uniform commercial code, be deemed to be a general intangible asset.** The existence of the restrictions on the sale or transfer of a membership interest, as contained in this chapter and, if applicable, in the operating agreement, shall be noted conspicuously on the face or back of every certificate representing a membership interest issued by a limited liability company. Any sale or transfer in violation of such restrictions shall be void. (Emphasis added.)

8. Thus, under New York’s LLC Law, an LLC may elect to reduce their interests to certificate form, and may “opt in” and specify that the certificates are to be treated as certificated securities under UCC Article 8.

**Waterview Amended Its Operating Agreement To Specify That The Certificate Be Treated As Securities Under UCC Article 8**

9. As set forth in the Affidavit of Brett Bandazian (“Bandazian Aff.”),<sup>1</sup> Waterview amended its Operating Agreement specifically to certificate Josefovich’s membership interests and to specify that the Certificate is to be treated as securities under UCC Article 8. (Bandazian Aff., ¶ 7.)

10. Accordingly, paragraph 4 of the Second Amendment to Amended and Restated Operation Agreement of Waterview provides as follows:

A new section 2.8 is added to the Operating Agreement:

**2.8 Certification of Membership Interests and Opt-In to “Article 8”.** Notwithstanding anything in this Agreement which may (may be construed to be) to the contrary: (a) the limited liability company membership interests and Economic Interest (as such term is defined in the Operating Agreement) (collectively, the “Membership Interests”) in the Company shall be evidenced by a certificate or certificates the form of which is attached to this Agreement as Schedule 2.8 (the “Membership Interest Certificates”); and (b) **the Membership Interests in the Company shall (and hereby do) provide that they are securities governed by Article 8 of the Uniform Commercial Code as in effect from time to time in the State of New York and Article 8 of the Uniform Commercial Code** of any other jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (and shall be treated as such for all purposes, including, without limitation, perfection of a security interest therein under Article 9 of the Uniform Commercial Code as in effect in such jurisdiction.” (Bandazian Aff., Ex. C, pdf p. 42 of 49, emphasis added.)

11. Thus, in accordance with the UCC and LLC Law, the issuer of Josefovich’s Membership Interests -- Waterview -- specified in its Operating Agreement that the interests are to be treated as a security under UCC Article 8.

<sup>1</sup> The Bandazian Aff. was annexed to my initial affirmation as Exhibit 1.

**Conclusion**

12. Pursuant to UCC § 8-103(c), LLC Law § 603(b), Operating Agreement § 2.8 (as amended), the Certificate is to be treated as a security and not a general intangible. Accordingly, as set forth in our memorandum of law, because the Certificate is a security (rather than a general intangible), a creditor must have possession of the Certificate in order to conduct a commercially reasonable sale. *See In re Domestic Fuel Corp.*, 71 B.R. 734 (Br. S.D.N.Y. 1987). This makes sense, particularly under the circumstances here, because what legitimate third-party would pay fair market value for a certificate which is not being delivered as part of the sale transaction -- not to mention the fact that the interests are at the center of a hotly contested dispute which includes, among others, the senior creditor. Because MCB has possession of the Certificate -- and will not voluntarily transfer possession of same, nor can it be compelled to do so because of, *inter alia*, its superior possessory rights -- the WP Parties cannot conduct a commercially reasonable sale. MCB therefore respectfully requests that the Court enjoin the sale of Josefovic's Membership Interests pending this action which sale seems to be nothing more than a premature attempt by the WP Parties to pursue a post-judgment-like remedy.

13. There is simply no prejudice to the WP Parties if the sale is delayed until the numerous knotty issues presented in this matter are sorted out. Conversely, MCB will be irreparably harmed because, *inter alia*, (1) the collateral (a/k/a the Certificate) cannot for the foregoing reasons be sold at its fair market value, thus leaving MCB in a under-collateralized position for which it did not bargain; (2) Waterview (MCB's borrower) will be controlled by a stranger whom MCB has not vetted; and (3) an event of default under the MCB/Waterview loan documents will occur.

WHEREFORE, MCB respectfully requests that the Court issue an order granting (1) Movants' order to show cause for a temporary restraining order and preliminary injunction, except that the injunction should not be extended to MCB and (2) MCB such other and further relief as this Court deems just and proper.

Dated: New York, New York  
June 28, 2021

Robert Malatak

Digitally signed by Robert Malatak  
DN: cn=Robert Malatak, o=WMLM, ou=Windeh,  
email=rmalatak@windeh.com, c=US  
Date: 2021.06.28 16:31:55 -04'00'

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**ROBERT J. MALATAK**



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June 29, 2021

**VIA NYSCEF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King, Jr., Blvd.  
White Plains, New York 10601

**Re: *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.***  
**Index No. 60278/2020**

Dear Judge Walsh:

As you know, we represent Defendants and Third-Party Plaintiff's HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman (collectively, "HBL") in the above-referenced action. We write regarding the proposed Order to Show Cause and Affirmations in Support [Dkt. Nos. 106-123, 132-133] [Mot. Seq. #5] (the "Order to Show Cause").

Given Your Honor's direction that the funds at issue be transferred to an escrow account, HBL arranged for a superior form of collateral, namely HBL is willing to provide Plaintiff with an irrevocable letter of credit for \$1.6 million as rent security.

HBL has provided a draft letter of credit and is working with counsel for JPMorgan Chase to complete this transaction as soon as possible. We have requested that Plaintiff's counsel postpone the threatened sale to allow us to complete this transaction. Plaintiff's counsel is refusing to accept the letter of credit, and instead insists on continuing with the purported sale.

We are available to discuss this matter with the Court and HBL respectfully requests the Court's assistance in resolving this matter.

Respectfully yours,

**MICHELMAN & ROBINSON, LLP**

John Giardino

JG:ec  
cc: Alfred E. Donnellan, Esq. Via ECF  
Robert Malatak, Esq. Via ECF

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
  
- against -  
  
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants and Third-Party Plaintiff,  
  
- against -  
  
CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,  
Third-Party Defendants.

Index No. 60278/2020

AFFIDAVIT OF  
WILLIAM A. NICHOLSON

LIZER JOZEFOVIC  
Plaintiff,  
  
- against  
  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,  
Defendants.

New York County Index No.  
655549/2020

Consolidated under Westchester  
County Index No. as per April 8,  
2021 Decision and Order.

STATE OF MASSACHUSETTS )  
 ) ss.:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

1. I am a Manager of White Plains Healthcare Properties I, LLC ("WPH Properties"). I have personal knowledge of the facts and circumstances set forth in this affidavit.
2. I submit this affidavit in opposition to the motion of Lizer Jozefovic ("Jozefovic") in

the above captioned consolidated actions, in which Metropolitan Commercial Bank ("MCB") joins, for a temporary restraining order and preliminary injunction enjoining WPH Properties from proceeding under Article 9 of the Uniform Commercial Code (the "UCC") to dispose of and/or sell Jozefovic's 71% membership interest (the "Waterview Membership Interest") in Waterview Acquisition I, LLC ("Waterview").

3. For the reasons that follow, and are more fully set forth in the accompanying memorandum of law, Jozefovic is in default under the pledge agreement that gives WPH Properties a security interest in the Waterview Membership Interest. Jozefovic's entity, HBL SNF, LLC ("HBL"), which is the tenant, is also in default under the lease. The pledge agreement secures HBL's obligations under the lease, as well. Although the material defaults under the lease are numerous, and they will be spelled out below, the critical default is HBL's failure to post the \$5.3 million security deposit that was required by the lease to be posted 60 days prior to the anticipated occupancy date. In fact, HBL has never posted any security deposit at all, despite the fact that it has been occupying WPH Properties' \$65 million building since September 2019.

4. HBL's failure to post the required security deposit is directly related to Jozefovic's default under the pledge agreement. WPH Properties and HBL entered into the lease before the building was built. They did so knowing that the pre-construction and construction activities were going to take several years. (In fact, as will be discussed below, HBL caused the delay in moving forward with the construction of the building.) HBL was reluctant to post the \$1.6 million in security two years before taking occupancy. WPH Properties had to know, however, that HBL had the funds to provide the security when the building was completed. So the parties agreed that HBL could hold the funds in its account until 60 days before the building was going to be finished, as long as the funds could not be moved from that account and remained available to be posted as

security. That obligation (as well as HBL's other obligations under the lease) was secured by the pledge of the Waterview Membership Interest, which the pledge agreement allows WPH Properties to sell if Jozefovic defaults under the pledge agreement or HBL defaults under the lease. Both defaults have occurred.

5. Jozefovic's argument to avoid his obligations under the pledge agreement centers on his contention that he satisfied his obligations under the pledge agreement by tendering certain bank documents to Howard Fensterman. As will be more fully explained below, the documents Jozefovic tendered were insufficient for that purpose. But that argument is a sideshow, intended to divert the Court's attention from the more substantial default under the lease – HBL's failure to post any security deposit – that Jozefovic does not dispute or even argue about.

6. The pledge agreement does not terminate when HBL puts the \$1.6 million in the account. It terminates when HBL deposits the \$1.6 million in WPH Properties Rent Security Deposit Account. That has never happened and HBL does not even claim that it has.

7. Jozefovic acknowledges that. In his affirmation he states that “[u]nder Paragraph 2, as soon as I deposited \$1,600,000 into the rents security account, the Collateral Assignment ‘shall automatically terminate and be void and of no further effect.’” Jozefovic Affirmation, ¶ 29. That is an accurate citation of paragraph 2. Pledge Agreement, Exhibit D, ¶ 2. But then he states, in direct contradiction to that statement, that “[t]he Collateral Assignment required me to place \$1.6 million into an account and provide Fensterman with signatory authority, *after which the Collateral Assignment would automatically terminate.*” Jozefovic Affidavit, ¶ 38. That is a complete and blatant misreading of paragraph 2. As Jozefovic admitted in paragraph 29 of his affirmation, *the Pledge Agreement terminates only after the \$1.6 million was deposited in WPH Properties' Rent Security Deposit Account.* Pledge Agreement, Exhibit D, ¶ 2.

8. HBL has been and continues to be in default of its obligation under the lease to post the \$1.6 million in security. Because HBL has not posted that security, the pledge agreement remains in effect. Under the pledge agreement, the Waterview Hills Interest secures HBL's obligation to post the \$1.6 million. As a secured creditor, WPH Properties therefore has the right under the UCC to sell the Waterview Hills Interest. There is no lawful basis, therefore, on which the Court can prevent WPH Properties from exercising its rights under the pledge agreement and the UCC.

9. The fact that Jozefovic, in violation of the pledge agreement, has also pledged the Waterview Membership Interest to Metropolitan Commercial Bank ("MCB") does not defeat the rights of WPH Properties. WPH Properties recognizes that even though Jozefovic pledged the Waterview Membership Interest first to WPH Properties, MCB perfected its security interest first. The Waterview Membership Interest will therefore be sold subject to MCB's interest (although if the facts establish that MCB knew about the prior pledge to WPH Properties, it would not have priority). As the accompanying memorandum of law establishes, however, a junior creditor has the right under the UCC to sell the collateral subject to the rights of the senior creditor and MCB has failed to establish any basis for stopping the sale.

10. Jozefovic should not be rewarded with an injunction for his nefarious actions and duplicity. The pledge agreement prohibits him from pledging the Waterview Membership Interest to anyone else. It also prohibits him from amending the Waterview operating agreement, which he did to authorize the membership certificates that MBC now claims make the sale commercially unreasonable.

The Assignor represents and covenants . . . that he will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in the Company and that there are no current liens or encumbrances that exist as of the day of this assignment.

The Assignor agrees not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee, which consent shall not be unreasonably withheld.

Pledge Agreement, Exhibit D, ¶ 3, 4.

11. Notwithstanding these express prohibitions in the Pledge Agreement, Jozefovic, after signing the Pledge Agreement, amended the operating agreement and pledged the Waterview Membership Interest to MCB. Jozefovic's material breach of the pledge agreement should defeat his motion, not be used to support it. The motion for a temporary restraining order and preliminary injunction should be denied.

**Background**

12. WPH Properties developed, financed, constructed and owns a brand new, state-of-the-art, 160-bed skilled nursing home located at 116-120 Church Street, White Plains, New York (the "Facility"). HBL is the tenant and operator of the Facility. WPH Properties and HBL are parties to an amended and restated operating lease dated as of November 19, 2015 (the "Lease"), under which WPH Properties, as landlord, leased the Facility to HBL, as tenant. A copy of the Lease is attached as exhibit A. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit A, Lease, § 7.1. The Jozefovic and Neuman guarantees are attached as exhibits B and C.

13. Waterview owns a 130-bed skilled nursing facility known as Waterview Hills Rehabilitation and Nursing Center located at 537 Route 22, Purdys, New York 10578. Pursuant to a Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 (the "Pledge Agreement"), Jozefovic pledged and assigned the Waterview Membership Interest. A copy of the Pledge Agreement is attached as exhibit D. The pledge and assignment

were security for: (i) Jozefovic's obligations concerning the maintenance of certain bank accounts containing funds sufficient to cover a \$1.6 million additional security deposit that HBL was required to provide to WPH Properties under the Lease; and (ii) all of HBL's contractual obligations under the Lease. WPH Properties perfected its security interest in the Waterview Membership Interest by filing a UCC-1 financing statement, a copy of which is attached as Exhibit E, on September 15, 2020.

14. Jozefovic failed to comply with his obligations under the Pledge Agreement and HBL defaulted on its obligations under the Lease. Those defaults entitle WPH Properties to foreclose on the Waterview Membership Interest by public sale conducted pursuant to the UCC. WPH Properties has therefore noticed a public sale of the Waterview Membership Interest for July 1, 2021 and has fully complied with the requirements of the UCC relating to the disposition of collateral at a public sale, including those relating to notice and commercial reasonableness. Jozefovic's motion to enjoin the UCC sale is without any basis. The sale should be allowed to proceed.

**A. The Pledge Agreement.**

15. HBL, the tenant under the Lease, entered into a Development Agreement with WPH Properties dated November 19, 2015, as amended July 12, 2017, concerning the Facility (the "Development Agreement"). Exhibit D, Pledge Agreement, at 1, ¶ 2. The Development Agreement obligated HBL to enter into the Lease with WPH Properties. Exhibit D, Pledge Agreement, at 1, ¶¶ 2-3. Under the Lease, HBL was obligated to, among other things, deposit additional security in the sum of \$1,600,000 (the "Additional Security Deposit") into the Landlord's Rent Security Account at least 60 days before the anticipated commencement date of the Lease. Exhibit A, Lease, § 7.1(a)(iii); Pledge Agreement, at 1, ¶¶ 6-7. In particular, the Lease provides that "[s]ixty days

prior to the anticipated Commencement Date, the funds in the controlled account number xxxxxx7272 in JPMorgan Chase Bank, N.A. . . . in the amount not less than \$1,600,000 shall be delivered by Tenant to Landlord and released by Tenant to Landlord to be held as an additional Security Deposit by Landlord." Exhibit A, Lease, § 7.1(a)(iii).

16. The Pledge Agreement recites that the funds in HBL's JPMorgan Chase Bank, N.A account number xxxxxx7272 (the "HBL JP Morgan Account") had been transferred to two JP Morgan accounts owned by Waterview (account number xxxxxx7002 and account number xxx-x0885) (the "Waterview JPM accounts") and that Howard Fensterman ("Fensterman"), one of the principals of WPH Properties, was not a signatory on the Waterview JPM Accounts. Exhibit D, Pledge Agreement, at 1, ¶ 8. The Pledge Agreement further recites that Jozefovic and HBL had promised to add Fensterman as a signatory to the Waterview JPM Accounts to guarantee that no withdrawals would be made from these accounts that would reduce the balance below \$1.6 million, "so as to ensure that when required 60 days prior to the commencement date [of the Lease] the money in the account or equivalent shall be delivered as additional cash security for the [L]ease." Pledge Agreement, at 2, ¶ 1.

17. Similarly, the Waterview resolution attached to the Pledge Agreement (the "Waterview Resolution") provides as follows:

THEREFORE, BE IT RESOLVED, that

1. The Company add Howard Fensterman as a co-signatory to the following account Waterview Acquisition I, LLC Account Number xxxxxx7002 and Account Number xxx-x0885 at JP Morgan Chase together with Marc Neuman and Lizer Jozefovic;
2. Howard Fensterman's signature shall be required on any withdrawal or any direction to the Bank on the account where such withdrawal or direction shall cause the balance and value of the account to fall below 1.6 million dollars until such time as the Facility is completed and an affiliated entity HBL-SNF satisfies its obligation to post a 1.6 million dollar additional cash security deposit according to Section 7.1(a)(iii) of the lease between HBL SNF, LLC as Tenant And White Plains Healthcare Property I, LLC as Landlord which requires Sixty days prior to the

anticipated Commencement Date that the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account.

- 3. Howard Fensterman's signature shall be required to withdraw all sums in the account in excess of 1.6 million at the direction of Lizer Jozefovic or Marc Neuman and by his signature below agrees to give such consent unless such withdrawal shall cause the balance in the account to fall below 1.6 Million dollars.

Pledge Agreement, Exhibit A, at 1-2.

18. In other words, the funds in the Waterview JPM Accounts were intended to secure the obligation under the Lease to post the Additional Security Deposit by adding Fensterman as a co-signatory whose signature would be required to make any withdrawal that would reduce the account below \$1.6 million. That would ensure that the balance in the Waterview JPM Accounts was always at least \$1.6 million, the amount of the Additional Security Deposit, and that those funds would be used to post the Additional Security Deposit when HBL was required under the Lease to post it - 60 days prior to taking occupancy.

19. The parties' intent is made crystal clear by § 2 of the Pledge Agreement, which provides that the Pledge Agreement would terminate only when the \$1.6 million was deposited in WPH Properties' Rent Security Account, not when Howard Fensterman's signature was on the Waterview JPM Accounts. Pledge Agreement, Exhibit D, ¶ 2. Only when HBL had complied with its obligation under the Lease to deposit the \$1.6 million Additional Security Deposit with WPH Properties would the Waterview Membership Interest be "automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect." Exhibit D, Pledge Agreement, ¶ 2.

20. Jozefovic failed to take all of the steps necessary to add Fensterman as a co-signatory to the Waterview JPM Accounts, a clear breach of the Pledge Agreement. And, most fundamentally, when it came time in July 2019 for HBL to post the Additional Security Deposit,

it failed to do so. To this day it continues to refuse to do so. The failure to deposit the \$1.6 million Additional Security Deposit in WPH Properties' Rent Security Deposit Account was, and continues to be, a breach of both the Pledge Agreement and the Lease. Exhibit A, Lease, § 7.1(a)(iii).

**B. Additional breaches of the lease.**

21. In addition to its failure to comply with its obligations under the Pledge Agreement, HBL has committed a number of other breaches of the Lease as well.

**(i) Failure to pay security deposits.**

22. The Lease obligates HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease. In addition, , as previously noted, the Lease requires HBL to deposit into WPH Properties' Rent Security Account an "Additional Security Deposit" in the amount of \$1,600,000. Exhibit A, Lease, § 7.1. HBL has never paid either amount.<sup>1</sup>

**(ii) Failure to pay rent.**

23. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 and other amounts which are defined as "Additional Rent." Exhibit, A, Lease, § 3.2. Almost immediately after taking possession of the Facility on September

<sup>1</sup> In January 2020, after HBL under the Lease, WPH Properties worked with HBL to try to resolve its defaults by entering into a Letter of Intent under which WPH Properties would sell the building to an entity in which Jozefovic and his partners would have a 70% interest. The Letter of Intent reduced the amount of the security deposit to \$1 million. But Jozefovic defaulted under that agreement as well by failing to pay the \$1 million security deposit, failing to pay rent, failing to pay municipal and utility payments, failing to pay real estate taxes, failing to enter into the required Deposit Account Control Agreement, failing to enter into an agreement with JP Morgan Chase Bank and by failing to maintain an \$8,000,000 working capital credit line.

30, 2019, HBL defaulted in paying rent. As of January 7, 2020, HBL owed rent due for September 30, 2019 through December 31, 2019 in the amount of \$10,831.79 and "Additional Rent" due for January 1, 2020 through January 31, 2020 totaling \$40,000. A copy of a January 7, 2020 Notice of Default detailing the rent and other amounts payable from HBL to WPH Properties as of January 7, 2020 is attached as Exhibit F.

**(iii) Failure to pay real estate taxes.**

24. The Lease also obligates HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit A, Lease, § 4.2. HBL failed to pay its prorated portion of the required real estate taxes for the period July 1, 2019 through December 31, 2019 (exclusive of late fees, costs, penalties and interest per municipal regulations and per the Lease), in the total amount of \$61,456.39, and real estate taxes for the period January 1, 2020 through June 30, 2020 in the total amount of \$121,587.12. Exhibit F, Notice of Default.

**(iv) Failure to pay utility charges, utility deposits and municipal maintenance escrows.**

25. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Facility and required HBL to keep the Facility in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses. Exhibit A, Lease, §§ 4.1 and 5.2. HBL failed to pay utility charges to Con Edison and failing to pay utility deposits totaling \$60,356.10 and municipal maintenance escrows totaling \$5,500.00, which WPH Properties paid to avoid the termination of electrical service to the building. Exhibit F, Notice of Default.

**(v) Other defaults under the Lease.**

26. HBL failed to deliver an agreement by Capital Funding Group allowing HBL to draw down on its credit line to pay the Rent each month directly to WPH Properties as required by § 7.1

of the Lease. Exhibit A, Lease, § 7.1.

27. HBL failed, as required by § 7.4 of the Lease, to deliver certificates of insurance, all Medicare, Medicaid and other provider agreements, reimbursement rate sheets and updated rate sheets, required financial reporting and written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease. Exhibit A, Lease, § 7.4.

28. HBL failed to maintain working capital accounts in the required amounts as required by § 7.7 of the Lease. Exhibit A, Lease, § 7.7.

**C. The Notice of Default**

29. The Lease provides that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease and HBL's right to possession of the Premises, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent. Exhibit A, Lease, §16.1.

30. WPH Properties terminated the Lease as of January 13, 2020 by reason of HBL's multiple defaults. The Lease provides that, if HBL continues to occupy the Premises after termination of the Lease (which it has done) its holding over does not constitute a renewal of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent rent payable by HBL under the Lease. Exhibit A, Lease, § 20.13. HBL defaulted on its rent obligations as a month-to-month tenant during the months of January, February, March, April, May, June, July, August, September and October 2020, when this action was commenced.

**D. WPH Properties is entitled to foreclose on the Waterview Membership Interest.**

31. The Pledge Agreement provides that Jozefovic pledges and assigns the Waterview

Membership Interest to WPH Properties in order to secure the obligations under the Pledge Agreement and the Lease. Exhibit D, Pledge Agreement, at 2, second Whereas clause (“WHEREAS, in order to secure the promises made by Assignor concerning such account Assignor has agreed to deliver to Assignee this Assignment; and the Assignor desires to pledge to Assignee all of his membership interest in Waterview Acquisition I, LLC (the ‘Company’), in order to secure the promises made herein and in the Lease and Security Agreement delivered to the Construction Lender.”); see also Exhibit D, Pledge Agreement, at 1, § 1 (“As collateral security for the Borrowers’ obligations under the Lease, the Security Agreement, the Loan, and the Development Agreement the Assignor hereby pledges and assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member in the Company (the ‘Collateral’).”)<sup>2</sup>

32. Section 13 of the Pledge Agreement provides that if Jozefovic violates the terms of the Pledge Agreement with respect to the Waterview JPM Account, WPH Properties “shall have”

[t]he right to sell the Collateral in the State of New York at one or more public or private sales at such price and on such terms as Assignee [WPH Properties] in its discretion accepts, for cash, upon or for future delivery. Upon any such sale, the Assignee shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral.

Exhibit D, Pledge Agreement, § 13.

**E. The balancing of the equities weighs heavily in favor of WPH Properties.**

33. The equities here weigh heavily in WPH Properties favor. It will suffer substantial harm if the injunction is granted. As a result of Jozefovic’s breach of the Pledge Agreement and FIBL’s breach of the lease, WPH Properties is the landlord of a \$65 million building occupied by

<sup>2</sup> The reference to “Borrower” in section 1 of the Pledge Agreement is a typographical error and should read “Assignor.”

a tenant who has never paid the security deposit required by the Lease, HBL is therefore in a position where it knows that it can default at will because it has no security deposit at stake.

34. Jozefovic agreed that if he defaulted under the Pledge Agreement or HBL defaulted under the Lease by failing to deposit the \$1.6 million before taking occupancy he would forfeit the Waterview Membership Interest. Jozefovic and HBL defaulted. The consequence of that default is the forfeit of the Waterview Membership Interest. A UCC sale of the Waterview Membership Interest is the express contractual remedy provided for in the Pledge Agreement as a result of Jozefovic's breaches of the obligations under the Pledge Agreement the breaches of the Lease. There is no reason Jozefovic should not be held to the agreement that he made.

35. The defaults by HBL and Jozefovic have not just caused harm to WPH Properties in on their own, but they have had a cascading effect, causing WPH Properties to default under a Construction Loan Agreement, Note and Mortgage given to its construction lender, Security Benefit Life Insurance Company ("Security Benefit"), which financed the construction of the Facility. Copies of the Construction Loan Agreement, Note and Mortgage are attached as exhibits G, H and I, respectively. Under the circumstances, enjoining WPH Properties from exercising its contractual and statutory remedies for Jozefovic's default would result in significant prejudice and harm.

36. In particular, WPH Properties has not been able to obtain permanent financing because HBL has been in default since it took occupancy. In order to obtain permanent financing for a commercial rental building, the owner must be able to represent to the lender that the tenant is not in default. WPH Properties has never been able to make that representation solely because HBL has been consistently in default. As a result, although WPH Properties has been paying the interest on Security Benefit's construction loan, it has not been able to obtain the permanent

financing necessary to pay the loan off.

37. On April 16, 2020, Security Benefit issued a notice of default to WPH Properties stating that WPH Properties was in default under the Construction Loan Agreement, subjecting WPH Properties to increased interest rates, late charges and other penalties provided in the Construction Loan Agreement. A copy of the April 16, 2020 notice of default is attached as exhibit J.

38. On May 22, 2020, Security Benefit issued another notice of default to WPH Properties stating that WPH Properties failed to make the monthly payment due under the Note and under § 2.12 of the Construction Loan Agreement on May 1, 2020 and reminding WPH Properties of the maturity date of the loan, August 1, 2020. A copy of the May 22, 2020 notice of default is attached as exhibit K.

39. The Lease requires HBL to cooperate in WPH Properties' efforts to refinance the Mortgage. Lease, §7.8. As a direct result of HBL's defaults under the Lease, however, WPH Properties was unable to refinance the Mortgage securing the construction loan prior to maturity. HBL's defaults under the Lease made it impossible to refinance the Mortgage because any new lender would have required proof that the Lease (which would provide the necessary funding in the form of rents to pay debt service on the new mortgage loan) was not in default. Due to HBL's defaults, it was therefore impossible for WPH Properties to provide any prospective new lender an estoppel certificate or other evidence certifying that the Lease was not in default. As a result, the construction loan has now matured and is in default, placing the ongoing operations of the Facility and WPH Properties at imminent risk of foreclosure by Security Benefit.

40. On May 1, 2021, Security Benefit commenced an action to foreclose the Mortgage based upon the failure to pay all amounts due under the Note on its maturity date. Security Benefit

*Life Insurance Company v. White Plains Healthcare Properties I, LLC, et al* (Supreme Court, Westchester County, Index. No. 55883/2021) (the "Foreclosure Action"). A true and correct copy of the complaint in the Foreclosure Action is attached as exhibit L.

41. Security Benefit withdrew the Foreclosure Action without prejudice to renew upon expiration of the moratorium on commercial foreclosure proceedings in New York State enacted by the "Covid-19 Protect Our Small Businesses Act of 2021," as amended, which is currently set to expire on August 31, 2021. Thus, upon expiration of the statutory foreclosure prohibition on August 31, 2021, Security Benefit will almost certainly recommence the Foreclosure Action.

42. Jozefovic's claims of defaults on the part of WPH Properties are baseless. To begin with, they have been released. The Lease provides, in 2017, that HBL, its officers, agents and anyone acting on its behalf release WPH Properties from "ALL CLAIMS . . . ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES." Exhibit C, Lease, § 5.6(b) (emphasis in original). And in 2019, the Letter of Intent provided:

Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the Lease, (3) any claims related to the Cost Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.

Exhibit W, Letter of Intent, ¶ 8.

43. But even if these claims had not been waived or released, they have no basis in fact.

44. Jozefovic's claim that construction was delayed until 2017 because of delays on the part of WPH Properties is completely false and belied by the documentary evidence. Construction

could not begin until HBL had obtained all of the approvals necessary from the New York State Department of Health. That was delayed by HBL's failure to obtain the necessary working capital and by the bankruptcy of Hebrew Hospital, one of the members of HBL. As Jozefovic's attorney, Mark Zafrin, admitted in an email dated April 11, 2017 to Linda Whitehead, Hebrew Hospital's counsel: "*Linda. Your bankruptcy was a large impediment to our financing package that is an immutable fact. I don't want to argue about it. Mr Nicholson will have to provide you with all of the details as to his next steps to finish the financing.*" Exhibit M. The chronology is as follows.

45. WPH Properties and HBL entered into the initial lease on November 19, 2015. Hebrew Hospital filed for bankruptcy on December 9, 2015. A copy of the filing is attached as Exhibit N. On April 18, 2016, the New York State Department of Health advised HBL's consultant, Pinnacle Health Consultants, that it considered HBL's application for a certificate of need to be abandoned. A copy of that letter is attached as Exhibit O. Pinnacle responded by letter dated May 24, 2016 that the operating agreement has been delayed by the need for the Bankruptcy Court to approve HBL's operating agreement. A copy of that letter is attached as Exhibit P (Page 5, Response 14). By letter dated July 20, 2016, Pinnacle advised the Department of Health that its application continued to be delayed by the Bankruptcy Court and, further, that HBL did not yet have the operating capital that was required. A copy of that letter is attached as Exhibit Q. By email dated October 11, 2016, I advised Jozefovic, his lawyer and consultants that without the operating agreement and the approval of the Department of Health, WPH Properties could not close on its construction financing. A copy of that email is attached as Exhibit R. The Bankruptcy Court finally approved the operating agreement on November 23, 2016; the operating agreement was not signed until February 1, 2017. Exhibits S and T, respectively. The Department of Health did not finally approve the project until July 26, 2017. A copy of the letter of that date to Pinnacle



is attached as Exhibit U. WPH Properties closed its construction loan three weeks later, on August 18, 2017, and the building was completed on September 30, 2019.

46. Jozefovic's claim that WPH Properties failed to construct the building within the approved budget of \$57 million is also completely false. Jozefovic Affirmation, ¶ 51. HBL "acknowledge[d] and agree[d]" in the Development Agreement that "the actual total cost of the Project ("Project Cost") as of the date hereof [November 20, 2015] is approximately \$60.0 million, is not possible to exactly ascertain as of the date of this Agreement due to circumstances beyond the control of all parties to this Agreement and is projected to be greater than the Approved Project Cost." Development Agreement, Article IV(A). A true and correct copy of the Development Agreement is annexed as Exhibit V. In fact, HBL was responsible for all of the approvals required from the New York State Department of Health. Exhibit V, Development Agreement, Article II(C). HBL, not WPH Properties, was responsible to "file and diligently pursue with DOH all applications required to increase the Approved Project Cost such that it then equals the best estimate of the Project Cost." Exhibit V, Development Agreement, Article IV(A).

47. Also contrary to Jozefovic's affirmation, there is nothing in the Development Agreement or the Lease that obligates WPH Properties to obtain permanent financing. Jozefovic Affirmation, ¶ 55. In fact, in the Letter of Intent, HBL waived "any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purpose" and "any claims related to the Cost Certification." Exhibit W, Letter of Intent, ¶ 8.

48. But even if HBL had such a claim and had not waived it, the only reason WPH Properties has not permanently financed the project is that HBL has defaulted. As the Court is aware, the construction lender has commenced and withdrawn a foreclosure action. The defaults

alleged in the foreclosure complaint are that WPH Properties did not satisfy the construction loan when it was due and has not paid the interest at the default rate since then (although WPH Properties has continued to pay interest at the non-default rate). WPH Properties would have been able to satisfy the construction loan on a timely basis by refinancing, however, if HBL had not defaulted under the lease. No lender will lend to a landlord where the tenant is in default. The failure to obtain permanent financing is, therefore, the fault of HBL, not WPH Properties.

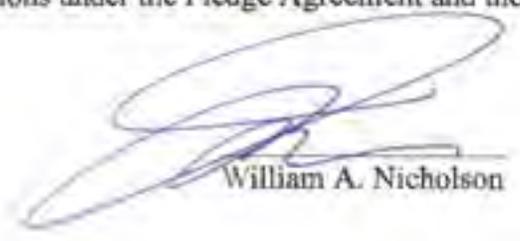
49. The costs incurred by WPH Properties as a result of its inability to obtain permanent financing have not been passed along to HBL yet, as the defendants allege. First Amended Verified Answer, ¶ 92. HBL pays a fixed rent, not dependent on WPH Properties' costs. But those costs are part of WPH Properties' damages claim against HBL.

50. Likewise, the \$2.2 million HBL paid pursuant to the Letter of Intent had nothing to do with the security deposit and additional security deposit at issue here. It was HBL's down payment for the purchase of the Facility. Exhibit W, Letter of Intent, § (1)(a)(i). HBL defaulted under the Letter of Intent, as well.

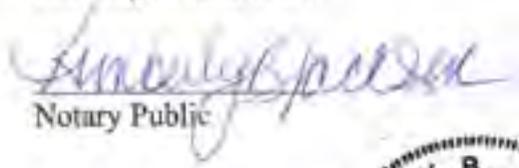
51. The failure and refusal of Jozefovic and HBL, which Jozefovic controls, to comply with their contractual obligations under the Pledge Agreement, the Lease and the guarantees have caused WPH Properties substantial prejudice and financial harm and placed its principal asset, the Facility, at serious imminent risk of foreclosure by Security Benefit, demonstrated beyond any doubt by Security Benefit commencing the Foreclosure Action, which it withdrew without prejudice to renew upon expiration of the New York State moratorium on commercial foreclosures. Enjoining WPH Properties from exercising their contractual and statutory remedies for these defaults would obviously cause it substantial, completely unwarranted harm.

52. On the other hand, the only consequences Jozefovic would suffer as a result of the

UCC sale is the loss of his Waterview Membership Interest, which is precisely what he bargained for in the event he defaulted on his obligations under the Pledge Agreement and the Lease.

  
William A. Nicholson

Sworn to before me this  
29th day of June 2021.

  
Notary Public



# Exhibit A

## to Nicholson Aff.

AMENDED AND RESTATED OPERATING LEASE

By and Between

WHITE PLAINS HEALTHCARE PROPERTIES 1, LLC,  
a Massachusetts limited liability company  
("Landlord")

and

HBL SNF, LLC,  
a New York limited liability company ("Tenant")

Dated as of November 19, 2015

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EXHIBIT "A"

Legal Description

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of White Plains, County of Westchester and State of New York. Said parcel being more particularly described as follows:

BEGINNING at a point in the easterly line of Church Street where the same is intersected by the southerly line of Barker Avenue;

THENCE from said point North 70 degrees 40 minutes 10 seconds East a distance of 173.57 feet along the southerly line of Barker Avenue to a point where the same is intersected by the division line herein described parcel on the West and lands now or formerly of Koepfel & Mohr Equities on the East;

THENCE from said point and along said division line South 17 degrees 59 minutes 50 seconds East a distance of 200.51 feet to a point in the division line between the herein described parcel on the north and lands now or formerly of Hamilton Plaza Company, Inc. on the south;

THENCE from said point and along said line South 71 degrees 01 minutes 50 seconds West a distance of 173.24 feet to the easterly line of Church Street; and

THENCE from said point and along said line North 18 degrees 05 minutes 04 seconds West a distance of 199.41 feet to the point and place of BEGINNING;

EXHIBIT A

EXHIBIT A

EXHIBIT "B"

GUARANTY

See Attached

2305449-5/17057-5

EXHIBIT B



SCHEDULE 3.1

Definition of Material Default

Material Default shall mean the occurrence of any of the following:

(a) Any Lease Default except 16.1 (a) (xxv) and (xxxx), provided that the following Lease Defaults shall not be deemed a Material Default unless they occur two or more times within such period: 16.1 (a) (ix), (xvii), (xxx), (xxxxi), and the following Lease Defaults shall not be deemed a Material Default unless they occur three or more times within such period: 16.1 (a) (i), (ii), (xvii).

(b) Any Lease Default during such period constitutes an "Event of Default" by Landlord under any Loan Document between Landlord and its Mortgagee(s) evidencing or documenting a loan secured by the Facility:

EXHIBIT 7.1(a)  
See Attached

EXHIBIT 7.1(b)  
See Attached

EXHIBIT 7.1(c)  
See Attached

SCHEDULE 7.4

PERIOD	EBITDAR TARGET
Quarter 1 (____, 20____ through _____, 20(____))	\$ _____
Quarter 2	\$ _____
Quarter 3	\$ _____
Quarter 4	\$ _____
Quarter 5	\$ _____
Quarter 6 and thereafter	\$ _____

"EBITDAR" means with respect to any quarterly period for the Facility an amount determined on a consolidated basis equal to the sum of the following amounts for the Facility for a trailing twelve month period: (a) earnings/(net income or net loss) (including, as an expense an actual or theoretical management expense of five percent (5%) of gross receipts) from operations before (b) interest expense, (c) income tax expense, (d) depreciation expense, (e) amortization expense, and (f) Fixed Rent, defined in accordance with GAAP for such quarterly period. EBITDAR is not considered a measure of financial performance under GAAP. In calculating earnings for the trailing twelve months that encompasses any month prior to the Commencement Date, for the months prior to the Commencement Date, revenue shall be calculated using current rates of reimbursement, meaning reimbursement rates in effect as of the start of the applicable quarterly period.

11044540/17071-A

SCHEDULE 7.4

2

**OPERATING LEASE**

THIS AMENDED AND RESTATED OPERATING LEASE ("Lease") is entered into as of November 19, 2015 (the "Effective Date"), by and between WHITE PLAINS HEALTHCARE PROPERTIES I, LLC a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 200, Peabody, MA 01960 ("WPHCP") or (the "Landlord") and HBL SNF, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (the "Tenant"), and amends and restates in its entirety the lease between the Parties dated as of November 19, 2015.

**RECITALS**

A. WHEREAS, Landlord is the owner of the real property, improvements, and personal property constituting the long-term care facility commonly known as 116-120 Church Street, White Plains, New York and more particularly described on Exhibit A, attached hereto and made a part hereof, (the "Real Property"), and following execution of this Lease, upon which certain buildings and improvements shall be erected (the "Facility"); and

B. WHEREAS, Landlord desires to lease the entire Leased Premises (defined herein) to Tenant and Tenant desires to lease the Leased Premises from Landlord pursuant to the terms, conditions and covenants set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, promises, representations and warranties set forth herein and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

**ARTICLE I**

**INCORPORATION OF RECITALS; PRINCIPLES OF CONSTRUCTION, DEFINITIONS**

Section 1.1 Incorporation of Recitals. The aforesaid Recitals A through B are hereby incorporated into this Lease as if fully set forth herein. Landlord and Tenant are hereinafter sometimes individually referred to as a "Party" and collectively referred to as "Parties".

Section 1.2 Principles of Construction. All references to articles, sections, schedules and exhibits are to articles, sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Landlord" shall mean

"Landlord and its successors and assigns"; the words "Leased Premises" shall include any portion of the Leased Premises and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegals, legal assistant and law clerk fees and disbursements, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise, and, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Landlord in protecting its interest in the Leased Premises and its rights hereunder. Wherever pursuant to this Lease it is provided that Landlord shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees as defined above. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The words "includes", "including" and similar terms shall be construed as if followed by the words "without limitation". Whenever in this Lease any consent, approval, determination or decision of Landlord is to be made by Landlord, or any matter is to be satisfactory to Landlord, then unless expressly provided to the contrary, such provision shall be deemed to mean that such consent, approval, determination or decision of Landlord or determination whether a matter is satisfactory shall be made by Landlord in its sole and absolute discretion for any or no reason and shall be final and conclusive. Any reference in this Lease shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease shall be deemed to be a reference to this Lease (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease or in the Guaranty shall be deemed to be a reference to the Guaranty (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time.

Section 1.3 Definitions.

"Additional Rent" as defined in Section 3.2.

"Affiliate" as defined in Section 20.31.

"Change of Ownership" means

"Commencement Date" as defined in Section 3.1.

"Commissioner" means the Federal Housing Commissioner also called the Assistant Secretary for Housing in the United States Department of Housing and Urban Development.

"DOH" means New York State Department of Health.

"Effective Date" as defined in introductory paragraph.

"Eligible Institution" as defined in Section 4.3.

"Extension Term" as defined in Section 3.1(b).

"Facility" as defined in Recital A.

"First Refinance" means the replacement or refinance of the Original Mortgage and/or original Junior Debt, in whole or part, in an amount not less than \$42,200,000.

"First Refinance Date" means the date of the First Refinance.

"Fixed Rent" as defined in Section 3.2.

"Governmental Authority" as defined in Section 5.2.

"Guarantors" mean Lizer Josefovic and Mark Neuman.

"Hazardous Materials" as defined in Section 10.3

"Hazardous Waste" as defined in Section 10.3.

"Health Care Authority or Authorities" means any Governmental Authority (including HUD) having responsibility for the approval, licensing, certification, payment, issuance of guaranties and insurance for, and/or otherwise setting standards for the operation and occupancy of skilled nursing facilities.

"Health Care Licenses" means all Medicare and Medicaid certifications and provider agreements, all public third party payor certifications and provider agreements, and all certifications, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses and certificates of need required by Health Care Authorities for the legal use, occupancy and operation of the Facility.

"HUD" means the United States Department of Housing and Urban Development.

"Junior Debt" means a mortgage on the Premises junior to the first Mortgage, and/or debt relating to the development and construction of the Premises.

"Landlord" as defined in introductory paragraph, and Section 1.2.

"Landlord's Indemnities" as defined in Section 9.1.

"Landlord's Work" as defined in Section 5.1.

"Laws" as defined in Section 5.1.

"Lease Default" as defined in Section 16.1.

"Leased Premises" as defined in Section 2.1.

"Lease Year" as defined in Section 3.1.

"Letter of Credit" as defined in Section 7.1.

"Material Default" as defined in Schedule 3.1.

"Mortgagee" shall refer to the first and second priority mortgages secured by fee simple interest in the Real Property as amended, restated, extended or replaced from time to time in Landlord's discretion.

"Original Mortgage" means the original Mortgage placed on the Premises by Landlord.

"Overdue Rate" as defined in Section 9.1(b).

"Primary Market of the Facility" means a fifteen mile radius of the Leased Premises.

"Prime Rate" as defined in Section 9.1.

"Prospective Mortgagee" means any Person chosen by Landlord as a Mortgagee prior to a closing of a Mortgage to be held by such Person.

"Real Property" as defined in Recital A.

"Refinance" means the replacement or refinance of the Mortgage, or Junior Debt, or any debt in replacement thereof, in whole or part, including the First Refinance.

"Refinance Date" means the date of any Refinance including the First Refinance.

"Rent" as defined in Section 3.2.

"Security Deposit" as defined in Section 7.1.

"Special Purpose Entity" as defined in Schedule 19.2.

"Substantial Completion Date" means the date which is the later of: (i) the date specified in the ATA Form G704, duly executed and certified by the Landlord's architect, that the Facility was substantially completed and in substantial compliance with the plans and specifications for the Facility, and (ii) the date Landlord delivers a Temporary Certificate of Occupancy (the "TCO") for the Facility, provided, however, if the Landlord is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (ii).

"Tenant's Lease Coverage Ratio" means EBITDAR divided by Fixed Rent.

"Term" as defined in Section 3.1 (including all exercised Extension Terms).

"Total Project Cost or "TPC" is the actual cost of purchasing, developing, constructing, and equipping the Facility, including without limitation, the cost of the Real Property and improvements, development costs, financing costs, and the cost of Landlord's Work and all equipment.

"Utilities" as defined in Section 4.1.

ARTICLE II

LEASED PREMISES

Section 2.1 Leased Premises. Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions set forth in this Lease, the following assets:

(a) all of Landlord's right, title, and interest in and to the Real Property, including, without limitation, all buildings, structures, erections, improvements, appurtenances, easements and fixtures, including fixed machinery and fixed equipment situated thereon or forming a part thereof; and

(b) all of Landlord's right, title and interest in and to all machinery, trade equipment, trade fixtures, furniture, furnishings, beds, and accessories of all kinds used in connection with the Facility located on the Real Property.

All of the items described in Sections 2.1(a) and 2.1(b) herein are collectively referred to as the "Leased Premises." Landlord and Tenant acknowledge and understand that all of the items which comprise the Leased Premises, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, shall be transferred back to Landlord in accordance with the terms and conditions set forth herein upon the expiration or earlier termination of this Lease.

Section 2.2 In connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein, and each successor in interest, shall have the right to transfer all amounts deposited pursuant to Section 4.3 with respect to the Facility, less any amount used pursuant to Section 4.3, to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, Landlord or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto. If Landlord's interest in the Leased Premises is sold or conveyed as provided above or otherwise or by operation of law: (i) at the new owner's option, Tenant shall affirm to and recognize the new owner as Tenant's Landlord under this Lease and Tenant shall take such actions to confirm the foregoing within ten (10) days after request.

ARTICLE III  
TERM AND RENT

Section 3.1 Term of Lease.

(a) The term (the "Term") of this Lease shall be for a period of thirty (30) years commencing on the later to occur of (i) the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility and (ii) the date that New York State Department of Health (hereinafter sometimes, "DOH") determines that the Landlord's Work is sufficiently complete as constructed (but not necessarily the Tenant's operations) to accept patients, provided, however, if the Landlord is unable to obtain a permanent or temporary Certificate of Occupancy because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of a permanent or temporary Certificate of Occupancy shall not be a condition under clause (i) (the "Commencement Date"), and ending at 11:59:59 P.M. on the day preceding the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date (the "Expiration Date"). Under any and all circumstances, Landlord shall not be liable to Tenant, in damages or otherwise, for any delay in delivering the Leased Premises to Tenant and Tenant shall have no right to terminate or rescind this Lease on account thereof. Notwithstanding the Commencement Date, certain of the rights and obligations of the parties shall commence on the Effective Date, but not including Tenant's obligations to pay Fixed Rent and Impositions prior to the Commencement Date, or to maintain the Leased Premises, insure the Leased Premises or restore the Leased Premises after a casualty or condemnation prior to the Commencement Date, or any other rights and obligations, which by their terms are intended to commence as of the Commencement Date, which rights and obligations shall commence on the Commencement Date.

As used herein with respect to the Term and the periods for payment of Rent (unless the context otherwise requires) the term "Lease Year" shall mean a 365 day period (or 366 day period in the case of a leap year), first commencing on the Commencement Date and thereafter on successive anniversaries thereof, and ending on the day prior to the next succeeding anniversary of the Commencement Date.

Landlord and Tenant hereby acknowledge that the Commencement Date is presently indeterminate and shall occur only as hereinabove provided in this Section. Except for the rights of Tenant expressly stated herein, Tenant hereby waives any right to rescind this Lease under the provisions of Section 223-a of the Real Property Law of the State of New York, and agrees that the provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of said Section 223-a. Landlord and Tenant shall execute a memo specifying the Commencement Date immediately following its occurrence.

(b) Provided a Lease Default has not occurred and is then continuing either at the time of the exercise of the options provided below or at the end of the Term or Extension Term, or there has not been any Lease Default listed in Schedule 3.1 attached hereto (a "Material Default"), whether or not cured, within two years of the end of the Term or Extension Term, Tenant shall have the option to extend the Term of this Lease for three (3) additional periods of ten (10) years each (each an "Extension Term"), by giving written notice to Landlord

not less than five forty-five (545) days nor more than seven hundred (700) days prior to the expiration of the Term (or Extension Term as the case may be) of this Lease, TIME BEING OF THE ESSENCE to these time periods. These options may be exercised by Tenant serving written notice upon Landlord stating that Tenant is exercising the option to extend. If Tenant fails to give such notice in writing to Landlord within the time period specified herein, all rights and privileges granted to Tenant to extend this Lease shall lapse and become null and void. No later option may be exercised if Tenant has failed to exercise a prior option. If Tenant has validly exercised its option(s) to extend the Term, references herein to the "Term" shall be deemed to include an Extension Term.

Section 3.2 Rent.

(a) Beginning in the first (1st) Lease Year of the Term and for each succeeding Lease Year thereafter, including during any and all Extension Terms, until the First Refinance Date, Tenant shall pay Landlord an annual amount of Six Million Seventy Three Thousand One Hundred Fifty Eight (\$6,073,158) Dollars ("Fixed Rent") in monthly installments of \$506,096.50.

(b) Tenant shall pay the Rent to Landlord during the term without deduction or setoff and without demand.

(c) The terms "Additional Rent" or "additional rent" means all sums, amounts, fees, expenses and costs (including, without limitation, legal fees and disbursements) payable or reimbursable to Landlord under this Lease other than Fixed Rent, and all of same shall be and constitute Additional Rent hereunder. The terms "Fixed Rent" and "Additional Rent" shall be collectively referred to as "Rent." Landlord shall have the same rights and remedies hereunder consequent upon a failure of Tenant to pay any item of Additional Rent as upon a failure of Tenant to pay any item of Fixed Rent.

(d) Rent shall be due and payable in advance in equal monthly installments during each year on the first (1st) day of each calendar month thereof (or in the event the first day of the calendar month is not a business day, on the first business day following the first day of each calendar month) throughout the Term. Rent for any period which is less than a full calendar month or full year, as the case may be, during the Term, shall be prorated on a daily basis. Rent shall not be paid more than one (1) month in advance. Rent shall be paid to Landlord at Landlord's address set forth in Section 1.1 or at such other place as Landlord designates from time to time by written notice to Tenant. Tenant agrees to pay Rent, at Landlord's direction, by electronic transfer or wire, as directed by Mortgagee in writing.

(e) TENANT HEREBY ACKNOWLEDGES THAT LATE PAYMENT BY TENANT TO LANDLORD OF RENT WILL CAUSE LANDLORD TO INCUR COSTS NOT CONTEMPLATED HEREUNDER, THE EXACT AMOUNT OF WHICH IS PRESENTLY ANTICIPATED TO BE EXTREMELY DIFFICULT TO ASCERTAIN. SUCH COSTS MAY INCLUDE PROCESSING AND ACCOUNTING CHARGES AND LATE CHARGES WHICH MAY BE IMPOSED ON LANDLORD BY THE TERMS OF ANY LOAN AGREEMENT AND OTHER EXPENSES OF A SIMILAR OR DISSIMILAR NATURE. ACCORDINGLY, IF ANY INSTALLMENT OF RENT THAT IS PAYABLE TO LANDLORD

OR ITS DESIGNEE SHALL NOT BE PAID WITHIN FIVE (5) DAYS OF THE DATE WHEN DUE, TENANT WILL PAY LANDLORD ON DEMAND A LATE CHARGE EQUAL TO FIVE PERCENT (5%) OF THE UNPAID PORTION OF THE AMOUNT OF SUCH INSTALLMENT. THE PARTIES AGREE THAT THIS LATE CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE COSTS THAT LANDLORD WILL INCUR BY REASON OF LATE PAYMENT BY TENANT. THE PARTIES FURTHER AGREE THAT SUCH LATE CHARGE IS RENT AND NOT INTEREST AND SUCH ASSESSMENT DOES NOT CONSTITUTE A LENDER OR BORROWER/CREDITOR RELATIONSHIP BETWEEN LANDLORD AND TENANT. IN ADDITION, THE AMOUNT UNPAID, INCLUDING ANY LATE CHARGES, SHALL BEAR INTEREST AT THE OVERDUE RATE FROM THE DUE DATE OF SUCH INSTALLMENT TO THE DATE OF PAYMENT THEREOF, AND TENANT SHALL PAY SUCH INTEREST TO LANDLORD ON DEMAND. THE PAYMENT OF SUCH LATE CHARGE AND/OR SUCH INTEREST SHALL NOT CONSTITUTE A WAIVER OF, NOR EXCUSE OR CURE, ANY DEFAULT UNDER THIS LEASE, NOR PREVENT LANDLORD FROM EXERCISING ANY OTHER RIGHTS AND/OR REMEDIES AVAILABLE TO LANDLORD.

(j) If a default is declared by the Commissioner under the provisions of the Regulatory Agreement, provided a copy of Notice of Default is given to Tenant, Tenant shall thereafter make all future payments under this Lease to the Commissioner.

Section 3.3 Net Lease Provisions. Landlord and Tenant intend that the Rent herein specified shall be net to Landlord in each year during the Term, and that all costs, expenses and obligations of every kind and nature, (known or unknown, general or special, ordinary or extraordinary, foreseen or unforeseen, direct or indirect, contingent or otherwise) relating to the operation, repair and maintenance of the Leased Premises (except Landlord's income taxes) which may arise or become due during the Term shall be timely paid by Tenant and that Landlord shall be indemnified by Tenant against such costs, expenses and obligations. Tenant's obligation to pay Rent is independent of all, and is in no manner conditioned upon any, other covenants, conditions and obligations of Landlord or Tenant under this Lease. There shall be no abatement of Rent payments for any reason nor shall Tenant be entitled to any offsets or deductions from Rent payments due hereunder.

Section 3.4 Rent Tax. If any governmental taxing authority levies, assesses, or imposes any tax, sales or use tax, privilege tax, excise or assessment (other than income or franchise taxes) upon or against the Rent payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise or assessment, or, if Landlord pays same, Tenant shall reimburse Landlord for the amount thereof within ten (10) days after written demand by Landlord.

It is the intent of this Section 3.4 and all other provisions of this Lease to insure that the Rent (including Additional Rent) paid to Landlord by Tenant will be received by Landlord without diminution by any tax, assessment, charge or levy of any nature whatsoever, except United States, State of New York and local net income taxes, and the terms and conditions of this Lease shall be liberally construed to effect such purpose. Without limiting the generality of the foregoing, if any tax is assessed or based on gross income actually or



constructively received by Landlord pursuant to this Lease, Tenant shall pay such amount which, when added to said gross income, shall yield to Landlord, after deduction of all such tax payable by Landlord with respect thereto, a net amount equal to that which Landlord would have realized therefrom had no such tax been imposed.

**Section 3.5 Assignment of Lease to Mortgagee.** Tenant acknowledges that all of the interest of Landlord in and to this Lease has been or will be assigned to Mortgagee pursuant to the Loan Documents.

Tenant agrees to promptly execute and deliver to Landlord from time to time any and all documents required by a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender, or any successor, commercial, agency or private lender, including, without limitation, a lease addendum, regulatory agreement, subordination agreement, non-disturbance and attornment agreement, and/or estoppel certificate, in order to finance or refinance the Facility or otherwise.

Tenant will on request at any time or from time to time by Landlord or any Mortgagee or Prospective Mortgagee subordinate this lease and all of Tenant's rights and estate hereunder to such Person's Mortgage and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, or declare such Mortgage to be prior to this lease and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, and agree with such holder that Tenant will atom thereto in the event of foreclosure. Landlord agrees to use reasonable efforts (except that Landlord shall not be obligated to expend money for any such agreement) to obtain a written agreement from any such holder in the form typically used by such holder which consents to this lease and provides that, notwithstanding such mortgage or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting said Mortgage, Tenant shall not be disturbed in peaceful enjoyment of the Leased Premises or this lease terminated or canceled at any time, except in the event Landlord shall have the right to terminate this lease under the terms and provisions set forth herein.

**Section 3.6 True Lease.** It is the intent of Landlord and Tenant and the parties agree that this Lease is a true lease and that this Lease does not represent a financing agreement. Each party shall reflect the transaction represented hereby in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

**Section 3.7 Right of First Refusal: Buyout.** (a) Landlord shall not sell, transfer or convey the Leased Premises to a third person or entity unless Tenant first is given the opportunity to purchase the Leased Premises pursuant to the terms and conditions set forth in this Section 3.7(a). If at any time during the first eleven years of Term Landlord receives from any third person or entity an Offer (as hereinafter defined) to purchase the Leased Premises which Landlord desires to accept, Landlord shall notify Tenant of such Offer by delivering written notice to Tenant, which notification (the "Offer Notice") shall contain a copy of the written Offer or, at Landlord's election, a written summary of the terms of the Offer. For purposes of this Lease, an "Offer" shall mean any bona fide written instrument or verbal communication setting forth the terms pursuant to which Landlord will convey the Leased Premises. Tenant shall have ten (10) Business Days after receipt of the Offer Notice in which to elect by written



notice delivered to Landlord (the "Acceptance Notice") to enter into a formal agreement on the same terms and conditions as those contained in the Offer ("Tenant's Purchase Right"). Such election shall be effective only if within ten (10) Business Days after delivery of the Acceptance Notice the parties enter into a written purchase agreement on terms reasonably acceptable to Landlord in good faith for the sale of the Leased Premises to Tenant containing all terms of the Offer. If Tenant fails to timely deliver the Acceptance Notice, or if Tenant fails to timely enter into said purchase agreement as provided herein, Landlord shall have the right to accept the Offer or any modification thereof on terms substantially similar as those set forth in the Offer. Tenant's right to purchase the Leased Premises identified in the Offer Notice shall not apply to (i) transfers of less than one hundred percent of the ownership interests in Landlord, (ii) a public offering of ownership interests in Landlord, (iii) a recapitalization transaction of any kind involving Landlord, (iv) condemnation, eminent domain or similar proceedings, or (v), rights exercised by Mortgagees in foreclosure or in lieu thereof pursuant to Mortgages or other documents executed by Landlord in connection therewith, including the subsequent disposition of the Premises by Mortgagee or its affiliate or designee that acquires the Leased Premises in connection therewith.

(b) Notwithstanding anything to the contrary, if Landlord's Offer Notice states that it is purchasing from Tenant Tenant's Purchase Right, then (i) Tenant shall have no further rights under Section 3.7(a), and Section 3.7(a) shall be null and void without further effect, and (ii) upon the closing of the purchase and sale of the Leased Premises pursuant to the Offer, Landlord shall pay Tenant ten percent (10%) of the excess of the sales price agreed to pursuant to the Offer (less costs and fees, including broker's fees) over the TPC, the "Offer Fee", and (iii) the Rent shall be the greater of the amount as determined by Section 3.2(a) or fair market value, as shall be determined by an independent third party appraiser jointly appointed by Landlord or and Tenant, and absent their agreement appointed by the then chairman or similar officer of the Westchester County Society of Real Estate Appraisers. For purposes of clarification, Tenant shall not be entitled to the receipt of the Offer Fee if Tenant exercises Tenant's Purchase Right as set forth in Section 3.7(a) above.

(c) Upon expiration of the eleventh Lease Year, Tenant's Right of First Refusal as set forth in in Section 3.7(a) shall lapse and become null and void.

Section 3.8. Option to Purchase. Commencing on the latter of (i) the first day after the Commencement Date and (ii) 24 months from the date of the closing of the Original Mortgage, and ending on the last day of the fifteenth Lease Year of the Lease, Tenant shall have the option to purchase the Leased Premises from Landlord for a purchase price of \$65,055,000 by giving written notice of its exercise of the Option to Purchase including a proposed closing date, provided if Tenant does not exercise the Option to Purchase prior to receiving an Offer Notice pursuant to Section 3.7, Tenant's Option to Purchase under this Section 3.8 shall lapse unless and until the conveyance of the Leased Premises contemplated under Section 3.7 does not occur. Upon expiration of the fifteenth Lease Year, Tenant's the right to purchase the Leased Premises from Landlord, all as set forth above, shall lapse, become null and void, and Tenant shall have deemed to waived all such rights hereunder.

ARTICLE IV



UTILITIES AND TAXES

Section 4.1 Utilities. From and after the Commencement Date, Tenant shall pay or cause to be paid all charges next coming due and payable for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Leased Premises (the "Utilities") during the Term. Tenant covenants to place all Utilities in Tenant's name as of the Commencement Date. Adjustment shall be made for Utilities applicable to any period prior to the Commencement Date. In the event Landlord is billed directly by any service provider or utility company for any Utilities or services supplied to Tenant during the Term, Landlord shall send Tenant the bill and Tenant shall promptly pay the same. Landlord shall have no obligation or liability with respect to any interruption or failure in the supply of any such Utilities. If Landlord elects to or shall be required to pay for any Utilities to preserve and/or protect the Leased Premises, Tenant shall reimburse Landlord for the cost and expense thereof plus interest at the Prime Rate.

Section 4.2 Taxes. Tenant shall be solely responsible for the payment, prior to the date when penalties would attach, of all general and special real estate taxes and assessments (together with any excise taxes on such real estate taxes and assessments levied or imposed by any governmental taxing authority), fire district taxes, liens, impositions, including capital stock, franchise, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes; personal property taxes, assessments including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; ground rents; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Premises, and all interest and penalties thereon attributable to any failure in payment by Lessee which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon the Leased Premises (collectively, the "Impositions") that accrue from the Commencement Date through the Term. Adjustment shall be made for Impositions applicable to any period prior to the Commencement Date. Tenant shall pay all of the Impositions directly to the applicable taxing authorities and Tenant shall promptly forward proof of payment to Landlord in such form as shall be reasonably acceptable to Landlord unless Landlord elects to require escrow deposits in accordance with Section 4.3 hereof. Landlord shall promptly forward any tax bills which it may receive to Tenant. Landlord shall only bill Tenant for any of the Impositions if Tenant does not pay any of the Impositions before delinquency and Landlord is obligated or elects (in Landlord's sole and absolute discretion) to pay any of the Impositions directly to remain current with all taxing authorities. Tenant shall pay the full amount of any increases in any of the Impositions resulting from alterations or improvements made by or for the benefit of Tenant. After the expiration or termination of this Lease, Tenant shall pay all bills for any of the Impositions which become due and payable after the expiration or termination of the Lease covering any period through the expiration or earlier termination of the Lease. If any governmental taxing authority acting under any present or future ordinance or regulation, shall levy, assess or impose a tax, excise and/or assessment (other than any net income or franchise tax) upon Landlord or Tenant for rental payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise and/or assessment



or shall reimburse Landlord for the cost and expense thereof, as the case may be. Provided that Tenant shall have deposited a sufficient amount of funds to pay the Impositions pursuant to Section 4.3 and Tenant has done nothing to prevent payment by Landlord or its lender of the Impositions, then Tenant shall not be responsible for any and all late payment fees and/or penalties, including interest, imposed by any applicable taxing authorities with respect to the untimely payment of Impositions.

Section 4.3 Escrow Deposits

(a) Escrow. At the option of Landlord, which may be exercised at any time by Landlord in its sole and absolute discretion Tenant shall, on the first day of the first calendar month commencing after notice from Landlord, and on the first day of each calendar month thereafter during the Term (each of which dates is referred to as a "Monthly Deposit Date"), pay to and deposit with Landlord a sum equal to one-twelfth (1/12th) of the Impositions to be levied, charged, filed, assessed or imposed upon or against the Leased Premises within one (1) year after said Monthly Deposit Date and a sum equal to one-twelfth (1/12th) of the premiums for the property insurance policies required pursuant to Article VI which are payable within one (1) year after said Monthly Deposit Date. If the amount of the Impositions to be levied, charged, assessed or imposed or insurance premiums to be paid within the ensuing one (1) year period shall not be fixed upon any Monthly Deposit Date, such amount for the purpose of computing the deposit to be made by Tenant hereunder shall be reasonably estimated by Landlord with an appropriate adjustment to be promptly made between Landlord and Tenant as soon as such amount becomes determinable. In addition, Landlord may, at its option, from time to time require that any particular deposit be greater than one-twelfth (1/12th) of the estimated amount payable within one (1) year after said Monthly Deposit Date, if such additional deposit is required in order to provide to Landlord sufficient funds from which to make payment of all Impositions on or before the next due date of any installment thereof, or to make payment of any required insurance premiums not later than the due date thereof. If any Mortgagee or the Commissioner requires Landlord to impound insurance premiums on a periodic basis during the term, Tenant, on notice from Landlord indicating this requirement, shall pay a sum of money towards its liability under this Lease to Landlord on a periodic basis in accordance with Landlord's requirements. Landlord shall impound the premium payments received from Tenant in accordance with the requirements of Mortgagee and shall utilize such funds to timely pay insurance premiums.

(b) Use of Deposits. The sums deposited by Tenant under this Section 4.3 shall be held by Landlord or Mortgagee and shall be applied in payment of the Impositions or insurance premiums, as the case may be, when due. Any such deposits may be commingled with other assets of Landlord or such Mortgagee, and shall be deposited by Landlord or such Mortgagee in an Eligible Institution in such account or accounts as Landlord or the Mortgagee may, from time to time select, and Landlord shall not be liable to Tenant or any other person (i) based on Landlord's or the Mortgagee's (or any bank's) choice of investment vehicles, (ii) for any consequent loss of principal or interest or (iii) for any unavailability of funds based on such choice of investment. Furthermore, subject to the foregoing regarding the use of depositories and accounts, Landlord and its Mortgagee shall bear no responsibility for the financial condition of, nor any act or omission by the depository bank. No income, if any, from such investment or interest on such deposits shall be paid to Tenant. To the extent that Landlord does not have an



invoice or bill specifying the due date for payment, Tenant shall give not less than thirty (30) days prior written notice to Landlord in each instance when an Imposition or insurance premium is due, specifying the Imposition or premium to be paid and the amount thereof, the place of payment, and the last day on which the same may be paid in order to comply with the requirements of this Lease. If Landlord, in violation of its obligations under this Lease, does not pay any Imposition or insurance premium when due, for which a sufficient deposit exists, Tenant shall not be in default hereunder by virtue of the failure to pay such Imposition or such insurance premium and Tenant shall not be liable for any late payment fees and/or penalties, including interest imposed as a result of such failure to pay. The term "Eligible Institution" shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least "A-1+" by S&P, "P-1" by Moody's and "F-1+" by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's).

(c) Deficits. If for any reason any deposit made by Tenant or held by Landlord under this Section 4.3 shall not be sufficient to pay any Imposition or insurance premium within the time specified therefor in this Lease, then, within ten (10) days after demand by Landlord, Tenant shall deposit an additional amount with Landlord, increasing the deposit held by Landlord so that Landlord holds sufficient funds to pay such Imposition or premium in full (or in installments as otherwise provided for herein), together with any penalty or interest thereon. Landlord may change its estimate of any Imposition or insurance premium for any period on the basis of a change in an assessment or tax rate or on the basis of a prior miscalculation or for any other good faith reason; in which event, within ten (10) days after demand by Landlord, Tenant shall deposit with Landlord the amount in excess of the sums previously deposited with Landlord for the applicable period which would theretofore have been payable under the revised estimate.

(d) Transfers. Consistent with Section 2.2, in connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein and each successor in interest shall have the right to transfer all amounts deposited pursuant to the provisions of this Section 4.3 and not used pursuant to this Section 4.3 to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, the original Landlord named herein or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto.

(e) Security. All amounts deposited with Landlord pursuant to the provisions of this Section 4.3 shall be held by Landlord as additional security for the payment and performance of Tenant's obligations under this Lease and, upon the occurrence and during the continuance of any Lease Default, Landlord may, in its sole and absolute discretion, apply such amounts towards payment or performance of such obligations.

(f) Return. Upon the expiration or earlier termination of this Lease, as long as all of the Rent and any and all other obligations due under this Lease have been fully paid and performed, any sums then held by Landlord under this Section 4.3 shall be refunded to Tenant.

and subject to the rights of a Mortgagee, together with all interest, if any, earned thereon and all income, if any, earned therefrom; provided, however, that if a Lease Default has occurred and is continuing, all of such sums may be applied by Landlord towards any amounts owed to Landlord pursuant to this Lease.

(g) Receipts. Tenant shall deliver to Landlord copies of all claims and bills in relation to the Impositions and insurance premiums promptly upon receipt thereof by Tenant.

This Article and the obligations herein shall survive expiration or earlier termination of this Lease.

ARTICLE V

LANDLORD'S WORK, MAINTENANCE AND REPAIR; IMPROVEMENTS

Section 5.1 Landlord's Work. (a) Landlord shall cause the Facility to be constructed ("Landlord's Work").

(b) Landlord will give Tenant thirty (30) days' notice of the date Landlord expects to be the Substantial Completion Date. On or prior to the Substantial Completion Date, Landlord and Tenant shall jointly prepare a list of the items for the Facility that remain to be completed or corrected, set a dollar value for the cost to complete the work, and fix time for their completion or correction (collectively the "Punchlist").

(c) Notwithstanding anything in this lease to the contrary, on and after the Substantial Completion Date Tenant shall be deemed to have agreed Landlord has completed Landlord's Work to Tenant's complete satisfaction, except for (i) the Punchlist, (ii) such items of decoration or mechanical adjustment of which Tenant gives Landlord written notice within thirty (30) days after the Substantial Completion Date (the "Initial Correction Items") or (iii) any defects in the Facility which were not known or reasonably discoverable by Tenant in the time period specified in the immediately prior clause (ii) ("Latent Defects"); provided that, as to Latent Defects, Landlord will have no responsibility or liability therefor, or for the correction thereof, unless (A) Tenant conducts at least one inspection of the Facility with a qualified engineer or other expert, within one year from the Substantial Completion Date, and (B) Tenant gives Landlord notice of such Latent Defects within thirty( 30) days after discovery thereof and in any event not later than one year after the Substantial Completion Date, which notice will be accompanied by the certification of such engineer or other experts, specifying, in detail, such Latent Defects in the Facility.

(d) At its sole expense, Landlord shall complete the Punchlist, and remedy the Initial Correction Items, and the Latent Defects provided with respect to Latent Defects that the conditions set out in clause (iii) of section (c) are satisfied.

(e) To the extent assignable at no cost to Landlord, Landlord assigns to Tenant all manufacturer warranties on materials and equipment. Tenant shall have the benefit and right to enforce such warranties at its sole cost and expense.

Section 5.2 Maintenance and Repair. Except as provided in Section 5.1, Tenant, at Tenant's sole cost and expense, shall keep the Leased Premises, including all buildings, fixtures, trade equipment, trade fixtures, furniture, beds and other personal property leased to Tenant pursuant to this Lease, including, without limitation, all structural and non-structural components, the roof, foundation, all outer walls, plumbing, sprinklers, electrical, mechanical, heating, ventilation, utility service, air conditioning, vertical transport, telephone, communications, cable, computer, fire-life-safety, nursing call, and all other systems of the Leased Premises in good condition and repair and in compliance with all Laws. Landlord shall not be responsible to make any improvements, repairs, maintenance or replacements whether occasioned by the act, omission, active negligence, or passive negligence of Landlord or Tenant and/or its agents, employees, invitees or licensees or otherwise, and Tenant shall pay for all improvements, repairs, replacements, maintenance and expenditures relating to the Leased Premises, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the commencement of the Lease, by Tenant's use or by a change in applicable Laws. The Leased Premises and its appurtenances shall at all times be kept clean, safe and sanitary and in good order, condition, replacement and repair by Tenant, at Tenant's sole cost and expense, except for ordinary wear and tear (provided, however, that, without limiting the generality of this Section 5.2, Tenant shall be obligated to replace any portion of the Leased Premises upon any obsolescence thereof or if proper repair is impractical). Tenant shall provide (if not currently a part of the Leased Premises) and maintain, repair and replace, as necessary, all furniture, fixtures, equipment and/or other personal property required by any Governmental Authority (other than furniture, fixtures, equipment and/or other personal property owned by contractors providing ancillary services at the Facility) necessary for the operation of the Facility and to comply with all Laws. All such property provided by Tenant shall immediately become the property of Landlord and Tenant shall execute such documentation as Landlord may reasonably require vesting title in such property in Landlord. Landlord shall have no liability or obligation with respect to such property or any of Tenant's operations relating thereto. All replacements made by Tenant hereunder shall be made in a good and workmanlike manner in accordance with Laws using the same, similar or better quality of materials as being replaced and shall immediately become the property of Landlord. Tenant acknowledges that title and ownership of all repaired and replaced furniture, fixtures, equipment and/or other personal property made hereunder shall belong to and is for the benefit of Landlord. Tenant shall not enter into any equipment leases or conditional sales contracts for any furniture, fixtures, equipment and/or other personal property relating to the Facility without Landlord's consent which it may grant or withhold in its sole discretion. The term "Laws" means, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Leased Premises or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Tenant, at any time in force affecting the Leased Premises or any part thereof. The term "Governmental Authority" means any court, board, agency, arbitrator, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

**Section 5.3** Improvements, Renovation, Alterations and Additions. Tenant shall have the right during the Term to make such non-structural interior alterations, changes and improvements to the Leased Premises as may be proper and necessary for the conduct of Tenant's business, to cause the Leased Premises to conform to all Laws, for patient comfort and safety, or for the full beneficial use of the Leased Premises, so long as such improvements do not (i) exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) in any given calendar year, (ii) interfere with any of the purposes for which the Facility was leased or affect the roof or structure, (iii) decrease the value of the Leased Premises, (iv) affect any building system, including, heating, ventilation, air conditioning, mechanical, electrical, plumbing or vertical transport systems, or (v) affect the exterior appearance of the Leased Premises. Tenant shall not make any other alterations, changes, or improvements without the express written approval in each instance by Landlord, which consent shall not be unreasonably withheld; provided, however, that the granting or withholding of consent shall not result in any liability to Landlord. Furthermore, Tenant may make all repairs or replacements required by a Governmental Authority without obtaining Landlord's consent, provided, however, Tenant shall give Landlord no less than ten (10) days prior written notice of such government mandated repairs or replacements prior to making or implementing same, unless emergency factors necessitate the making of such repairs before Tenant can reasonable give notice to Landlord, in which event Tenant shall give notice to Landlord as soon as reasonably possible. Tenant shall pay for all costs, fees and penalties imposed by the applicable state agencies or the Center for Medicare and Medicaid Services ("CMS") or other Governmental Authority in connection with any survey or the Change of Ownership. Tenant shall notify Landlord of any alterations, changes or improvements required and/or permitted by the applicable state agencies or the CMS or other Governmental Authority prior to the commencement thereof. Tenant shall pay all costs and expenses of any required and/or permitted alterations, changes, and improvements, shall make the same in a good and workmanlike manner, and in accordance with all Laws, having obtained all necessary permits and approvals from Governmental Authorities having jurisdiction over the Facility and work performed thereon or therein, and shall assure Landlord, in form reasonably satisfactory to Landlord, all necessary permits and authorizations have been received and that payment for the work and materials will be made by Tenant. Tenant hereby completely and fully indemnifies Landlord against any mechanic's liens or other liens or claims in connection with the making of any alterations, changes, and/or improvements. Any liens arising out of any required and/or permitted alterations, changes, and/or improvements shall be discharged of record by Tenant within the earlier of thirty (30) days after the same have been filed by payment, bonding or otherwise, as permitted by law, or five (5) days after commencement of a foreclosure or enforcement action. Notwithstanding any provision of this Lease to the contrary, Tenant shall not undertake any alterations, renovations, or improvements to the Facility or otherwise commence any project or activity with respect to the Facility, which may result in any bed being taken out of service for more than seven (7) days without Landlord's and/or Mortgagee's prior written consent, which Landlord's consent shall not be unreasonably withheld. Tenant shall give Landlord written notice ten (10) days prior to commencing repairs, construction, or alterations whose costs exceed One Hundred Thousand Dollars (\$100,000.00).

**Section 5.4** Signage. All signs installed by Tenant at the Facility shall comply with all Laws, and all necessary permits or licenses shall be obtained by Tenant. Tenant shall maintain all signs in good condition and repair, and/or replace as may be required by applicable law, at all times at Tenant's sole cost and expense. Upon vacating the Leased

Premises, Tenant shall remove all signs and supporting material or installations so installed by Tenant, but only if Landlord shall request such removal, and Tenant shall repair all damage caused by such removal. Landlord acknowledges and agrees that neither Landlord nor any subsequent tenant of Landlord shall be authorized to use any company or registered trade name of Tenant or any of Tenant's affiliates or subtenants.

Section 5.5 Surrender. (a) Subject to applicable law and to receipt of any necessary DOH approval, Tenant shall deliver up and surrender to Landlord possession of the Leased Premises and all improvements and replacements thereof, including all of Tenant's alterations, improvements work (and all replacements thereof) and all fixtures permanently attached to the Leased Premises by Tenant during the Term, upon the expiration of this Lease or its termination in any manner whatsoever, in as good condition and repair and in substantially similar form, character and manner as the same shall be on the Commencement Date, reasonable wear and tear excepted (without compensation to Tenant), with permitted changes, improvements and additions made during the Term as authorized herein, subject to no liens, encumbrances, charges, restrictions, conditions, limitations or claims whatsoever to the extent not encumbering the Leased Premises as of the Commencement Date, and deliver the keys and/or operational security cards to the Leased Premises to Landlord or Landlord's designated agent.

(b) Licenses and Transfer of Operations. Upon the expiration of the Term or earlier termination of the Lease, Tenant shall and shall cause its subtenants to, (i) transfer to Landlord or Landlord's nominee a fully operational, licensed and certified, and staffed facility and shall cooperate with Landlord or Landlord's designee or nominee in connection with the processing by Landlord or Landlord's designee or nominee of any applications for all licenses, operating permits and other governmental authorization, all contracts, including contracts with all Governmental Authorities or quasi governmental entities (provided that except following a Lease Default, the reasonable costs and expenses of the processing of any such application shall be paid by Landlord or Landlord's designee or nominee), (ii) transfer to Landlord or Landlord's nominee all tangible personal property of Tenant, including financial and accounting records, business records, data, employee and/or personnel records, patient and resident records, and all records held in electronic form, (all subject to the Laws requiring confidentiality), all equipment and small ware and all inventory used in connection with the Facility, (iii) transfer to Landlord or Landlord's nominee all intangible property except accounts receivable of Tenant, and (iv) transfer to Landlord or Landlord's nominee all residents in the Facility. With respect to resident funds, Tenant shall transfer to Landlord or its designee, all patient and resident trust accounts, and shall cause its subtenant to prepare and submit to Landlord or its designee a true, correct, and complete accounting and inventory (properly reconciled) of any patient trust funds and resident property to be transferred to Landlord, or its designee. Tenant shall, and shall cause its subtenant, not to commit any act or be remiss in the undertaking of any act that would jeopardize the licensure or certification of the Facility, and Tenant shall and shall cause its subtenant to comply with all requests for an orderly transfer of the same upon the expiration or early termination of the Term, including, but not limited to, upon the request of Landlord or its designee, the transitioning of employees in compliance with applicable laws. Without limiting the generality of the foregoing, if requested by Landlord or a proposed replacement operator for the Facility, Tenant hereby agrees to enter into a reasonable operations transfer agreement with such replacement operator. Tenant shall not unreasonably withhold, condition or delay its



consent to entering into any interim subleases or management agreements as may be necessary to effectuate an early transfer of the operations of the Facility prior to the time that such replacement operator holds all licenses and permits from all applicable Governmental Authorities with jurisdiction necessary to operate the Facility for its intended use. In addition, upon request, Tenant shall and shall cause subtenants, to promptly deliver copies to Landlord or Landlord's designee of all books and records relating to the Leased Premises and operations thereon (including inventories, employee lists and personnel records, and policies and procedures manuals). Tenant shall allow Landlord or a proposed replacement operator for the Facility to utilize Tenant's, subtenants' computer hardware and software for a minimum of ninety (90) days to facilitate the transfer of operations, the collection of accounts receivables, the billing of providers, and the provision of patient care. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any loss, damage, cost or expense incurred by Landlord or Landlord's designee or nominee in connection with the correction of any and all deficiencies of a physical nature identified by any Governmental Authority responsible for licensing the Leased Premises in the course of any change of ownership inspection and audit. Tenant shall be responsible for any alterations or renovations necessitated by, or imposed in connection with, a change of ownership inspection survey for the transfer of operation of the Leased Premises to Landlord or its designee. Tenant shall not commence to wind up and terminate the operations of the Facility or relocate the patients or occupants of the Facility to any other health care facility. In addition, Tenant shall not terminate the employees of the Facility except in connection with and upon the transfer of operations of the Facility to Landlord or its designee.

(c) If Landlord notifies Tenant in writing that it intends to transfer the operations of the Facility to a new operator and desires to have Tenant continue to operate the Facility after the Expiration Date or earlier termination of the Lease, then Tenant shall continue to operate the Facility until the earliest to occur of (i) the date on which such successor operator shall assume operation of the Facility, or (ii) the date that is 180 days after the applicable Expiration Date or termination date (the "Reimbursement Period"). During the Reimbursement Period (x) Landlord shall provide Tenant with an operating budget, (y) Landlord shall include in the aforesaid operating budget, and Tenant shall continue to pay during the Reimbursement Period, all Rent that would have been owing under this Lease as to the Leased Premises if this Lease had not expired or terminated as to, and/or Tenant had not been dispossessed from, such Leased Premises, and (z) provided that this Lease was not terminated with respect to, and Tenant was not dispossessed from, such the Lease Premises due to a Lease Default, Landlord shall reimburse Tenant for any operating deficits with respect to the Facility that Tenant may be required to fund out-of-pocket on account of operating losses and expenses incurred by Tenant by reason of, or arising out of compliance with, such budget with respect to the Reimbursement Period. Any such reimbursement shall be due from Landlord to Tenant within 60 days after request by Tenant, provided that Tenant shall furnish such documentation of any operating deficits, losses and expenses as Landlord may reasonably request. The terms of this Section 5.5(c) shall survive the expiration or earlier termination of this Lease and/or any dispossession of Tenant from the Lease Premises.

(d) Use of Legacy Tradename. Without limitation of the other provisions of this Section 5.5 and notwithstanding anything to the contrary contained in this Lease, Tenant agrees to allow Landlord or its designee operator, at its option and at no cost to Landlord or any such designee, to continue to use, in its signage, marketing and advertising materials, operations

and otherwise, any or all name(s) (including tradenames) associated with the operation of the Facility as a going concern for up to 180 days following (i) the expiration or termination of this Lease and (ii) the vacation from, and surrender of, the Leased Premises and Facility by Tenant. At the end of such 180 day period, or upon sooner written notice from Landlord to Tenant, Tenant shall, promptly and at its expense, remove its aforesaid name(s) from all signs on the Facility and repair any damage to such signs caused by such removal. Landlord acknowledges and agrees that Tenant, not Landlord, owns the aforesaid names and that neither Landlord nor any designee of Landlord may use the same except as described in this Section 5.5(d) or as otherwise agreed in writing by Tenant.

(e) Management of Terminated/Dispossessed Premises. Commencing on the applicable Termination/Dispossession Date as to any Terminated/Dispossessed Premises, Landlord or its designee, upon notice to Tenant, may elect to assume the responsibilities and obligations for the management and operation of the Business at such Terminated/Dispossessed Premises, and Tenant agrees to cooperate fully to accomplish the transfer of such management and operation without interrupting the operation of such Business to the extent allowable by Law. Tenant shall permit Landlord or its designee to operate the Facility under Tenant's licenses, certifications and other authorizations pending the issuance of new licenses, certifications and other authorizations Landlord or its designee. Tenant shall not commit any act or be remiss in the undertaking of any act that would jeopardize any licenses, certifications and other authorizations related to the Facility, and Tenant shall comply with all requests for an orderly transfer of all licenses, certifications and other authorizations related to the Facility and any payor's certifications.

(f) In addition, upon any expiration or termination of this Lease, Tenant covenants and agrees to do such things and to take such action as may, from time to time, be necessary or appropriate to permanently surrender and withdraw from possession and operation (including but not limited to licensure and certification) of the Leased Premises, and shall thereafter be fully and permanently relieved of all powers, duties, responsibilities and obligations that are conferred or imposed upon Tenant under this Lease (except those continuing obligations, including but not limited to the obligation to pay all Rent due and owing under this Lease, and the obligation to pay all amounts owed by Tenant to the Medicare, Medicaid, third party payor programs and residents for the period of the Term, which survive the termination hereof as provided herein) and to restore and place Landlord or its designee in possession and operation of the Leased Premises, or any portion thereof, and Tenant covenants and agrees to execute and deliver to Landlord or Landlord's designee (each subject to the approval of DOH) all assignments, operation transfer agreements, consents, consents to assignments (including Medicare and Medicaid provider agreements, if requested by Landlord) documents and other instruments, to the reasonable satisfaction of Landlord in order to effectuate the provisions hereof.

Section 5.6 Condition of Leased Premises. (a) Subject to Section 5.1, Tenant shall accept and take possession of the Leased Premises in its "AS IS," "WHERE IS" "WITH ALL FAULTS" condition, and acceptance of possession of the Leased Premises on the Commencement Date shall be deemed an acknowledgment by Tenant of Tenant's acceptance of the condition of the Leased Premises. Tenant acknowledges and agrees that Landlord is not making any representation, warranty or covenant whatsoever with respect to the condition of the

Leased Premises, or any portion thereof, or its suitability for any particular purpose, and Tenant shall be relying solely on its inspection of the Leased Premises and due diligence investigations with respect thereto.

(b) LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND FOR COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. EFFECTIVE AS OF THE DATE OF THIS LEASE, TENANT SHALL RELEASE LANDLORD FROM ALL CLAIMS WHICH TENANT OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MANAGER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTING ON TENANT'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH TENANT ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES, INCLUDING THE INFORMATION AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS, AND TENANT SHALL NOT LOOK TO LANDLORD IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION, EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS LEASE: (A) TENANT WILL ACQUIRE THE LEASED PREMISES SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS, AND (B) WITHOUT LIMITING THE FOREGOING, WAIVES ANY RIGHT IT OTHERWISE MAY HAVE AT LAW OR IN EQUITY AGAINST LANDLORD WITH RESPECT TO ANY ASPECT OF LEASED PREMISES.

ARTICLE VI  
INSURANCE

Section 6.1 Insurance (a) Tenant shall obtain and maintain, or cause to be maintained, insurance for Tenant and the Facility providing at least the following coverages or as required from time to time by any Mortgagee:

(i) comprehensive "all risk" insurance on the Facility and the Personal Property, including Building Ordinance Coverage from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation (except with respect to the insurance pursuant to clauses (D), (x), (y) and (z) below); (B) containing an agreed amount

endorsement with respect to the Facility and Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Ten Thousand Dollars (\$10,000.00) for all such insurance coverage (except as stated in the penultimate sentence of this subsection); and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if the Facility or the use of the Facility shall at any time constitute legal non-conforming structures or uses and covering the increased cost of construction, demolition cost, value of the undamaged portion of the structure and any increased expenses to rebuild due to the enforcement of building or zoning laws or requirements following a covered loss of the Leased Premises. In addition, Tenant shall obtain: (x) if any portion of any of the Leased Premises is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of any loan encumbering the Leased Premises or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or successor legislation, or such greater amount as Landlord and/or Mortgagee shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in an area with a high degree of seismic activity and (z) coastal windstorm insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in a coastal region; provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive insurance policy required under this Subsection (i); and further provided that the earthquake insurance pursuant to clause (y) may provide for a deductible of up to the greater of One Hundred Thousand Dollars (\$100,000.00) and two percent (2%) of the amount of such coverage, (III) the flood insurance pursuant to clause (x) may provide for a deductible of up to One Hundred Thousand Dollars (\$100,000.00), and (IV) the ordinance and law coverage pursuant to clause (D) may have a sub-limit of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Facility, such insurance (A) with a combined limit of not less than Five Million Dollars (\$5,000,000.00) in the aggregate and Two Million Dollars (\$2,000,000.00) per claim (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) to continue at not less than the aforesaid limit until required to be changed by Landlord and Mortgagee in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability; and (5) contractual liability covering the indemnities contained in Section 9.1 of the Lease to the extent the same is available;

(iii) business income with extra expense insurance (A) with loss payable to Landlord and Mortgagee; (B) covering all risks required to be covered by the insurance provided for in Subsection (i) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss in the Facility and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Facility is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred

percent (100%) of the projected net profit and extra expense with respect to the Facility for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire at the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Tenant's reasonable estimate of the gross income from the Facility for the succeeding twelve (12) month period. Nothing herein contained shall be deemed to relieve Tenant of its obligations to pay the Rent when due except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Facility, and only if the Facility coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above and (3) with an agreed amount endorsement waiving co-insurance provisions;

(v) worker's compensation insurance with respect to any employees of Tenant, as required by any Governmental Authority, Health Care Authority, Legal Requirement or Health Care Requirement;

(vi) boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Landlord and Mortgagee on terms consistent with the commercial property insurance policy required under Subsection (i) above;

(vii) intentionally omitted;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million Dollars (\$1,000,000.00);

(ix) if the Facility is or becomes a legal "non-conforming" use, ordinance or law coverage and insurance coverage to compensate for the cost of (upon a Casualty) demolition or rebuilding of the undamaged portion of the Facility along with any reduced value and the increased cost of construction in amounts as requested by Landlord and Mortgagee;

(x) the commercial property and business income insurance required under Sections 6.1(a)(i) and (iii) above shall cover perils of terrorism and acts of terrorism and Tenant shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i) and (iii) above at all times during the Term;

(xi) professional liability and malpractice insurance with limits of at least Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate. Tenant shall also require each medical director for the Facility and the associated nurse practitioner at the Facility to carry professional liability and malpractice insurance with

limits of not less than Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate; and

(xii) notwithstanding anything to the contrary in the foregoing, all insurance coverage required by any mortgagee of Landlord shall be met by Tenant, from time to time as necessary;

(xiii) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Landlord and/or Mortgagee from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Facility located in or around the region in which the Facility is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or, in the singular, the "Policy"), and shall be subject to the approval of Landlord and Mortgagee as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State of New York and having a claims paying ability rating of "A" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the companies (one of which shall be S&P if they are rating the securities and one of which will be Moody's if they are rating the companies), or if only one Rating Agency is rating the companies, then only by such Rating Agency and shall specifically name Landlord and Mortgagee as loss payees and additional insureds, as applicable. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Landlord and Mortgagee, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Landlord and Mortgagee of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Tenant to Landlord and Mortgagee.

(c) Any blanket insurance Policy shall specifically allocate to the Facility the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Facility in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Tenant as the insured and Landlord and Mortgagee as the additional insured, as their interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called lender's loss payee endorsement in favor of Mortgagee providing that the loss thereunder shall be payable to Mortgagee.

(e) All Policies provided for in Section 6.1 shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Tenant, or anyone acting for Tenant, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Landlord and Mortgagee are concerned;

(ii) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' written notice to Landlord and Mortgagee and any other party named therein as an additional insured;

(iii) the issuers thereof shall give notice to Landlord and Mortgagee if the Policies have not been renewed fifteen (15) days prior to its expiration; and

(iv) Neither Landlord nor Mortgagee shall be liable for any insurance premiums thereon or subject to any assessments due thereunder.

(f) If at any time Landlord and Mortgagee is not in receipt of written evidence that all Policies are in full force and effect, either shall have the right, without notice to Tenant, to take such action as either deems necessary to protect its interest in the Leased Premises, including, without limitation, the obtaining of such insurance coverage as either in its sole discretion deems appropriate. All premiums incurred by Landlord and/or Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Tenant to Landlord and/or Mortgagee, as the case may be, upon demand and, until paid, shall be secured by the Mortgagee and shall bear interest at the Overdue Rate.

(g) Tail Insurance. If Tenant has claims made insurance coverage of any type, upon expiration or earlier termination of this Lease, Tenant shall purchase so-called "tail" insurance for a period of three years in an amount not less than its existing coverages in order to assure Tenant is covered by insurance after the expiration or earlier termination of this Lease for all claims arising or relating to the period prior to the expiration or earlier termination of this Lease, and Landlord and Mortgagee shall be named as additional insured thereunder.

Section 6.2 Certificates of Insurance. Upon the Commencement Date of this Lease, Tenant shall furnish Landlord, Mortgagee and other third parties which Landlord shall designate with appropriate certificates of insurance on acceptable Acorf forms, together with an additional insurance endorsement showing that each type of insurance required under this Article VI is in full force and effect and not cancelable or modifiable without thirty (30) days prior written notice to Landlord, and upon request of Landlord or one or more of such additional insureds, deliver copies of such insurance policies. Tenant will provide Landlord with acceptable certificates of insurance pursuant to this Section 6.2 evidencing the renewal of such Policies ten (10) Business Days prior to the Policies' expiration date. Tenant acknowledges that all such certificates shall name Landlord, its successors and assigns, and Mortgagee, its successors and assigns, as additional insureds on the general liability and umbrella policies and as a loss payee/mortgagee, as their interests may appear, on the property and boiler and machinery policies.

Section 6.3 Waiver of Subrogation. Landlord and Tenant hereby waive all rights of recovery for causes of action which either has or may have or which may arise hereafter against the other for any damage to the Leased Premises or the property or business of either of them or of anyone claiming through either of them, by way of subrogation or otherwise, caused by any of the perils covered by a special form policy of property insurance or contents insurance or by any other insurance for damage to property carried by the party whose property was damaged; provided, however, that the foregoing waiver shall apply only if and to the extent that

A waiver of subrogation for property damage is not prohibited in the State of New York, has been consented to by the applicable insurance carrier, and only to the extent of such insurance coverage.

ARTICLE VII

SECURITY, ACCESS AND REPORTING OBLIGATIONS, WORKING CAPITAL

Section 7.1 Security Deposit/Guaranty.

(a) Contemporaneously with the execution of this Lease, Tenant, shall deliver a guarantee of this Lease (the "Guaranty") from Lizer Josefovic and Mark Neuman (collectively, the "Guarantors") in the form of Exhibit "B" attached hereto, or in form and amounts as may be otherwise required by the Landlord and Landlord's first and second Mortgagee. The Guaranty shall set forth that the Guarantors will be required to cooperate in turning the license over to the Landlord's designee or be personally liable for all costs, expenses and damages or deficiencies. The Guarantors shall ensure that the Tenant shall deliver all of the documents required to transfer the license in escrow to Posternak, Blankstein & Lund, or such other party as Landlord designates. As further security for the Tenants performance under the Lease, the Tenant hereby agrees as follows:

(i) Tenant agrees that it shall deliver to Landlord 60 days prior to the Commencement Date, an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached hereto as Exhibit 7.1(a) or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months.

(ii) Tenant agrees that it shall deliver 60 days prior to the anticipated Commencement Date either (i) an unconditional Letter of Credit, in accordance with the Letter of Credit Agreement attached hereto as Exhibit 7.1(b) (which shall be executed simultaneously herewith), in the amount of \$3,700,000, or (ii) \$3,700,000 in cash ("Security Deposit") to secure the full and timely payment and performance of Tenant's obligations under this Lease. Tenant's failure to deliver the Letter of Credit or timely pay to Landlord the Security Deposit shall be deemed a Lease Default by Tenant. Landlord may retain the Security Deposit in such accounts as Landlord elects in its sole discretion and Landlord may commingle the Security Deposit with other funds of Landlord or its affiliates. Tenant shall have no right to any interest on the funds comprising the Security Deposit that it delivers to Landlord.

(iii) Sixty days prior to the anticipated Commencement Date, the funds in the controlled account number [REDACTED] 7272 in JPMorgan Chase Bank, N.A. (the "Bank") in the amount not less than \$1,600,000 shall be delivered by Tenant to Landlord and released by Tenant to Landlord to be held as an additional Security

Deposit by Landlord. The letter to Bank implementing the Tenant's obligations pursuant to the preceding sentence, attached hereto as Exhibit 7.1(c), which shall be held in escrow by Posternak, Blankstein & Lund, shall be delivered by it to the Bank sixty days prior to the anticipated Commencement Date upon notice from Landlord.

(b) The term "Letter of Credit" shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit in favor of Landlord in form and content reasonably satisfactory to Landlord and entitling Landlord to draw thereon without the payment of any fees or charges in New York, New York, issued by a domestic banking institution or the U.S. agency or branch of a foreign banking institution; provided, that such banking institution has a long term senior unsecured debt obligation rating of at least "AA" by S&P. The Letter of Credit shall have an expiration date of the date that is the first anniversary of the date hereof. The Letter of Credit shall provide that it shall be deemed automatically renewed (without amendment) for consecutive periods of one year each thereafter during the Term unless the issuing bank sends written notice to Landlord and Tenant by certified mail, return receipt requested, not less than thirty (30) days preceding the then expiration date of the Letter of Credit that it elects not to have such Letter of Credit renewed. If such notice is sent, then at least twenty (20) days prior to the expiration of the Letter of Credit (and each subsequent or replacement Letter of Credit), Tenant shall deliver to Landlord a new Letter of Credit in the same amount and a failure to do so shall entitle Landlord to draw upon the existing Letter of Credit and to receive the proceeds therefrom and hold such proceeds as a cash Security Deposit pursuant to this Section 7.1 pending delivery of a new Letter of Credit.

(c) Upon a Lease Default, Landlord shall have the right, but not the obligation, in Landlord's sole and absolute discretion, to draw upon the Security Deposit and/or Letter of Credit and apply some or all of the funds to remedy such default or occurrence and to compensate Landlord for any loss or damage resulting therefrom, without prejudice to any other rights or remedies of Landlord under this Lease or at law or in equity. Upon any such application by Landlord, Tenant shall promptly deposit with Landlord an amount in cash equal to the amount from the Security Deposit so utilized by Landlord. Landlord shall at all times have, as security hereunder, Letter of Credit and cash Security Deposit in the amounts stated in Section 7.1(a). Upon the termination or expiration of this Lease, as long as Tenant has performed all of its obligations pursuant to this Lease and no Lease Default has occurred which is continuing, the remaining amount of the Security Deposit shall be returned or refunded to Tenant, without interest, subject in all events to Landlord's right to apply the Security Deposit as provided herein.

(d) Upon the occurrence of a Lease Default, Landlord may use, apply or retain the whole or any part of the Security Deposit or draw under a Letter of Credit to the extent required for the payment of any Rent or any other sums as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the reletting of all or any portion of the Leased Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the Security Deposit, Tenant shall upon demand immediately deposit with Landlord a sum equal to the amount so used, applied or retained. In the event of any sale or financing of Landlord's interest in the Leased Premises, Landlord shall have the right to assign its interests in the

Security Deposit to the transferee, assignee or mortgagee, as the case may be, and if Landlord has given notice to Tenant of the assignment of Landlord's interest in the Security Deposit and if assignee or transferee of the Security Deposit has accepted liability for the Security Deposit, Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof; and Tenant shall look solely to the new landlord or mortgagee for the return or payment of the same. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit and neither Landlord, nor its successors or assigns, shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

**Section 7.2 Access to Leased Premises.** Tenant shall permit Landlord, Mortgagee and their agents to enter upon the Leased Premises at all reasonable times during ordinary business hours and upon at least twenty-four (24) hours advance oral notice (except that in the case of emergency, Landlord may enter at any time and without prior notice) to inspect and examine the Leased Premises, to perform repairs as to Landlord's Work pursuant to Section 5.1, and to inspect and copy any operating manuals, procedures manuals, training manuals, and other books and records concerning unemployment, workers' compensation, insurance, tax, and any other business issues pertaining to the Leased Premises (subject to applicable laws and regulations governing patient confidentiality and privacy and the confidentiality of medical records) and any information necessary for audit relating to cost reimbursement, collections, general financial matters, litigation, inquiries and related activities (as may be necessary in connection with the Lease or the Leased Premises or any matters relating to periods prior to the Commencement Date). Any access by Landlord to patient records or medical records shall be strictly governed by Laws governing patient confidentiality and privacy and the confidentiality of medical records and all appropriate consents and/or waivers from residents or their guardians or representatives shall have been obtained before access to such records shall be granted. Landlord shall make reasonable efforts not to materially interfere with or materially disrupt Tenant's business and use and enjoyment of the Leased Premises during any such inspection or examination. Landlord shall also have the right but not the obligation to conduct a physical inspection of the Facility and from time to time and within ninety (90) days prior to the expiration of the Term or earlier termination of the Lease, upon twenty-four (24) hours advance oral notice. If Landlord reasonably determines based on this inspection that the Facility, or any portion of the Facility, requires repairs or maintenance so that the condition of the Facility is in compliance with this Lease and all Laws, then within thirty (30) days of notification by Landlord, Tenant shall commence making said repairs and diligently pursue such repairs to completion. Should Tenant fail to do so, within seven (7) days of notification by Landlord, Tenant shall pay to Landlord a deposit of funds in an amount equal to Landlord's reasonable estimate of the costs of such repairs or maintenance, which funds shall be released to Tenant from time to time during the progress of such repairs and maintenance based on submission by Tenant of evidence reasonably satisfactory to Landlord that such work is complete and all costs and expenses incurred to date have been paid in full. Tenant and Landlord acknowledge that the operations of the Facility and its maintenance are the sole and absolute responsibility of Tenant. Landlord shall have no liabilities or obligations with respect to the Facility, including no liabilities or obligations with respect to inspections of the Facility or the failure by Landlord to inspect the Facility.

Notwithstanding anything to the contrary in this in this Lease, Landlord and Tenant agree that all information, records and data collected or maintained regarding Facility



residents shall be confidential. Landlord, Tenant, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable New York and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) and the regulations issued in connection therewith (collectively, "HIPAA"). No employee or agent of Landlord or Tenant shall discuss, transmit or narrate in any manner the Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility's assets, or otherwise fulfilling its obligations under this Lease or under law. The obligations under this Section 7.2 shall survive the termination of this Lease, whether by rescission or otherwise.

Section 7.3 Changes in Licensure and Certification Status. As of the Commencement Date, Tenant represents and warrants that the number of beds licensed or certified for the Facility is one hundred sixty (160). Tenant shall not increase or decrease the licensed or certified number of beds, or change the license or certification thereof, without the consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; Tenant may increase the number of licensed or certified beds of the Facility upon thirty (30) days prior written notice to Landlord, but without the prior written consent of Landlord. If required, Tenant shall not increase the number of beds without the consent of the Commissioner and/or the DOH and Tenant agrees to return to Landlord upon the expiration of the Lease, the Leased Premises. Should Tenant increase the number of licensed beds at the Facility, the Fixed Rent payable for the Facility shall be increased proportionately for such additional beds. In no event shall the Fixed Rent be reduced in the event the number of Licensed Beds at the Facility is reduced. Landlord and Tenant acknowledge that the Leased Premises are, and at all times under the Term of this Lease are, the sole and absolute property of Landlord. Upon any termination of this Lease or any Lease Default by Tenant hereunder (which breach or default is not cured within any applicable grace period), and subject to the approval of the DOH, Landlord shall have the right to cause the Facility's licenses to be reissued in Landlord's name or in the name of Landlord's designee upon application therefor to, and the receipt of approval from, the DOH and to further have the right to have any and all Medicare, Medicaid and any other provider and/or third party payor agreements issued in Landlord's name or in the name of Landlord's designee. In the event Landlord exercises its rights pursuant to this Section 7.3, Tenant and Guarantors shall cooperate with Landlord in transferring the aforementioned items to Landlord's name or for the benefit of Landlord or as Landlord may direct pursuant to the terms of this Lease.

Section 7.4 Reporting and Other Obligations.

(a) During the Term, Tenant shall and shall cause all Subtenants, sub-subtenants and any operators of the Facility to provide (without duplication) Landlord and Mortgagee with the following reports, statements, and inspections:

(i) Annual Budget. Within 60 days prior to the projected Substantial Completion Date, and no later than thirty (30) days prior to the end of each calendar year thereafter, Tenant shall submit to Landlord an annual budget (each an "Annual Budget") covering the operations of and proposed capital expenditures to be made with respect to the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Annual Budget).



(A) Capital Expenditures. The Annual Budget shall include a capital budget (the "Capital Budget") outlining a program of capital expenditures as may be required by Law, any lender to Landlord, or Tenant's reasonable business judgment during the next calendar year (or the remainder of the current calendar year, in the case of the initial Capital Budget), in which each proposed capital expenditure will be designated as either mandatory, highly recommended or desirable. Tenant shall be responsible for designating as a "mandatory capital expenditure" any expenditure which, if not made would, in Tenant's reasonable judgment: (a) cause the Facility to lose or put at risk its License; (b) place at risk the safety of a patient or resident or employee of the Facility; (c) cause the ineligibility of the Facility under any third party payor program applicable to the Facility; (d) cause the issuance of a formal notice that any of the operating licenses for the Facility or any substantial portion of the Facility will be revoked or suspended or qualified in any material adverse respect; or (e) subject Landlord or Tenant to criminal prosecution. Tenant shall make during the calendar year, or calendar quarter for which they are budgeted, all capital expenditures approved by Landlord. On and after the Commencement Date, Tenant shall expend at least Five Hundred Twenty-Three Dollars (\$523.00) per bed per annum for capital expenditures at the Facility, including amounts expended to comply with the licensure and other expenditures required by any Governmental Authority or such other amounts as may be required by Mortgagee from time to time. If Mortgagee requires Landlord to deposit sums for capital expenditures, replacements and/or refurbishments relating to furniture, fixtures, equipment and/or improvements to the Facility, then Tenant shall pay to Landlord, as Additional Rent hereunder, all reserve or escrow amounts, sums and/or deposits which Landlord is required to pay to such Mortgagee with respect to such capital expenditures, replacements and/or refurbishments. Tenant shall pay any and all of such amounts and sums to or as directed by Landlord as Additional Rent hereunder together with each payment of Fixed Rent hereunder. Tenant acknowledges that as of the date hereof, Mortgagee requires a monthly deposit of Five Hundred Twenty-Three Dollars (\$523.00) per bed with respect to the Facility. In the event that such deposits are made by Tenant hereunder, Landlord shall use its reasonable efforts, subject to the terms and conditions of the loan agreements with Mortgagee, to obtain disbursements of such funds to be used for the payment of or reimbursement for the costs of such capital expenditures, replacements and/or refurbishments.

(B) Operating Budget. The Annual Budget shall include an operating budget (the "Operating Budget") setting forth an estimate of operating revenues and expenses for the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Operating Budget), together with an explanation of anticipated changes in the Facility. Tenant shall provide to Landlord upon written request such other reports, including a cost comparison report, and all appropriate Medicare and Medicaid reports, as may be required under these programs, as are normally provided by Tenant to the owners of other similar rehabilitation hospitals, psychiatric hospitals, and skilled nursing facilities leased by Tenant.

(ii) Financial Reporting. Tenant will keep and maintain or will cause to be kept and maintained on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Tenant and all items of income and expense in connection with the operation on an individual basis of the Facility. Notwithstanding the foregoing, Tenant's interim unaudited financial statements shall be prepared in accordance GAAP for interim financial information, but may not include all information or notes required by GAAP for a complete set of financial statements; such financial statements

shall include all adjustments and reclassifications of a normal recurring nature considered necessary for a fair and comparable presentation; all such interim financial statements shall be read in conjunction with most recent audited financial statements. Landlord and Mortgagee shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Tenant or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Landlord and/or Mortgagee shall desire. After the occurrence of a Lease Default, Tenant shall pay any costs and expenses incurred by Landlord and/or Mortgagee to examine Tenant's accounting records with respect to the Facility, as Landlord and/or Mortgagee shall reasonably determine to be necessary or appropriate in the protection of Landlord and/or Mortgagee's interest.

(iii) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, as soon as available, and in any event (A) within thirty (30) days after each calendar month's end, unaudited monthly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the month then-ended and year to date, prepared on a basis consistent with the annual statements; monthly census and revenue information of the Facility as of the end of such month and year to date in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average monthly census of the Facility and year to date; an aged accounts receivable report from the Facility in sufficient detail to show amounts due from each class of patient-mix by the account age classifications of 30 days, 60 days, 90 days, 120 days, and over 120 days; (B) within forty-five (45) days after the end of each calendar quarter, unaudited quarterly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the quarter then-ended, prepared on a basis consistent with the annual statements; quarterly census and revenue information of the Facility as of the end of such quarter in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average quarterly census of the Facility; (C) no later than 120 days after the end of each calendar year of Tenant, audited annual financial statements of Tenant, prepared by an independent certified public accounting firm reasonably acceptable to Landlord, prepared in accordance with generally accepted accounting principles, with an unqualified opinion, and including a balance sheet, a statement of income and expenses for the year then ended, a statements of cash flow, and a schedule audited by such independent certified public accountant reconciling Tenant's, net operating income to net cash flow, which shall itemize all adjustments made to net operating income to arrive at net cash flow deemed material by such independent certified public accountant.

(iv) Each financial report provided by Tenant shall reconcile and show variances between the actual experience incurred during each such reporting period with respect to each metric to the metric shown on the Operating Budget and Capital Budget for such period.

(v) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, any other reports and certificates reasonably requested by Landlord or Mortgagee from time to time.

(vi) In addition, Tenant shall prepare and deliver to Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, a written report providing an operational overview of significant events and circumstances at the Facility during the prior month, during the first six months of the Term and then quarterly thereafter, including, but not limited to, clinical events, employee relations and staffing matters and provide such other information as Mortgagee may require from time to time. Tenant shall provide Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, with a copy of all federal income tax returns of Tenant and its Subtenants within fifteen (15) days after filing thereof. Whenever practicable, all reports shall be delivered to Landlord electronically in a format usable by Landlord.

(b) All unaudited financial reports from Tenant shall include an Officer's Certificate certifying that such financial statements present fairly the financial condition and the results of the operations of Tenant and the properties being reported upon and that such financial statements have been prepared in accordance with the Tenant's customary accounting procedures. The Officer's Certificate accompanying the annual audited financial statements of Tenant shall also include a statement that they have been prepared in accordance with GAAP and whether there exists an event or circumstance which constitutes a default or an event of default under the Lease, the nature thereof, the period of time it has existed, and the action then being taken to remedy the same.

(c) Tenant shall furnish Landlord and Mortgagee, within five (5) days of the receipt by Tenant, any and all notices (regardless of form) from any Health Care Authority that Tenant's license, Medicare or Medicaid certification, or VA or other governmental program participation is being, or could be revoked or suspended, that action is pending, being considered or being taken to revoke or suspend the Tenant's license or certification or to fine or penalize the Tenant, or that action is pending, being considered, or being taken, to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Tenant or related to the operation of the Facility other than in the ordinary course of business related to billing adjustments.

(d) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the receipt by Tenant, any and all notices (regardless of form) from any Governmental Authority or third party payor (i) alleging that the Facility has three or more deficiency(ies) of a scope and severity of "G" or hire, or one or more deficiency(ies) of a scope and severity of "J" or higher, (ii) alleging that the residents of the Facility are in jeopardy, (iii) freezing admissions to the Facility or (iv) denying reimbursement for any class of residents by any third party payor.

(e) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the sending or receipt by Tenant of any communication copies thereof, including a plan of correction, with respect to the matters referenced in Section 7.4(d).

(f) Tenant shall file all required reports, including without limitation, Medicare or Medicaid cost reports, on or prior to the date such reports are due (such due date to include approved regulatory extensions allowed by the applicable Governmental Authority for the filing of such reports) and shall furnish Landlord and Mortgagee, within thirty (30) days of the date of filing, a complete and accurate copy of the annual Medicare or Medicaid cost report



for Tenant, which will be prepared by Tenant and accompanied by an Officer's Certificate of Tenant certifying as of the date thereof that such report is accurate, complete and not misleading, and promptly furnish Landlord and Mortgagee any amendments filed with respect to such reports and all notices, responses, audit reports or inquiries with respect to such reports.

(g) Tenant shall furnish Landlord and Mortgagee, within thirty (30) days of the receipt by Tenant, the annual Medicaid and Medicare provider agreement(s) and the annual Medicaid and Medicare reimbursement rate sheets for the Facility.

(h) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt but at least five (5) days prior to the earliest date on which Tenant is required to take any action with respect thereto or would suffer any adverse consequence, a copy of any Medicare, Medicaid or other licensing or accreditation or rating agency or entity survey, report, warning letter, or notice, and any statement of deficiencies, and within the time period required by the particular agency for furnishing a plan of correction also furnish or cause to be furnished to Landlord and Mortgagee a copy of the plan of correction generated from such survey, report, warning letter, or notice to Tenant and any subsequent correspondence related thereto, and correct or cause to be corrected any deficiency, the curing of which is a condition of continued licensure or of full participation in Medicare or Medicaid or a care program offered by an insurance company, managed care company, or other third-party payor by the date required for cure by such agency or entity (plus extensions granted by such agency or entity).

(i) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any other notices or charges issued relating to the non-compliance by Tenant with any Governmental Authority, insurance company, managed care company, or other third-party payor laws, regulations, requirements, licenses, permits, certificates, authorizations or approvals, but only such matters which could reasonably be expected to have a material adverse effect on the financial condition of such Person or the operation of the Facility.

(j) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any new, revised or amended Medicare or Medicaid reimbursement rate sheets which may be issued subsequent to the annual reimbursement rate sheets.

(k) Tenant shall notify Landlord within five (5) days of any condition or event that constitutes a breach of any term, condition, warranty, representation or provision of this Lease or any other agreement between Landlord or its Affiliates and any Tenant, any Guarantor or any of their Affiliates, and of any adverse change in the financial condition of any Tenant, any Guarantor or any Affiliate of any Tenant or any Guarantor and of any Event of Default. Additionally, Tenant shall notify Landlord within seven (7) days after receipt of any formal or informal written notice or advice from its insurance carrier, reinsurance provider, accountants, actuary, any Governmental Authority, or any third party payor program provider of any actual, pending, threatened or contemplated increase in Tenant's reserves for expenses relating to malpractice or professional liability claims or any material increase in the premium costs for malpractice or professional liability insurance.

(l) To the extent performed, Tenant shall furnish Landlord and Mortgagee, a copy of written external consultant reports (including environmental, operations,



(quality assurance, physical plant, property inspection, etc.) (which shall be delivered promptly upon receipt from the consultant).

(m) Tenant shall furnish Landlord and Mortgagee, a copy of cost reports as filed by Tenant.

(n) Any supporting documents or data requested by Landlord in connection with the items in this Section 7.4.

(o) Within 10 days of event of any of the following, Tenant shall deliver to Landlord, notice of:

(i) any rate appeal brought before any Governmental Authority or any administrator of any third party payor program or referral source;

(ii) any reimbursement appeals or recoupment claims made or contests pending or threatened as a result of any audits by any third party payor; and

(iii) any claim, requirement or demand (excluding all claims, requirements, and demands, if any, that have been waived) of any Governmental Authority, third party payor or insurance body or carrier having or claiming any licensing, certifying, supervising, evaluating or accrediting authority over the Leased Premises to rework or redesign the Leased Premises, its professional staff or its professional services, procedures or practices in any material respect or to make any of the Leased Premises conform to or comply with a legal requirement.

(p) The receipt by Landlord of any reports, statements, financial information, surveys or otherwise from Tenant or its Affiliates shall not in any way impose any obligation or liability upon Landlord to act or take any action upon any information, facts or circumstances which may be disclosed or shown therein and Landlord shall have no liability for its failure to act thereon or as a result thereof.

(q) Financial Covenants. Tenant covenants and agrees to the following, as may be amended time to time as required by Landlord's 1st or 2nd Mortgagee:

(i) Commencing the third full quarter of the Term Tenant's Current Ratio shall not be less than 1.1 to 1.0. The term "Current Ratio" means the current assets of Tenant divided by the current liabilities of Tenant determined in accordance with GAAP.

(ii) For each quarter of the Lease Term commencing the third full quarter following the Commencement Date, Tenant's Lease Coverage Ratio shall be not less than 1.25 to 1.0.

(iii) For each quarter of the Lease Term commencing the second full quarter following the Commencement Date, the Facility shall have achieved the EBITDAR benchmarks as described on Schedule 7.4, attached hereto. The term "EBITDAR" is defined in Schedule 7.4.

Section 7.5 Payment in the Ordinary Course. Tenant shall pay in full: (a) prior in each case to the date when penalties would attach, all Impositions (except only those so long as and to the extent that the same shall be contested in good faith by appropriate and timely proceedings and for which adequate reserves have been established in accordance with GAAP), provided that (i) Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) for which Tenant may be or become liable; (ii) no Lease Default has occurred and remains uncured, (iii) such proceeding shall suspend the collection of such Impositions or the Impositions shall have been paid, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Tenant is subject and shall not constitute a default thereunder, (v) no part of or interest in the Leased Premises will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Tenant shall have furnished such security as may be required in the proceeding, or as may be requested by Landlord or Mortgagee, to insure the payment of any such Impositions, together with all interest and penalties thereon, which shall not be less than 125% of the unpaid Impositions being contested and (vii) Tenant shall promptly upon final determination thereof pay the amount of such Impositions, together with all costs, interest and penalties; (b) all of Tenant's wage obligations to Tenant's employees in compliance with the Fair Labor Standards Act (29 U.S.C. §§ 206-207) or any comparable provisions under federal, state or local law; (c) all obligations owed in connection with any claim, demand or notice of any overpayment received from Medicare, Medicaid or other third party payor; and (d) all of Tenant's obligations calling for the payment of money (except only those so long as and to the extent that the same shall be contested in good faith and for which adequate reserves have been established in accordance with GAAP, provided that Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) before such payment becomes overdue.

Section 7.6 Security Agreement. In order to secure the payment and performance of all of Tenant's obligations under this Lease and all of Tenant's obligations to Landlord, and all and all other documents contemplated thereby, Tenant hereby grants to Landlord a first priority security interest in and lien upon, all of the assets of Tenant including, without limitation, (i) all trade fixtures, equipment, furniture, merchandise, inventory and other personal property located from time to time in or upon the Leased Premises (including the proceeds thereof), and (ii) to the fullest extent permitted by applicable law, all accounts, accounts receivable, licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, certificates of need, and other authorizations issued to or held by Tenant with respect to the operation of the Facility skilled nursing facility and Tenant's interest in and rights under all third party payor provider agreements with respect to the Facility (the items listed in clauses (i) and (ii), together with the proceeds of same, are collectively, "Collateral"). The security interest granted to Landlord with respect to Tenant's tangible personal property is intended to be subordinate to any purchase money security interest or capital lease on any of Tenant's tangible personal property provided that Tenant has notified Landlord of the creation of such security interest or capital lease prior to the creation thereof and Landlord has approved same. Landlord agrees to subordinate its lien on Tenant's accounts receivable in favor of Tenant's accounts receivable lender, which shall be a nationally recognized nursing home accounts receivable lender with experience acceptable to HUD or Mortgagee on at least 20 nursing homes, securing up to a \$2,000,000.00 accounts receivable loan, provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. Should

Mortgagee require a subordination of the priority of Landlord's security interest in the Collateral, Landlord and Tenant shall execute such documents as Mortgagee may request to subordinate Landlord's lien to the Mortgagee's security interest in the collateral. In addition, Tenant's members shall grant to Landlord a first lien pledge (subject to the following sentence) of the membership interests of Tenant. To the extent required by Tenant's accounts receivable lender, Landlord agrees to subordinate its lien on Tenant's membership interests to a lien in favor of such lender securing up to a \$2,000,000.00 accounts receivable loan; provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. On or before the Commencement Date, Tenant shall provide Landlord with a detailed list and description of all the Collateral. Upon a Lease Default by Tenant, Landlord shall have all the rights and remedies of a secured party under the laws of the State of New York. Tenant, as debtor, shall cause to be executed (if appropriate or necessary) and delivered to Landlord, as the secured party, upon execution of this Lease by Tenant, UCC-1 Financing Statements in proper form, and thereafter, from time to time, deliver to Landlord such extensions and/or updates of such financing statements as are required for the purpose of perfecting and maintaining the priority of the security interest granted to Landlord herein, and to perform any other acts reasonably necessary to the perfection of such security interest. Tenant and Tenant's members consent to Landlord's preparation of and the filing of such financing statements by Landlord and agrees that the provisions of this Section 7.6 shall constitute a security agreement for the purposes contemplated hereby. The security interest granted by this Section 7.6 shall be in addition to any lien of Landlord that may now or at any time hereafter be provided by law. In the event Landlord exercises its remedies to foreclose the security interest created under this Section 7.6, or elsewhere in this Lease, Tenant shall cooperate with Landlord in transferring all of the aforementioned items promptly as requested by Landlord in Landlord's or its designee's name or for the benefit of Landlord. Tenant covenants and agrees that it shall not sell, move, surrender, cancel, modify, transfer, assign, relocate, pledge, grant a security interest in, convey or in any other manner encumber any assets of Tenant including, without limitation, the personal property, the certificate of need approval or any of the licensed or Medicare- and/or Medicaid-certified beds at the Facility, or any licenses for the Facility, or attempt at any time to do same, except as expressly provided hereunder and with the written consent of Landlord. This Section 7.6 and Landlord's rights and remedies hereunder shall survive the termination of the Lease.

**Section 7.7 Working Capital.** As of the Effective Date, Tenant shall have and maintain until the Commencement Date in accounts, acceptable to Landlord in its sole and complete discretion, an amount of funds equal to the greater of ("Working Capital") (i) any debt service reserve required by Mortgagee, (ii) the aggregate negative net operating income of Tenant for the period of months from the Commencement Date to the first day of the first two month period in which aggregate net income from operations exceeds zero, all as reflected in the projections attached hereto as Schedule 7.7 ("Cash Requirement"), for the purpose of this calculation net operating income shall be determined on a cash basis, and (iii) 4.5 million dollars. Working Capital shall not include any accounts or reserves established to satisfy the requirements of Section 7.1(a) (i) and (ii). From and after the Commencement Date, the Working Capital, subject to any requirement of the Mortgagee, may be used by Tenant only to fund the Cash Requirement.

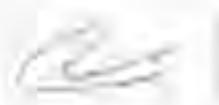
**7.8 Refinance.** Tenant shall fully cooperate with Landlord in its efforts to Refinance from time to time, including without limitation, providing all information and executing all

documents required by Landlord or its lender(s). On and after each Refinance Date the Fixed Rent for each twelve month period shall equal the sum of the amounts provided for in clauses (a) through (e): (a) the annual debt service payments (principal, interest, and mortgage insurance premiums, if any) that Landlord is required to pay to Lender pursuant to the first Mortgage (the "Mortgage Debt"), plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations; (b) the annual aggregate debt service payments or preferred equity payments that the Landlord is required to pay pursuant to the Junior Debt (or replacement thereof) (with the Mortgage Debt), the "New Debt Service"; plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations under the Junior Debt (or replacement thereof); (c) an annual amount equal to \$1,390,115; (d) an additional amount of \$250,000 per year prior to the fourth year of the Term; \$350,000 per year during Lease Years 4 and 5; and \$400,000.00 per Lease Year thereafter until the end of the Term, including all Extension Terms; and (e) an additional amount equal to one-half of the amount that (i) a sum equal to the last 12 months interest payment on the original Mortgage and Junior Debt exceeds (ii) New Debt Service.

ARTICLE VIII

PERSONAL PROPERTY

Section 8.1 Landlord's Personal Property. Upon the expiration or termination of this Lease, Tenant shall leave all personal property leased to Tenant hereunder, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, in or on the Leased Premises, except for ordinary wear and tear. Any and all restorations, alterations or replacements of, or repairs, reconstructions or additions to, the personal property at the Facility made by Tenant shall become part of Landlord's personal property, and any and all security interests (except in favor of Landlord) in Tenant's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Tenant shall pay off in full the remaining payments due on all personal property leased by Tenant and such personal property shall become part of Landlord's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Any of Tenant's software, software licenses, proprietary information, and policies, and procedures of Tenant ("Retained Assets") shall not become part of Landlord's personal property except in the event of the termination of this Lease as a result of a Lease Default, in which case the Retained Assets shall become the personal property of Landlord; provided, however, upon request of Landlord, in consideration of a payment by Landlord or its designee of Ten Dollars (\$10.00) and any applicable lease, rent, or license fees owed to any third parties during the Transition Period (hereinafter defined), Tenant shall license Landlord or its designee(s) (at Tenant's cost with no mark-up) to utilize the Retained Assets for a period of one hundred twenty (120) days (the "Transition Period") in connection with the transition of operations from Tenant and Landlord's new operator(s). To the extent Tenant or any Subtenants are obligated under license agreements with third party vendors supplying software (and/or computer hardware which Tenant does not own or lease) to such Tenant, Tenant shall use its best



efforts to arrange for Landlord or Landlord to enter into licensing agreements with such third party vendors to allow Landlord or its designee to utilize such software and computer hardware supplied by such third party vendors for the duration of the Transition Period.

Section 8.2 Tenant's Retained Assets. At the termination of the Lease, Landlord shall have the right to purchase all or a portion of Tenant's Retained Assets located at the Facility at the lower of its fair market value or book value. To the extent any of Tenant's Retained Assets is subject to a license, Landlord shall have the right but not the obligation to assume some or all of such license Landlord's sole cost and expense and at no additional liability to Tenant.

**ARTICLE IX  
INDEMNIFICATION**

Section 9.1 Tenant's Indemnification (a) During the Term of this Lease and after the surrender of the Leased Premises in accordance with Section 5.5 of this Lease, Tenant shall protect, defend (at Landlord's request), indemnify and hold harmless Landlord, Landlord's members, managers, officers, owners, directors, employees, agents, representatives, and Mortgagee and their respective agents, executors, heirs, representatives and assigns, and any entity providing financing which is secured by the Leased Premises (collectively the "Landlord's Indemnitees"), from and against any claims, losses, costs, penalties, damages, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) imposed or resulting from, arising out of or attributable in whole or in part to any of the following: (i) any violation of any Law, order of Governmental Authority, whether occasioned by the intentional act, omission, or negligence of Tenant or those holding under Tenant, (ii) any accident or other occurrence on or about the Leased Premises on or after the Commencement Date causing injury to any person or property whomsoever or whatsoever, including but not limited to patient care claims or elder abuse, (iii) any failure of Tenant in any respect to comply with or perform any term, condition, covenant, requirement and/or provision of this Lease, or a breach of this Lease by Tenant, including, but not limited to, a breach of any of Tenant's representations and warranties under Section 19.1 of this Lease, (iv) in any way relating to Tenant's use, operation and/or maintenance of the Facility (including, without limitation, third-party claims, whether by the State of New York, the United States, private matters, private parties, for recoupment, false claims, or any other claims, assumption of and use by Tenant of Landlord's permits, variances, waivers, and certificate of need approval or its possession of the Leased Premises and/or (v) any liability under Section 20.14. The indemnity provided for herein shall survive the expiration of this Lease or the surrender of the Leased Premises for the period of the relevant statute of limitations.

(b) Any amounts which become payable by Tenant under this Article IX shall be paid within ten (10) days after liability therefor is determined by litigation or otherwise, and if not timely paid shall bear interest at the Prime Rate plus 5% (the "Overdue Rate") from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or may compromise or otherwise dispose of the same as Tenant sees fit provided that Landlord receives a full and complete release with respect to such claim, action or proceeding. Any legal

counsel selected by Tenant to defend Landlord shall be reasonably satisfactory to Landlord. All indemnification covenants are intended to apply to losses, damages, injuries, claims, costs, penalties, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) incurred directly or indirectly by the indemnified parties and their property, as well as by the indemnifying party or third party, and their property. For purposes of this Article IX, any acts or omissions of Tenant, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant. It is understood and agreed that payment shall not be a condition precedent to enforcement of the foregoing indemnification obligations. The "Prime Rate" shall mean on any date, a rate equal to the annual rate on such date publicly announced by Citibank, N.A., as its prime, base or reference rate. Such rate need not be the lowest rate charged by Citibank, N.A. If Citibank, N.A. discontinues its use of such prime, base or reference rate or ceases to exist, Landlord shall designate the prime, base or reference rate of another state or federally chartered bank with offices in New York, N.Y. to be used for the purpose of calculating the Prime Rate hereunder.

**ARTICLE X**

**USE OF LEASED PREMISES**

Section 10.1 Compliance with Laws and Regulations. Tenant shall use the Leased Premises solely as a licensed Medicare- and Medicaid-certified skilled nursing facility with at least the number of licensed and certified beds existing at the Facility on the Commencement Date, and for no other purpose (the "Intended Use"). On or before the Commencement Date, Tenant shall have acquired, and thereafter Tenant shall maintain all licenses, certificates, accreditations, approvals, permits, variances, waivers, provider agreements and other authorizations needed to operate the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility. Tenant hereby covenants, warrants and represents to Landlord that as of the Commencement Date and throughout the Term: (a) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be validly licensed and Medicare and Medicaid certified to operate a skilled nursing facility in accordance with the applicable rules and regulations of the DOH, federal governmental authorities and accrediting bodies, including, but not limited to, the United States Department of Health and Human Services ("DHHS"), CMS, and the DOH; (b) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be, certified by and the holder of valid provider agreements with Medicare and Medicaid issued by DHHS, DOH and/or CMS and shall remain so certified and shall remain such a holder in connection with its operation of the Leased Premises as a licensed and Medicare and Medicaid certified skilled nursing facility; (c) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be in compliance with and shall remain in compliance with all applicable Laws with regard to the operation of the Facility, including, without limitation, compliance under Laws governing patient confidentiality and privacy and the confidentiality of medical records; (d) Tenant (and any subtenant, operator or manager of Tenant) shall operate the Facility in a manner consistent with high quality skilled nursing services and sound reimbursement principles under the Medicare and Medicaid programs and as required under Laws; and (e) Tenant (and any subtenant, operator or manager of Tenant) shall not abandon, terminate, vacate or fail to renew any licenses,

certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or any other authorization which relates to the operation of the skilled nursing facility business or other permitted operations on the Leased Premises or in any way commit any act which will or may cause any such licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or other authorization to be revoked by any Governmental Authority or accrediting body having jurisdiction thereof.

Section 10.2 No Waste. Tenant shall not commit or suffer to be committed any waste on the Leased Premises nor shall Tenant cause or permit any nuisance thereon.

Section 10.3 Hazardous Materials and Hazardous Waste. (a) Tenant shall not place or hold any Hazardous Materials on or at the Leased Premises, except as is necessary for the ordinary course of its business as a skilled nursing facility in compliance with Section 10.1. If Tenant's business requires the use of any Hazardous Materials, other than such cleaning materials as are typically found in skilled nursing facilities in compliance with Section 10.1, Tenant shall notify Landlord in writing and shall comply with hazard communication and notification requirements of the Occupational Safety and Health Act ("OSHA") and all Laws which require notification of employees, the community or any governmental agency of the hazardous properties of such Hazardous Materials. For purposes of this Lease, "Hazardous Materials" means and includes any hazardous substance defined as such in OSHA, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous substance or material, as now or at any time hereafter in effect.

(c) Tenant shall not cause or allow any asbestos or any asbestos containing materials to be incorporated into any improvements or alterations which it makes or causes to be made on or to the Leased Premises. Tenant shall obtain and maintain O&M Programs for the Facility if the Facility is determined to contain asbestos or asbestos containing materials and upon Landlord's request, shall furnish copies of same to Landlord, Mortgagee or their designee(s).

(d) Tenant shall not place, hold or dispose of any Hazardous Waste on, under or at the Leased Premises except as specifically allowed in this Section 10.3. Tenant further agrees that it shall not use the Leased Premises as a treatment, storage, or disposal (whether permanent or temporary) facility for Hazardous Waste. If Tenant, in the ordinary course of its business as a skilled nursing facility generates Hazardous Waste, then Tenant shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to the appropriate use, storage, transportation and disposal of Hazardous Waste. For the purposes of this Lease, "Hazardous Waste" means and includes any hazardous material that has entered the waste stream or any contaminant or pollutant as defined as such in the Resource Conservation and Recovery Act, CERCLA, as amended, any so-called "Superfund" or "Superfund" law, the TSCA, or any other Law, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste. Tenant further agrees that it shall properly dispose in accordance with Laws of all "infectious waste" such as laboratory waste, pathological waste, blood specimens or products, patient or resident waste including, without

limitation, bandages and disposable gowns, sharp waste and any material generated by the production or testing of biological agents. Immediately upon receipt of any Environmental Notice (as hereinafter defined) from any Person, Tenant shall deliver to Landlord a true, correct and complete copy of same. "Environmental Notice" shall mean any note, notice, or report of any suit, proceeding, investigation, order, consent order, injunction, writ, award, or action related to or affecting or indicating the treatment, storage, handling, disposal, generation, spill, release or discharge of any Hazardous Waste or Hazardous Materials in, upon, under, from or affecting the Leased Premises. All of the terms, covenants, warranties and indemnifications contained in this Section 10.3 shall survive the expiration or termination of this Lease.

(e) Without in any way limiting Tenant's obligation to indemnify Landlord and Landlord's Indemnitees under Section 9.1 of this Lease, Tenant shall indemnify, defend (at Landlord's request) and hold harmless Landlord and Landlord's Indemnitees from and against any claims, losses, costs, damages or expenses of any and every kind whatsoever (including reasonable attorney's fees and expenses and consultant's and expert's fees and expenses) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord and/or Landlord's Indemnitees for, with respect to, or as a direct or indirect result of: (a) a breach by Tenant of the covenants set forth in Section 10.3 or, (b) caused, permitted or allowed by Tenant or any agent, employee, invitee, or licensee of Tenant, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, onto, or into the Leased Premises, the atmosphere, or any watercourse, body of water, or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, as amended, any so-called "Superfund" or "Superlien" law, or any other Law, relating to or imposing liability or standards of conduct concerning, any Hazardous Material) occurring from and after the Commencement Date; and the provisions of and undertakings and indemnification set out in this Section 10.3(d) shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever. If required by Mortgagee, Tenant shall enter into an agreement to indemnify, defend and hold harmless Mortgagee with respect to matters contained in this Section 10.3 and other similar matters pursuant to a form of agreement reasonably acceptable to Mortgagee. In no event however shall Tenant have any liability to Landlord or Landlord's Indemnitees for Hazardous Materials located at or under the Leased Premises prior to the Commencement Date or for the remediation of same.

(f) If Tenant or its employees, agents, or contractors violate the provisions of this Section 10.3, then, in addition to any other duty or obligation of Tenant hereunder, at law or in equity, Tenant shall be obligated to clean up, remove, and dispose of the material causing the violation, in compliance with all applicable environmental laws and repair any damage to and remediate the Leased Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord; provided that such work shall commence no later than thirty (30) days from the date of such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time and procedure for any clean-up, remediation or removal of material causing the violation under this provision, and Landlord shall have the right to require reasonable changes in such method, time or procedure.

(g) Landlord reserves the right from time to time, but not more than once a year, except in the event of an emergency or during the occurrence and continuation of an uncured Lease Default during the Term hereof, at Landlord's cost and expense (except that, in the event of a continuing and uncured Lease Default, at Tenant's sole cost and expense), to have the Leased Premises inspected by environmental engineers and/or specialists for the purpose of determining compliance by Tenant with any environmental laws, rules and regulations applicable to Tenant's operations in or about the Leased Premises and with the terms and conditions of this Lease dealing with environmental matters, including without limitation, the provisions of this Section 10.3. If the environmental assessment or report resulting from such inspection discloses any non-compliance with Laws, Tenant shall immediately, following receipt of the environmental assessment, take all such steps as are necessary to put the Leased Premises into compliance, including without limitation, cleaning up any spills or other emissions of Hazardous Wastes or Hazardous Materials, and reimburse Landlord for the costs of its inspection.

(h) Upon the expiration of the Term, or the earlier termination thereof, subject to the last sentence of Section 10.3(d) above, Tenant shall forthwith remove all Hazardous Materials and Hazardous Waste from the Leased Premises or any portion thereof in accordance with applicable Law. Landlord shall have the right to inspect the Leased Premises with regard to the management and disposal of Hazardous Materials and Hazardous Waste at all reasonable times during the Term.

**ARTICLE XI**

**DAMAGE OR DESTRUCTION**

Section 11.1 Damage or Destruction. Tenant shall immediately notify Landlord of any casualty, fire, damage, destruction or injury ("Casualty") affecting the Facility, including a description of the Casualty, and whether the Casualty is such as to cause the Leased Premises to be unsuitable, in whole or in part, for the Intended Use. Tenant shall proceed with reasonable diligence to repair or reconstruct the Leased Premises and Tenant shall be liable for any costs of repair or replacement to the Leased Premises, whether or not such Casualty, or the costs of repairing such Casualty, are fully covered by the proceeds of Tenant's insurance required to be carried hereunder. If such Casualty renders the Facility unsuitable for the purpose of this Lease and if Landlord's Mortgagee so requires, Landlord, upon notice to Tenant, Landlord may terminate this Lease and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance to the extent such difference results from Tenant's breach of Article VI. Notwithstanding the foregoing, if Landlord's obligations to its Mortgagee have been satisfied in full and the DOH approves and agrees to reimburse the costs of rebuilding the Facility, Landlord shall not so terminate this Lease with respect to the Facility, and Tenant shall repair or reconstruct the Leased Premises in substantially the same condition as just prior to the incident with the proceeds of the property casualty insurance carried by Tenant, as required hereunder (if not otherwise paid to the Mortgagee), and/or with funds of Tenant. Regardless of any Casualty, except as provided above, this Lease shall continue in full force and effect without any abatement of Rent, and Tenant shall

not be entitled to surrender possession of the Leased Premises as a result of such casualty. Landlord's receipt of Rent from Tenant's rental interruption insurance shall be credited against Rent payments due from Tenant hereunder. If Tenant fails to commence such repair or reconstruction within thirty (30) days of the Casualty, Landlord shall have the option, subject to the approval of the DOH if required by Laws, to either terminate this Lease upon written notice to Tenant or repair and reconstruct the Leased Premises in substantially the same condition just prior to the incident and costs and expenses incurred as a result thereof shall be deemed Additional Rent hereunder and shall be payable to Landlord by Tenant, upon demand. Upon payment of all such sums demanded by Landlord, Tenant may re-enter and resume possession of the Leased Premises pursuant to the terms of this Lease. All insurance proceeds collected under the Policies shall be paid to Landlord, and made available to Tenant to pay for or reimburse Tenant for the costs and expenses for such repairs and reconstruction subject to the terms, conditions and provisions of any mortgage or other loan documents encumbering the Leased Premises. If Mortgagee does not make the insurance proceeds available to Landlord, then Landlord may terminate this Lease upon thirty (30) days' notice to Tenant, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance.

Section 11.2 Precedence of Rights of Mortgage. All provisions contained in the loan documents between Landlord and Mortgagee, or any other document in connection therewith which concern or pertain to the restoration of the Leased Premises, the application of insurance proceeds and any and all matters concerning a casualty, shall take precedence over and be in lieu of any contrary provision provided for in this Lease, and in all respects are binding upon Tenant who agrees to and acknowledges the same.

Section 11.3 Tenant hereby waives the provisions of Section 227 of the Real Property Law of the State of New York and acknowledges that the terms of this Article XI shall govern in lieu thereof.

ARTICLE XII

EMINENT DOMAIN

Section 12.1 Eminent Domain. (a) In the event that all or substantially all of the Leased Premises, or such portion of the Real Property which renders the balance of the Facility unsuitable for the purpose of this Lease, shall be taken by condemnation or right of eminent domain, this Lease shall terminate as of the day the taking authority takes possession of the Leased Premises, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except as otherwise expressly provided in this Lease. In the event only a portion (and less than substantially all) of the Leased Premises is taken by condemnation or right of eminent domain and the portion so taken does not render the balance of the Leased Premises unsuitable for the purposes of this Lease, as determined by Landlord, this Lease shall not terminate. In such an event, Tenant shall restore the Leased Premises with reasonable diligence with its own funds and with the proceeds of any award from the applicable public or quasi-public authority, or private corporation or individual having the

power of condemnation ("Award") to an architectural unit as nearly like its condition prior to such taking as shall be practicable. Notwithstanding anything to the contrary herein, this Section 12.1(a) is subject to the terms, conditions and provisions of any mortgage and other loan documents encumbering the Leased Premises.

(i) Notwithstanding anything to the contrary contained in Section 12.1(a), Landlord may cancel this Lease with no further liability to Tenant, in the event that following a taking by condemnation or right of eminent domain, Mortgagee elects to require Landlord to repay the mortgage on the Leased Premises.

(j) Tenant shall not be entitled to any part of any award or settlement of damages representing the value of land and buildings appropriated, the value of this Lease or any estate therein, or damage to the residue of the Leased Premises or other property of Landlord; it being agreed as between Landlord and Tenant any such award shall be the sole property of Landlord. No appropriation of part or all of the Leased Premises or cancellation of this Lease pursuant to this Article XII shall be deemed an eviction of Tenant or a breach of any covenants of Landlord hereunder.

ARTICLE XIII

NOTICES

Section 13.1 Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if (a) hand delivered or sent by (b) certified or registered United States mail, postage prepaid, return receipt requested or (c) Federal Express or other nationally recognized overnight next business day courier service at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 13.1):

If to Tenant:

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, New York 10520

with a copy to:

Michelman & Robinson  
800 Third Avenue, 24th Floor  
New York, NY 10022  
Attn: Mark Zafrin, Esq.  
Telephone: 212.730.7700

If to Landlord:

White Plains Healthcare Properties I, LLC,

7 Bourbon Street, Suite 200  
Peabody, Ma 01960

with a copy to:  
Gerald J. Billow, Esq.  
Posternak Blankstein & Land LLP  
800 Boylston Street, Suite 3200  
Boston, Massachusetts 02199

-and-

Howard Fensterman, Esq.  
Abrams Fensterman  
111 Marcus Avenue  
Lake Success, New York 11042

The effective date of such notices shall be as follows: (a) upon delivery or refusal of delivery if sent by personal delivery, (b) two (2) Business Days after mailing (or upon actual receipt, if earlier), if sent by certified or registered mail, (c) one (1) Business Day after deposit with the courier for next business day delivery, if sent by overnight courier. The term "Business Day" means any day other than (i) a Saturday or a Sunday, and (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

Section 13.2 Notices to Mortgagee. (a) Tenant hereby agrees, upon request of Mortgagee, to give to Mortgagee copies of all notices given by Tenant of default by Landlord under this Lease at the same time and in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord. Such Mortgagee shall have the right to remedy any default under this Lease, or to cause any default of Landlord under this Lease to be remedied, and for such purpose Tenant hereby grants such Mortgagee such period of time as may be reasonable to enable such Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default which is a default. Tenant shall accept performance by such Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No default by Landlord under the Lease shall exist or shall be deemed to exist (i) as long as such Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (ii) if possession of the Leased Premises is required in order to cure such default, or if such default is not susceptible of being cured by such Mortgagee, as long as such Mortgagee, in good faith, shall have notified Tenant that such Mortgagee intends to institute proceedings under the mortgage and, thereafter, as long as such proceedings shall have been instituted and shall prosecute the same with reasonable diligence and, after having obtained possession, prosecutes the cure to completion with reasonable diligence. This Lease shall not be assigned by Tenant or modified, amended or terminated without Mortgagee's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed. In the event of the termination of this Lease by reason of any default thereunder or for any other reason whatsoever except the expiration thereof, upon such Mortgagee's written request, given

within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Mortgagee or its designee or nominee a new lease of the Leased Premises for the remainder of the Term of the Lease upon, at a minimum, all of the terms, covenants and conditions of this Lease. Neither such Mortgagee or its designee or nominee shall become liable under this Lease unless and until such Mortgagee or its designee or nominee becomes, and then only for so long as such Mortgagee or its designee or nominee remains, the fee owner of the Leased Premises or the owner of the leasehold interest of Landlord under this Lease. Such Mortgagee shall have the right, without Tenant's consent, to, as the case may be, foreclose its mortgage or to accept a deed in lieu of foreclosure of such mortgage.

(b) In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Mortgagee, and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such Mortgagee within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Mortgagee shall have become entitled under its loan documents with Landlord in connection therewith, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period in which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy).

ARTICLE XIV

QUIET ENJOYMENT

Section 14.1 Quiet Enjoyment Landlord covenants, warrants and represents to Tenant that, provided no Lease Default exists under this Lease, Tenant shall at all times during the Term peacefully and quietly have, hold, occupy and enjoy the Leased Premises, subject to the terms and conditions of this Lease, without any hindrance, interference or molestation by Landlord or by, under or through Landlord.

ARTICLE XV

SUBLETTING AND ASSIGNMENT

Section 15.1 Subletting and Assignment (a) Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in the Landlord's sole and absolute discretion (and, if required by law, without the prior written consent of the Commissioner, which consent may be withheld in the Commissioner's sole and absolute discretion), transfer or assign this Lease or Tenant's interest in the Leased Premises or any part thereof or sublease all or any part of the Leased Premises. In all events of assignment, transfers or subletting, the prior approval of the DOH shall be required. Tenant shall not at any time, without the prior written consent of Landlord, which consent may be withheld or given in the sole and absolute discretion



of Landlord, pledge, mortgage, or hypothecate the leasehold estate hereby created or any interest of Tenant therein. The issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant aggregating to forty-nine percent (49%) or more of the stock, membership or ownership interest in Tenant or any subtenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; notwithstanding anything to the contrary, any change in the management or control of Tenant such that Lizer Josefovic does not control all of the decisions of Tenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof. Notwithstanding anything to the contrary, the issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant resulting in the aggregate interest of Lizer Josefovic, Marc Neuman, and their spouse or issue, or a trust for their benefit, equaling less than seventy-five percent (75%) of the stock, membership or ownership interest in Tenant or any subtenant to any person or entity shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; provided that any assignment by Lizer Josefovic to Joseph Josefovic made after five years after the Commencement date shall not be unreasonably denied by Landlord taking into account, among other things, the experience, performance record, and financial strength of Joseph Josefovic. The consent by Landlord to any transfer shall not constitute consent to any subsequent transfer or to any successive transfer. Further, subject to the provisions of Section 3.2, and without in any way limiting or otherwise affecting the provisions of this Lease, Landlord shall be permitted to assign this Lease and all agreements, duties, obligations and rights incidental thereto to any entity related to, or affiliated with Landlord, without any consent from Tenant. The term "transfer" shall mean any direct or indirect sale, conveyance, transfer, lease (including any amendment, extension, modification, waiver or renewal thereof), sublease, sub-sublease, assignment, mortgage, pledge, grant of a security interest or hypothecation, whether by operation of law or otherwise, whether voluntary or not, of or in (i) all or part of the Leased Premises (including any legal or beneficial direct or indirect interest therein) or (ii) any direct or indirect interest in Tenant. Notwithstanding anything to the contrary contained herein, Tenant may assign this Lease to, or enter into a sublease with, or transfer interests in an entity comprising Tenant to, an affiliate under common control with Tenant, or owned by Lizer Josefovic, Marc Neuman, or their spouse or issue, or a Trust for their benefit, without Landlord's consent, provided (x) Landlord is given thirty (30) days prior written notice of such intended transfer, assignment or sublease with copies of the organizational documents of the assignee, transferee or sublessee, (y) after such transfer, assignment or sublease, Lizer Josefovic controls all of the decisions of the assignee, transferee or sublessee, and (z) all required consents from the Mortgagee, the DOH and/or the Commissioner (if required), have been obtained by Tenant. Notwithstanding the foregoing and any other provision contained herein to the contrary, no transfer or series of transfers of legal, economic, beneficial or equitable (direct or indirect) interest in the Lease or in Tenant's membership interest that requires DOH's consent shall occur without the prior written consent of Landlord and DOH. Tenant shall enter into such subordination agreements or subordination, non-disturbance agreements ("SNDAs") as Mortgagee may request from time to time.

Section 15.2 **Atornment and Related Matters.** Any sublease shall be expressly subject and subordinate to all applicable terms and conditions of this Lease and provide that upon the expiration or earlier termination of this Lease, Landlord, at its option and without any

obligation to do so, may require any subtenant to attorn to Landlord, its successors and assigns, in which event Landlord shall undertake the obligations of Tenant, under such sublease from the time of the exercise of such option to the termination of such sublease; provided, however, that in such case Landlord shall not be liable for any prepaid rents, fees or other charges or for any prepaid security deposits paid by such subtenant to Tenant or for any other prior defaults of Tenant under such sublease. In the event that Landlord shall not require such attornment with respect to any sublease, then such sublease shall automatically terminate upon the expiration or earlier termination of this Lease, including any early termination by mutual agreement of Landlord and Tenant. In addition, any such sublease shall provide that in the event that the subtenant or other transferee receives a written notice from Landlord stating that a Lease Default has occurred or that an event or circumstance has occurred which with notice and/or passage of time would constitute a Lease Default, such subtenant or other transferee thereafter shall without further consent or instruction of Tenant pay all rentals accruing under such sublease directly to Landlord or as Landlord may direct; provided, however, that (a) as and to the extent that the amounts so paid to Landlord, together with other amounts paid to or received by Landlord on account of this Lease, exceed the amounts then due Landlord from Tenant under this Lease, the excess shall be promptly remitted to Tenant, and (b) at such time as the Lease Default has been cured and this Lease reinstated (if ever), Landlord shall notify and direct the subtenant(s) in writing to resume making payments of rentals under their sublease(s) directly to Tenant, or as Tenant may direct. Any such rentals collected from such subtenant or other transferee by Landlord shall be credited against the amounts owing by Tenant under this Lease in such order of priority as Landlord shall reasonably determine. Furthermore, any sublease or other agreement regarding a transfer shall expressly provide that the subtenant, assignee, manager or other transferee shall furnish Landlord, its lender, the Mortgagee, if applicable, the HUD Mortgagee, and/or the Commissioner, and /or DOH, if applicable, with such financial, operational and other information about the Facility and subtenant, etc., as Landlord may request from time to time.

**Section 15.3 Assignment of Subleases.** To secure the prompt and full payment by Tenant of the Rent and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to the conditions hereinafter set forth and any required consent(s) from DOH, all of Tenant's right, title and interest in and to all permitted subleases, assignments, licenses and occupancy agreements, to the extent permitted by law, involving the Facility, as set forth on Schedule 15.3 attached hereto (the "Sublease", and the subtenant under a Sublease herein referred to as a "Subtenant") and hereby confers upon Landlord, its agents and representatives, a right of entry (subject to prior notice) in, and sufficient possession of, the Leased Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Sublease, and further agrees that the exercise of said right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Leased Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever; provided, however, that such assignment shall become operative and effective only if (a) a Lease Default shall occur and be continuing or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof or (c) there occurs a repossession under a dispossessory warrant

or other re-entry or repossession by Landlord under the provisions hereof or (d) a receiver for all or a portion of the Leased Premises is appointed, and then only as to such of the subleases that Landlord may elect to take over and assume. At any time and from time to time within ten (10) days after Landlord's written demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants, with a photostatic copy of each of the Subleases. Upon request of Landlord, Tenant shall permit Landlord and its agents and representatives, and Mortgagee, its agents and representatives, to inspect all Subleases affecting the Leased Premises. Tenant covenants that each Sublease shall provide that the Subtenant thereunder shall be required from time to time, upon request of Landlord or Tenant, to execute, acknowledge and deliver, to and for the benefit of Landlord, an estoppel certificate confirming with respect to such Sublease the information set forth in Section 20.11 hereof.

**Section 15.4 Additional Sublease Requirements.** Tenant covenants and agrees that all Subleases hereafter entered into affecting the Leased Premises shall provide that (a) they are subject to this Lease and that the principals of the Subtenant acknowledge that they have read this Lease and accept the terms hereof, (b) the term thereof shall not end less than one (1) day prior to the Expiration Date hereof, unless Landlord shall consent otherwise, which consent may be withheld in Landlord's sole and absolute discretion, (c) the Subtenants will not do, authorize or execute any act, deed or thing whatsoever or fail to take any such action which will or may cause Tenant to be in violation of any of its obligations under this Lease, (d) the Subtenants will not pay rent or other sums under the Subleases with Tenant for more than one (1) month in advance, (e) the Subtenants shall give to Landlord at the address and otherwise in the manner specified in Section 13.1 hereof, a copy of any notice of default by Tenant as the landlord under the Subleases at the same time as, and whenever, any such notice of default shall be given by the Subtenants to Tenant; and (f) all of the representations, warranties and covenants given by Tenant to Landlord in this Lease, including but not limited to all reporting requirements and covenants set forth in Section 7.4 above, shall be made and given by each Subtenant for the benefit of Landlord, Mortgagee, and their respective successors and assigns.

**Section 15.5 Transfers in Bankruptcy.** (a) In the event of a transfer pursuant to the provisions of Title 11 of the United States Code or any statute of similar purpose or nature (the "Bankruptcy Code"), all consideration payable or otherwise to be delivered in connection with such transfer shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any consideration constituting Landlord's property pursuant to the immediately preceding sentence and not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. For purposes of this Section 15.5, the term "consideration" shall mean and include money, services, property and any other thing of value such as payment of costs, cancellation or forgiveness of indebtedness, discounts, rebates, barter and the like. If any such consideration is in a form other than cash (such as in kind, equity interests, indebtedness earn-outs, or other deferred payments, consulting or management fees, etc.), Landlord shall be entitled to receive in cash the then present fair market value of such consideration. If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment shall be given to Landlord by Tenant no later than fifteen (15) days after receipt of such offer by Tenant, but in any event to

later than ten (10) days prior to the date that Tenant shall file any application or motion with a court of competent jurisdiction for authority and approval to enter into such assumption and assignment. Such notice shall set forth (a) the name and address of the assignee, (b) all of the terms and conditions of such offer, and (c) the proposal for providing adequate assurance of future performance by such person under the Lease, including, without limitation, the assurance referred to in Section 365 of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease from and after the date of such assignment. Any such assignee shall execute and deliver to Landlord upon demand an instrument confirming such assumption.

(b) The term "adequate assurance of future performance" as used in this Lease shall mean (in addition to the assurances called for in Bankruptcy Code Section 365(1)) that any proposed assignee shall, among other things, (i) deposit with Landlord on the assumption of this Lease an amount equal to the greater of (x) two (2) times the then monthly Fixed Rent and Additional Rent or (y) such other amount deemed by the Bankruptcy Court to be reasonably necessary for the adequate protection of Landlord under the circumstances, as security for the faithful performance and observance by such assignee of the terms and obligations of this Lease, (ii) furnish Landlord with financial statements of such assignee for the prior three (3) calendar years, as finally determined after an audit and certified as correct by a certified public accountant, which financial statements shall show a net worth at least equal to the amount of the deposit referenced in (i) above, (iii) if determined by the Bankruptcy Court to be appropriate under the circumstances, grant to Landlord a security interest in such property of the proposed assignee as Landlord shall deem necessary to secure such assignee's future performance under this Lease, and (iv) provide such other information or take such action as Landlord, in its reasonable judgment, shall determine is necessary to provide adequate assurance of the performance by such assignee of its obligations under the Lease.

(c) If, at any time after Tenant may have assigned Tenant's interest in this Lease in a proceeding of the type described in Section 16.1 (iv) through (vii), this Lease shall be disaffirmed or rejected in any proceeding of the types described in Section 16.1 (iv) through (vii) hereof, or in any similar proceeding, or in the event of termination of this Lease by reason of any such proceeding or by reason of lapse of time following notice of termination given pursuant to Article XVI based upon any of the Lease Defaults set forth in said Section 16.1 (iv) through (vii) Tenant, upon request of Landlord given within thirty (30) days next following any such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord), shall (a) pay to Landlord all Rent due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant", enter into a new lease with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the expiration date of the term, unless sooner terminated as in such lease provided, at the same Fixed Rent and Additional Rent upon the then executory terms, covenants and conditions as are contained in this Lease, except that (i) Tenant's rights under the new lease shall be subject to the possessory rights, if any, of the assignee under this Lease and the possessory rights of any person claiming through or under such assignee or by virtue of any applicable Law, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant with due diligence, and (iii) such new lease shall require Tenant to

pay all Rent reserved in this Lease which, had this Lease not been so disaffirmed, rejected or terminated, would have accrued under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant shall default in its obligation to enter into said new lease for a period of ten (10) days next following Landlord's request therefor, then in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant as if Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 15.6 Management Agreement. Tenant agrees and acknowledges that it will not enter into any management agreements during the Term with regard to the Facility, except with an entity (i) owned wholly by an individual principal of Tenant which entity has been received establishment approval from the New York State Department of Health Public Health and Health Planning Council in compliance with 10 NYCRR 600.9(d)(1) and (ii) approved by HUD if the Facility is, or is about to be financed by a HUD program, and/or Mortgagee. Any such management agreement shall be subordinate to Landlord's rights hereunder, to the rights of Mortgagee and to the rights of the Commissioner. Tenant shall cause such manager to execute such documents as are required by Landlord or Mortgagee or by the Commissioner to effect such subordination.

Section 15.7 Memorandum of Lease. This Lease shall not be recorded, but either party may record a memorandum of lease in which shall describe the parties to this Lease, a description of the Leased Premises and a recitation of the Term. The party requesting that the memorandum of lease be recorded shall prepare and pay all costs of recording the memorandum of lease, and the other party agrees to execute at any and all times such instruments as may be reasonably required for such recording. Upon the expiration or earlier termination of this Lease, Landlord may release the memorandum of lease. For this purpose Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to execute a release of such memoranda in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. To the extent any transfer tax, conveyance tax, excise tax, or similar tax is imposed by any Governmental Authority as a result of the recording of such Memorandum of Lease, or is otherwise due and payable as to Tenant's leasehold interest granted pursuant to this Lease, Tenant shall pay same to the applicable Governmental Authority.

ARTICLE XVI

DEFAULT

Section 16.1 Default by Tenant and Remedies of Landlord. (a) Tenant shall be in default under this Lease upon the occurrence of any of the following events referred to herein individually or collectively as a "Lease Default" (any reference to such event occurring or involving Tenant shall be deemed to include any such event occurring or involving any of Tenant's Subtenants):



(i) if Tenant fails to pay any installment of Rent within five (5) days after the date when due;

(ii) if Tenant defaults in the prompt and full performance of any other of Tenant's covenants, obligations or agreements hereunder which are not specifically enumerated herein as a Lease Default and fails to correct such failure within thirty (30) days of receipt of written notice from Landlord of such default (unless such default cannot reasonably be cured within thirty (30) days, in which event such period shall be extended, provided Tenant shall have commenced in good faith to cure such default within the first such thirty (30) day period and shall proceed with all due diligence to correct such default thereafter but in no event more than ninety (90) days of receipt of such written notice);

(iii) if the leasehold interest of Tenant shall be levied upon under execution or be liened or attached and such levy, lien or attachment is not removed within sixty (60) days of the date Tenant receives notice of it;

(iv) in the event of a filing by or against Tenant of a petition under federal or state law pertaining to bankruptcy or insolvency or for a reorganization or other relief;

(v) if Tenant shall admit in writing its inability to pay its debts generally as they become due;

(vi) if Tenant is adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, with or without the consent of Tenant, a receiver or trustee of Tenant or of the whole or substantially all of its property;

(vii) if Tenant makes any general assignment for the benefit of creditors;

(A) if Tenant abandons the Leased Premises or if, except as a result of damage, destruction or a partial or complete condemnation, Tenant ceases operations of the Facility, or Tenant closes any portion of the Facility;

(viii) if Tenant receives a state or federal notice of termination of license or de-certification and such notice has not been suspended, extended, withdrawn or terminated prior to 30 days before the effective date of such termination or decertification by any Governmental Authority;

(ix) if Tenant fails to maintain its qualifications for licensure as required by this Lease if failure to do so would result in an inability to operate the Facility or would result in the appointment of a receiver with respect to the Facility;

(κ) if any transfer or assignment of this Lease or Tenant's direct or indirect interest therein or a transfer of Tenant's direct or indirect equity ownership interests occurs in violation of this Lease;

(xi) if any malpractice award or judgment exceeding any applicable malpractice insurance coverage and any applicable umbrella coverage by more than One Million

Dollars (\$1,000,000.00) shall be rendered against Tenant or any subtenant, and either (A) enforcement proceedings shall have been commenced by any creditor upon such award or judgment or (B) such award or judgment shall continue unsatisfied and in effect for a period of sixty (60) consecutive days without an insurance company reasonably satisfactory to Landlord having agreed to fund such award or judgment in a manner reasonably satisfactory to Landlord, or (C) such award or judgment has been appealed and without a bond having been posted to cover such amount that exceeds any insurance coverage, and in any case such award or judgment shall, in the reasonable opinion of Landlord, have a material adverse affect on the ability of Tenant or any subtenant to operate the Facility;

(xii) upon the denial, refusal to issue, or loss of any licenses, certifications, certificates, approvals, permits, variances, waivers, provider agreements and other authorizations necessary or required for Tenant to operate the Facility in accordance with the requirements of this Lease;

(xiii) if any of the representations or warranties made by Tenant under this Lease or any subtenant under its Sublease or otherwise proves to be untrue when made in any material respect;

(xiv) if any Governmental Authority having jurisdiction over the operation of the Facility removes ten percent (10%) or more of the patients or residents who reside in the Facility for violations of standards of care;

(xv) Tenant fails to give Landlord and Mortgagee timely notice or timely deliver copies of documents within the times required under Section 7.4 (c) through (o);

(xvi) Tenant's receipt of notice of an allegation or determination of "Immediate Jeopardy" (as such term is customarily used) or equivalent notice from any Governmental Authority or officer, acting on behalf thereof relating to the Facility;

(xvii) Tenant's receipt of notice of the freeze on admissions or the imposition of a denial of payment for new admissions or equivalent notice from any Governmental Authority or officer acting on behalf thereof relating to the Facility;

(xviii) Tenant's breach of its obligations under Section 3.5 including Tenant's failure to execute and deliver to Landlord within seven days of its request therefore any and all documents, certificate or agreement required or reasonably requested by Landlord, a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender or the Commissioner, including confirming the subordination required hereunder;

(xix) Tenant's breach of its obligations under Section 15.6 Management Agreement;

(xx) Tenant's breach of its obligations under Section 7.6 Security Agreement;



(xxi) Tenant fails to notify Landlord within twenty-four (24) hours after receipt of any notice from any Governmental Authority, terminating or suspending or threatening termination or suspension of any material license or certification relating to the Facility;

(xxii) a default beyond any applicable notice and cure periods under any Sublease, operating agreement, management agreement or any other material agreement relating to the Leased Premises or to which Landlord and Tenant are a party;

(xxiii) the creation of any indebtedness relating to the Leased Premises (other than trade payables which are not more than 30 days past due, not evidenced by a note and not in excess of One Million Dollars \$1,000,000.00);

(xxiv) the amendment, modification, restatement, termination or cancellation of any material contract relating to the Leased Premises, including but not limited to any Sublease, without Landlord's prior written consent, which consent shall not be unreasonably withheld;

(xxv) default or breach by Guarantor under the Guaranty beyond the expiration of any applicable cure period contained therein;

(xxvi) failure by Tenant to deposit all or any portion of the Security Deposit or Letter of Credit or to replace any portion of the Security Deposit or Letter of Credit utilized by Landlord;

(xxvii) a default or breach of any of the provisions set forth in Article XIX;

(xxviii) Tenant violates any term, covenant or condition of Tenant's Regulatory Agreement (with respect to a HUD financing) which violation is not cured within thirty (30) days of written notice to Tenant;

(xxix) a default or breach of the provisions set forth in Section 7.4(b) or a report required by Section 7.4 proves to be untrue in any material respect;

(xxx) any act or omission by Tenant or any Subtenant referenced in Section 7.4 that constitutes a default by Landlord under its loan documents with Mortgagee;

(xxxi) Tenant's failure to meet the covenants provided in Section 7.4 (q)

(xxxii) the sale or transfer or attempted sale or transfer of all or any portion of any certificate of need, bed or unit right or other similar authorization relating to any portion of the Facility or the Leased Premises, assignment or subletting in violation of the provisions of Section 15.1;

(xxxiii) the use of any portion of the Premises other than for the Intended Use;



(xxxiv) the Facility appears on the Special Focus Facility List, or similar list established by CMS;

(xxxv) Tenant fails to procure the insurance coverage, or loss of the insurance coverage, required by this Lease;

(xxxvi) Tenant enters into any corporate integrity agreement, settlement or consent decree, or deferred prosecution agreement with any Governmental Authority;

(xxxvii) Any Governmental Authority assesses a fine or penalty against, or with, Tenant that imposes a payment or fine upon Tenant in excess of \$75,000;

(xxxviii) The conviction of, or plea of no contest or nolo contendere by, Tenant or any member or beneficial owner of Tenant with respect to (1) any felony or (2) any misdemeanor that involves any act of fraud, embezzlement, theft or misappropriation;

(xxxix) Tenant fails to comply with its obligations in Section 18.1(n) within 10 days after written notice from Landlord; or

(xxxxi) Tenant or any Subtenant fails or refuses to execute estoppel certificate required pursuant to Section 20.11, or otherwise complying with the requirements of Section 2.3 within ten (10) days after Tenant's receipt thereof.

Upon the occurrence of a Lease Default, Landlord, may, if Landlord so elects, upon five (5) days written notice of such election, forthwith terminate this Lease and Tenant's right to possession of the Leased Premises and, at Landlord's sole and absolute discretion, accelerate the payment of all Rent for the balance of the Term and declare the same presently due and payable in full provided, however, that with respect to a Lease Default under Section 16.1(a)(iv), this Lease shall automatically terminate. In the event of such Lease termination, Tenant shall immediately pay Landlord the then present value of all such accelerated Rent. Landlord, in addition to all other remedies given to Landlord at law or in equity, may by written notice to Tenant, without terminating this Lease, cause Tenant to apply to the DOH to install a manager and/or management consultant and/or a receiver having the necessary approvals from Governmental Authorities, of Landlord's choice, at Tenant's sole cost and expense or to the extent permitted by applicable law, reenter the Leased Premises by summary proceedings or otherwise. In any event, upon a Lease Default, Landlord may require Tenant to consent to a so-called "Change of Ownership" and Landlord may dispossess Tenant upon approval of the Change of Ownership or Certificate of Need by DOH, it being the understanding that under no circumstances is this Lease to be an asset for Tenant's creditors by operation of law or otherwise. In the event of such reentry, Landlord may relet the Leased Premises without being obligated so to do, and in the event of a reletting may apply the Rent therefrom first to the payment of Landlord's cost and expenses, including consultant and/or expert and attorneys' fees and expenses incurred by reason of such Lease Default, and the cost and expense of reletting including, but not limited to, repairs, renovation, or alteration of the Leased Premises and then to the amount of Rent and all other sums due from or payable by Tenant hereunder, Tenant remaining liable for all other sums due from or payable by Tenant hereunder and for any deficiency. Tenant shall also be liable for and indemnify Landlord against all amounts owed to

Medicare, Medicaid, all applicable third-party payor programs, third party payors, or residents, including, but not limited to, any overpayments received by Tenant, relating to the Term. Any and all such deficiencies shall constitute Additional Rent hereunder and shall be payable by Tenant monthly on the date herein provided for the payment of Rent. In addition to the foregoing remedies, Landlord shall immediately be entitled to retain the Security Deposit and draw on and retain proceeds of the Letter of Credit, and thereafter Tenant shall have no further claim, right, title or interest therein to the extent of Landlord's claims only.

Landlord acknowledges that its rights of reentry onto the Leased Premises set forth in this Lease do not confer on Landlord the authority to operate a nursing facility as defined in Article 28 of the Public Health Law on the Leased Premises and agrees that except in the event of a Lease Default Landlord will give the DOH, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of its intent to reenter the Leased Premises or to initiate dispossession proceedings or that the Lease is due to expire at least thirty (30) days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least sixty (60) days before expiration of the Lease.

Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossession proceedings and sixty (60) days prior to the expiration of the Lease, Tenant shall immediately notify by certified mail the DOH, Tower Building, Empire State Plaza, Albany, NY 12237 (or its then current address), of the receipt of such notice or service of such process or that the Lease is about to expire.

(b) Except as provided in this Lease to the contrary, Rent and other sums not paid when due (unless paid within any applicable grace period) shall bear interest from the date when the same are first payable under the terms of this Lease until the same shall be paid at an annual rate of interest equal to the Overdue Rate.

(c) Upon the filing of a petition by or against Tenant pursuant to the Bankruptcy Code, Tenant, as debtor and as debtor-in-possession, and any trustee who may be appointed shall: (i) timely perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (ii) pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Leased Premises an amount equal to the Rent and other charges otherwise due pursuant to this Lease; and (iii) reject or assume this Lease within one hundred twenty (120) days after the filing of such petition under the Bankruptcy Code or within such time period as the Bankruptcy Code may allow. Tenant, as debtor and as debtor-in-possession, and any trustee shall be deemed to have rejected this Lease in the event of the failure to comply with any of the above. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor, in the event of assumption and/or assignment is the prior written consent of any mortgagee to which this Lease has been assigned as collateral security.

(d) In the event of termination of this Lease by reason of any Lease Default by Tenant, or upon the expiration of the Term, then, and in any of such events, Tenant, upon Landlord's written request, shall to the greatest extent permitted by law, transfer to Landlord or its designees or assigns, or cause its Subtenants and/or Affiliates, to transfer to Landlord or its designees or assigns, the following: (i) all federal, state or municipal licenses,

certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements (including non-governmental) and other authorizations which relate to the operation of the Facility; and (ii) the name of the Facility as then commonly known to the general public. Tenant shall also prepare and file all notices required by applicable law in connection with such termination and shall also prepare and timely file all final Medicare and Medicaid cost reports. In the event Tenant fails or refuses to transfer any such licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, other authorization or trade name, then this provision shall constitute an act of assignment by Tenant to Landlord or its assigns without the necessity of any further written instrument. For this purpose, Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to complete or undertake such replacements in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

(e) Landlord shall have the option of taking over the operation of the Facility, or having the operation of the Facility taken over by a designee, in the event of a termination of this Lease for any reason, without Landlord or designee assuming any of Tenant's liabilities or obligations, including Tenant's liabilities and obligations with respect to employees, such as vacation, sick leave, health insurance and pension liabilities and Tenant's obligations under applicable law to offer and provide group health continuation coverage. Landlord shall give Tenant written notice of Landlord's intent to exercise the right set forth above, in which event, upon the approval of the DOH of the Change of Ownership, Tenant shall and shall cause the Subtenant to immediately turn over possession and control of the Facility without any further action having to be taken on the part of Landlord. At the request of Landlord, Tenant shall and shall cause the Subtenant to turn over any or all of inventories, personal property (including computer and telecommunications equipment but excluding any leased equipment) vehicles, and material contracts (including hospital, transfer, vendor, and managed care contracts).

(f) No failure of Landlord to enforce any rights or remedies upon default of Tenant shall prejudice or affect the rights of Landlord upon any subsequent or similar default.

(g) In the event of a Lease Default by Tenant of any of the terms, covenants, conditions or provisions of this Lease, which Lease Default is not cured within any applicable grace or cure period, Landlord shall have the right to invoke any remedy permitted to Landlord at law, in equity or otherwise. All remedies available to Landlord are declared to be cumulative and concurrent and the exercise of one shall not preclude or waive the right to exercise any other. No termination of this Lease and no taking or recovering of possession of the Leased Premises shall deprive Landlord of any of its remedies or actions against Tenant and Tenant shall remain liable for all past or future Rent, including all taxes, insurance premiums and all other charges and Rent payable by Tenant under this Lease, during and for the balance of the Term hereof. The bringing of any action for Rent or other default shall not be construed as a waiver of the right to obtain possession of the Premises.

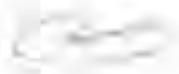
(h) If suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent, or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and breach shall be established, Tenant shall pay to Landlord all expenses,

including reasonable attorney fees, incurred therefor. This subsection shall survive termination of this Lease.

Section 16.2 Facility Operating Deficiencies. On written notice of a request therefor by Landlord to Tenant, upon a Lease Default and for a period of time necessary to fully remedy the Lease Default, Tenant shall engage the services of a consultant, unaffiliated with Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to review the management of the facility for the purpose of making recommendations to remedy the Lease Default. Subject to applicable legal requirements governing confidentiality of patient records, the consultant shall have complete access to the Facility, its records, offices and facilities, in order that it may carry out its duties. Tenant shall cause such consultant to prepare and deliver to Landlord and Tenant a written report of its recommendations within ten (10) days after its engagement. If Tenant shall fail to designate a consultant approved by Landlord as provided above within five (5) days after Tenant's receipt of Landlord's notice, Landlord may designate such consultant by further notice to Tenant. Tenant shall be responsible for payment of all fees and expenses reasonably charged and incurred by the consultant in carrying out its duties. Tenant shall promptly implement any and all reasonable recommendations made by such consultant in order to promptly correct or cure the Lease Default; provided, however, that in no event shall Tenant implement any such recommendations if the same would constitute a violation of applicable legal requirements, violate any rule or regulation of the DOH, or would otherwise cause a Lease Default hereunder (e.g., a transfer or change in use of the Leased Premises), unless Landlord consents in writing to such Lease Default, which consent may be given or withheld in Landlord's sole and absolute discretion. Nothing herein shall impose any liability or obligation on Landlord to (a) request the appointment of a consultant or (b) otherwise remedy the Facility Operating Deficiency(ies) nor shall it deem Landlord an operator of the Facility.

Section 16.3 Receivership

Tenant acknowledges that one of the rights and remedies available under applicable law for nursing facilities which fail to comply with the conditions of participation for Medicare or Medicaid is to apply to a court of competent jurisdiction for the appointment of a receiver to take possession of the Facility, to collect the rents, issues, profits and income of the Facility and to manage the operation of the Facility. Tenant further acknowledges that the revocation, suspension or material limitation of the certification of the Facility for provider status under Medicare or Medicaid (or successor programs) and/or the revocation, suspension or material limitation of a license relating to the operation of the Facility for its intended use under the laws of the State of New York will materially and irreparably impair the value of Landlord's investment in the Facility. Therefore, in the event of a Lease Default, and in addition to any other right or remedy of Landlord under this Lease, at the request of Landlord, Tenant shall request DOH to, or to the extent permissible under law, Tenant shall, petition any appropriate court, for the appointment of a receiver to take possession of the Facility, to manage the operation of the Facility under Tenant's licenses and certifications, to collect and disburse all rents, issues, profits and income generated thereby and to preserve or replace to the extent possible any such license and provider certification for the Facility or to otherwise substitute the licensee or provider thereof. The receiver shall be entitled to a reasonable fee for its services as a receiver. All such fees and other expenses of the receivership estate shall be added to the



monthly Rent due to Landlord under this Lease as Additional Rent. Tenant hereby irrevocably stipulates to the voluntary appointment of a receiver under such circumstances and for such purposes and agrees not to contest such appointment.

Section 16.4 Tenant's Waiver, Mitigation. In connection with the exercise by Landlord of any of its remedies under this Section 16, including the termination of this Lease, in whole or in part, Tenant waives, to the maximum extent permitted by applicable Laws, (1) any right of redemption, re-entry or repossession, (2) the benefit of any moratorium laws or any laws now or hereafter in force exempting property from liability for rent or for debt, (3) any duty on the part of Landlord to mitigate the damages recoverable from Tenant on account of any Lease Default by Tenant, except that, notwithstanding the foregoing or anything in this Lease to the contrary, Landlord agrees to comply with any duty to mitigate damages where applicable Laws do not allow Tenant to waive such right, (4) the right to interpose any counterclaims (other than compulsory counterclaims) in any summary proceeding instituted by Landlord against Tenant in any court or in any action instituted by Landlord in any court for unpaid Rent under this Lease, and (5) any other right provided to Tenant under applicable Laws relating to a breach of or Lease Default under this Lease, including any rights to cure such breach or Lease Default.

ARTICLE XVII

ENTRY AND REIMBURSEMENT RIGHTS OF LANDLORD

Section 17.1 Entry and Reimbursement Rights of Landlord. In addition to those rights set forth in Section 7.2 of this Lease, Landlord reserves the right at all reasonable times during business hours and upon at least twenty-four (24) hours' advance oral notice to go upon and inspect the Facility and every part thereof (subject to applicable Laws pertaining to patient confidentiality and privacy and the confidentiality of medical records). If Landlord shall make any payments or perform any repairs on behalf of Tenant which are Tenant's obligation and which Tenant has failed to make after applicable notice from Landlord, then any reasonable amounts so paid by Landlord are agreed and declared to be Additional Rent, and shall be due and payable to Landlord by Tenant upon submission to Tenant of an invoice, bill, or statement therefor, together with interest charged at the Overdue Rate commencing on the date of such invoice, bill, or statement. Nothing in this Section 17.1 shall impose any liability or obligation upon Landlord.

ARTICLE XVIII

REPRESENTATIONS AND WARRANTIES

Section 18.1 Tenant's Representations, Warranties and Additional Covenants. Tenant represents, warrants and covenants to Landlord and agrees (all of which shall survive the delivery and execution of this Lease) as follows (all of Tenant's representations, warranties, and covenants shall be deemed to include, in addition to that specified herein, the identical warranties, representations, and covenants of all Subtenants, which Tenant agrees to set forth in any Sublease and which are hereby incorporated herein by reference as if set forth in full herein):

(a) Corporate. Tenant is a limited liability company duly formed and validly existing and in good standing under the laws of the State of New York, and has the limited liability company power and authority to own its property and assets and to carry on its business as now being conducted or as will be conducted on and after the Commencement Date.

(b) No Breach of Statute or Contract. The execution, delivery and performance of this Lease by Tenant and any Sublease by a subtenant will not breach any statute or regulation of any Governmental Authority, and will not as of the Commencement Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of Tenant's articles of organization, operating agreement, other material agreements, or any order, writ, injunction, decree, agreement or instrument to which Tenant is a party, or by which it or its property, may be bound.

(c) Authorization of Lease. The execution, delivery and performance of this Lease, and all Subleases, has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Tenant and this Lease constitutes the valid and binding obligation of Tenant, fully enforceable in accordance with its terms.

(d) No Litigation or Adverse Events. Except as set forth on Schedule 18.1(d) attached hereto and incorporated herein, there is no suit, claim, action or legal, administrative, arbitration, or other proceeding or governmental investigation pending or threatened, by or against Tenant, and there exists no event or condition of any character, which could prevent the consummation of the transactions contemplated by this Lease or materially adversely affect Tenant's performance of the terms and conditions hereunder.

(e) Conduct of Business. Subject to the express provisions hereof, at all times after the Effective Date, Tenant shall, and cause its subtenants to (i) operate the Leased Premises (after the Commencement Date) and otherwise conduct its/their business in the ordinary course, and in compliance with all statutory and regulatory requirements of any federal, state or local authority, (ii) continue to operate the Leased Premises after the Commencement Date and maintain it in substantially its condition as of the Commencement Date, reasonable wear and tear excepted, including but not limited to repairs and replacements permitted or required under this Lease, and in a lawful manner, (iii) not encumber all or any portion of its assets or properties or the Leased Premises, including without limitation, certificates of need, bed rights, or provider agreements, (iv) preserve the goodwill of the Facility, (v) not take any action from an accounting perspective which would materially adversely affect the reimbursement formula or tax benefits with respect to the Leased Premises or any portion thereof, (vi) utilize the Leased Facility only for the Intended Purpose, (vii) not relinquish or attempt to transfer the location of or sell the skilled nursing facility license, certificate of need approval, Medicare or Medicaid certification or any other licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements or other authorizations, (viii) not refuse to admit patients without 30 days' written notice of intent to, and prior written consent of, Landlord, (ix) not dissolve, merge or consolidate with or into any other person or entity, or otherwise change its identity or company or capital structure, or (x) not change its name or its business address.

(f) Continuing Existence. At all times on and after the Effective Date, Tenant shall cause to be done all things needed to preserve its rights and franchises and comply with all Laws applicable to it, and to continue to conduct its business in the ordinary course.

(g) Payment of Obligations. At all times on and after the Effective Date, Tenant shall timely pay, and cause its subtenants to timely pay, all of its/their obligations, indebtedness, taxes, charges and impositions, whether or not relating to the Leased Premises or this Lease, as they become due unless contested in good faith and diligently pursued only if permitted under and subject to the terms and conditions of this Lease.

(h) Notice of Default. At all times on and after the Effective Date, Tenant shall promptly notify Landlord of (i) any material default by Tenant relating to any indebtedness or obligation of Tenant, whether or not relating to the Leased Premises or this Lease, and (ii) any material violations by the Facility of any applicable Law.

(i) Compliance with Law. At all times on and after the Effective Date, Tenant shall comply in all respects, and cause its subtenants to comply in all respects, with all applicable Laws, including Medicare and Medicaid conditions of participation, to which it is subject or which are applicable to the Leased Premises and to Tenant's operation of the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility.

(j) Beds and CON. Tenant has been awarded a CON for construction and operation of 160 skilled nursing facility beds for use at the Lease Premises by DOH and such CON may be used in connection with this Lease.

(k) Tenant, on behalf of itself and its Subtenants, makes the Health Care warranties and representations set forth in Schedule 18(k) attached hereto and incorporated herein, to Landlord, its successors and assigns, which warranties and representations shall be true and correct as of Commencement Date and at all times during the Term.

(l) Except for the Subleases of the Leased Premises to the Operators, there are no subleases or sub-subleases or occupancy agreements (other than residence agreements with patients or residents) for any portion of the Leased Premises.

(m) Tenant shall maintain and comply at all times with all O&M Plans (Operation and Maintenance Plans covering the handling, treatment or maintenance of asbestos or Hazardous Materials) relating to the Leased Premises, or that shall be required in the future by Mortgagee or any HUD mortgagee or, where applicable, the Commissioner.

(n) Obligations prior to Commencement Date. In addition to all of Tenant's obligations provided in this Lease, Tenant shall:

(i) as soon as practical after the Effective Date, apply for all and rigorously pursue until obtained all Health Care Licenses;

(ii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain from DOH the maximize total project cost for the Facility approvable by DOH;

(iii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain the highest possible reimbursement rate with respect to the Medicare and Medicaid programs;

(iv) as soon as practical after the Effective Date, apply for and rigorously pursue until obtained provider agreements with third party payors providing reimbursement for skilled nursing facility services in the geographic area of the Facility;

(v) after the Effective Date take all actions requested by Landlord in order for Landlord to finance and complete Landlord's Work.

(vi) as soon as practical prior to the Commencement Date, hire, employ and train a staff adequate to provide services to the residents of the Facility immediately after the Commencement Date;

(viii) as soon as practical prior to the Commencement Date, purchase a sufficient inventory of food, medicines and other perishable items necessary to provide services to the residents of the Facility immediately after the Commencement Date;

(ix) as soon as practical prior to the Commencement Date, purchase and deliver to the Facility all small wares necessary provide services to the residents of the Facility immediately after the Commencement Date;

(x) six months after the Effective Date and thereafter every six months until the Commencement Date, deliver to Landlord a detailed projected statement of income and expenses and cash flow for a three year period.

Section 18.2 Representation and Warranties. Landlord hereby represents and warrants to Tenant, all of which shall survive the delivery and execution of this Lease, and agrees, as follows:

(a) No Breach of Statute or Contract. The execution, delivery, and performance of this Lease will not violate any provision of law, any order of any court or other agency of federal or state government or any provision of any indenture, agreement, or other instrument to which Landlord is a party or by which it or any of its properties or assets are bound; conflict with, result in a breach of, or constitute (with passage of time or delivery of notice, or both), a default under any such indenture, agreements or other instrument; or result in the creation or imposition of any lien or other encumbrance of any nature whatsoever upon any of the properties or assets of Landlord.

(b) Authorization of Lease. This Lease has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Landlord and this Lease constitutes the valid and binding obligation of Landlord, fully enforceable in accordance with its terms.

(c) No Litigation or Adverse Events. There is no action, suit, examination, review, or proceeding by or before any governmental instrumentality or agency now pending or, to the knowledge of Landlord, threatened against Landlord, which, if adversely determined,



would materially impair the right of Landlord to carry on the business as contemplated under this Lease.

(d) No Default. Landlord is not in default in the performance, observation, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which it is a party relating to the Leased Premises and which default would have a material adverse affect on the Leased Premises; and

(e) Corporate. Landlord is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of New York and is qualified to do business in the State of New York, and has the limited liability company power and authority to own its properties and assets and to carry on its business as now being conducted.

ARTICLE XIV

OPERATION, MERGER AND CONSOLIDATION RESTRICTIONS

Section 19.1 Intentionally Omitted

Section 19.2 SPE Provisions. At all times during the term of this Lease, Tenant represents, warrants and covenants that Tenant and each Subtenant, and all successors and assigns of Tenant and Subtenants, is, shall be and shall continue to be a "Special Purpose Entity" as defined in Schedule 19.2. The Operating Agreement of Tenant and each subtenant shall include the Special Purpose Entity provisions set forth in Schedule 19.2.

Section 19.3 Injunctive Relief. Notwithstanding anything to the contrary set forth in this Lease, the Parties hereto understand and agree that: (a) each term of Article XIX of this Lease is fully required to protect Landlord's interests, and that no such term confers a benefit on Landlord that is disproportionate to the detriment imposed on Tenant, if any; (b) the remedy at law for any breach by Tenant of Article XIX would be inadequate; (c) the damages flowing from such breach are not readily susceptible to measurement in monetary terms; and (d) Landlord shall be entitled to immediate injunctive relief restraining any breach thereof. Nothing in this Agreement shall be deemed to limit Landlord's remedies at law or in equity for any such breach by Tenant of any term or provision of Article XIX of this Lease.

Section 19.4 Equity Interests. In the event that Tenant or any constituent entity under this Lease is ever a form of entity other than a limited liability company, the term "membership interest" as used in Articles XIX and XX hereof shall be deemed to mean the analogous form of equity ownership interest in such other type of entity, such as capital stock, partnership interest, beneficial interest or the like.

Section 19.5 No Merger or Consolidation. Except as expressly provided elsewhere in this Lease, Tenant shall not sell, or offer for sale, its assets or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity other than selling non-material assets in the ordinary course of business, to any other entity, business or activity involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and

representatives. Except as expressly provided elsewhere in this Lease, Tenant, Subtenants, Guarantor(s) and their Affiliates, shall not sell or offer to sell, assign, transfer, convey, pledge, or encumber its/their membership interests to, or otherwise attempt to merge with or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity, business or activity, whether involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and representatives, or otherwise.

ARTICLE XX

MISCELLANEOUS

Section 20.1 GOVERNING LAW. (a) ALL MATTERS PERTAINING TO THIS LEASE OR THE LEASED PREMISES SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS LEASE, AND THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LANDLORD OR TENANT ARISING OUT OF OR RELATING TO THIS LEASE MAY AT LANDLORD'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF WHITE PLAINS, COUNTY OF WESTCHESTER, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND TENANT WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TENANT HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING, TENANT DOES HEREBY DESIGNATE AND APPOINT:

Lizer Josefovic  
HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, New York 10520

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO TENANT IN THE MANNER PROVIDED IN ARTICLE XIII OF THIS LEASE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON TENANT IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE

STATE OF NEW YORK. TENANT (A) SHALL GIVE PROMPT WRITTEN NOTICE TO LANDLORD OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE, IN THE FORM OF A WRITTEN NOTICE TO LANDLORD, A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN WHITE PLAINS, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR AND NOTIFY LANDLORD IN WRITING OF SUCH SUBSTITUTION.

Section 20.2 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Lease shall not operate as, or be construed to be a waiver of, any subsequent breach of the same or other provision hereof. No waiver shall be effective unless set forth in writing and signed by the party against whom such waiver is asserted.

Section 20.3 Delay Not a Waiver. Neither any failure nor any delay on the part of any party hereto in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or any other document or instrument entered into or delivered in connection herewith or pursuant hereto, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. A waiver of one default with respect to any Person shall not be construed to be a waiver of any subsequent default with respect to such Person or any other Person or to impair any remedy, right or power consequent thereon.

Section 20.4 Force Majeure. Neither party shall be liable nor deemed to be in default (other than monetary defaults) for any delay or failure in performance under this Lease or other interruption of service or employment deemed resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Parties' employees, or any similar or dissimilar cause beyond the reasonable control of either party ("Force Majeure").

Section 20.5 Severability. In the event any provision of this Lease is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Lease so long as the intent of the parties under this Lease can still be effected, which shall remain in full force and effect and enforceable in accordance with its terms.

Section 20.6 Entire Agreement Amendments. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such Parties are merged into and expressed in this instrument, and any and all prior agreements between such Parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Landlord and Tenant.

Section 20.7 Counterpart Execution; Electronic Execution. This Lease may be executed in any number of counterparts with the same effect as if the Parties hereto had signed the same document. All counterparts will be construed together and shall constitute one lease. Signatures transmitted by email as PDFs shall have the same effect as original signatures.

Section 20.8 Survival of Representations and Warranties. Except as specifically provided otherwise in this Lease, all representations and warranties of Landlord and Tenant shall survive the Term of this Lease.

Section 20.9 Use of Brokers. Landlord and Tenant each represent and warrant to the other that no broker, finder or other person has been involved in regard to this Lease. Landlord and Tenant hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind (including the injured party's reasonable attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of a party to this Lease in connection with the transactions contemplated herein. The provisions of this Section 20.9 shall survive the expiration and termination of this Lease.

Section 20.10 Owner for Federal Tax Purposes. It is hereby agreed between Landlord and Tenant that for federal, state and local income tax purposes Landlord will be the owner of the Leased Premises and Tenant will be the lessee thereof, and each party hereto agrees to characterize this Lease as a lease for federal, state and local income tax purposes and to file all tax returns consistent therewith.

Section 20.11 Estoppel Certificates. Tenant shall, without charge, at any time and from time to time, within ten (10) days after written request by Landlord or Mortgagee, deliver a written instrument to Landlord or any other person specified by Landlord, duly executed and acknowledged, certifying the following and such other matters as may be reasonably required by Landlord, including without limitation, current financial information relating to Tenant:

- (a) That Tenant has accepted and is in possession of the Leased Premises;
- (b) That this Lease is unmodified and in full force and effect or, if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (c) Whether or not there are then existing any setoffs or defenses in favor of Tenant against the enforcement of any of the terms, covenants, and conditions of this Lease by Landlord and, if so, specifying the same, and also whether or not Landlord has observed and performed all of the terms, covenants, and conditions on the part of Landlord to be observed and performed and, if not, specifying same;
- (d) That no Lease Defaults exist or are continuing; and
- (e) The dates to which Rent and all other charges hereunder have been paid.



Section 20.12 Confidentiality. (a) Landlord and Tenant agree to keep all aspects of (but not the existence of) this Lease confidential, and shall not disclose to any person other than the members, managers, owners, directors, officers, employees, agents, advisors, affiliates, brokers, lenders, attorneys or accountants (collectively the "Representatives") of the Parties hereto on a need-to-know basis, or to any Governmental Authority pursuant to regulatory authority, any confidential or proprietary information, knowledge or data concerning the business, affairs, operations, secrets, dealings or finances of the other party furnished directly or indirectly by such other party (collectively referred to as the "Confidential Information"). As used in this Lease, the term "Confidential Information" does not include any information which: (i) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by either party or their Representatives); (ii) was available to either party on a non-confidential basis from a source other than a party to this Lease or its Representatives, provided that such source is not and was not bound by a confidentiality agreement with the party hereto; (iii) has been independently acquired or developed by either party or their Representatives without violating any of the obligations hereunder; (iv) is required by law to be disclosed; or (v) relates to the tax structure, tax strategy or tax planning of this transaction.

(f) In the event that either party or any of the Representatives receives notice of a legal request for disclosure of any of the Confidential Information (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), the party receiving such notice ("Receiving Party") shall promptly notify the other party ("Notified Party") so that the Notified Party may seek a protective order or other appropriate remedy if it chooses to do so. Failure by the Notified Party to take action to seek a protective order or other remedy and to notify the Receiving Party of such action prior to the required disclosure date, shall be deemed a waiver of the provisions of this section. In the event that a protective order or other remedy is not obtained or that the Notified Party waives compliance with the provisions hereof, the Receiving Party shall exercise its best efforts to obtain a confidentiality agreement or protective order concerning the Confidential Information, and in the absence thereof, shall disclose only that portion of the Confidential Information which it is advised by written opinion of counsel is legally required to be disclosed, or which is compelled by court order.

(g) In the event of any breach or threatened breach hereof, Landlord or Tenant shall be entitled to equitable relief, including a temporary preliminary and permanent injunction and specific performance, in addition to all other remedies available to them at law or in equity.

(h) Notwithstanding anything herein to the contrary, Landlord (and each employee, agent, or other Representative of Landlord) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of this Lease, related documents and all materials of any kind (including opinions or other tax analyses) that are provided to Landlord relating to such tax treatment and tax structure. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income tax treatment of the transaction and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of the transaction.

Section 20.13 Holdover. If, at the expiration of the Term, or earlier termination of the Lease, Tenant continues to occupy the Leased Premises except during a Reimbursement Period, with Landlord's consent, such holding over shall not constitute a renewal of this Lease, but Tenant shall be a Tenant from month-to-month at 300% of the most recent Rent payable by Tenant hereunder, at Landlord's sufferance, and under the same terms and conditions as were in force and effect at the expiration of the Term (except only as to the Term), and except that in the event Tenant shall continue to occupy the Leased Premises after the expiration of the Term, without a duly executed extension agreement in writing having been entered into by and between Landlord and Tenant, then if Landlord shall suffer any damage, loss, cost or expense as a result of such holdover, then Tenant, in addition to such increased Rent, shall pay the amount thereof to Landlord immediately on demand. The provisions of this Section shall be deemed to be "an agreement expressly provided" otherwise as provided in Section 252-C of the Real Property Law of the State of New York. Holding Over. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the Expiration Date or earlier termination of this Lease, nor shall anything contained herein be deemed to limit Landlord's remedies.

Section 20.14 Tenant's Waiver of Claim for Physical Injury. Landlord and Landlord's Indemnitees shall not be liable for, and Tenant waives and indemnifies Landlord and Landlord's Indemnitees against all claims for, damage or injury to person or property sustained by Tenant or any person claiming through Tenant, or otherwise, resulting from any accident or occurrence in, about, or upon the Leased Premises, whether occurring as a result of Landlord's active or passive negligence, or otherwise.

(a) Such waiver shall include, but not be limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair or any other capital improvement, replacement, repair or maintenance; (ii) injury done or occasioned by wind; (iii) any defect in or failure of plumbing, heating, or air conditioning equipment, electric wiring, gas, water and steam pipes, stairs, rail or walks; (iv) broken glass; (v) the backing up of any sewer pipe or washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Leased Premises; (vi) the escape of steam or hot water; (vii) water, snow or ice being upon, falling from or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Leased Premises; (viii) the falling of any fixture, plaster, drywall or stucco; and (ix) any act, omission or negligence of trespassers.

Section 20.15 Binding Effect. This Lease does not constitute an offer to lease and shall not bind Landlord or Tenant unless and until each such party elects to be bound hereby by executing and delivering to the other party an executed original counterpart hereof.

Section 20.16 Default by Landlord. Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within sixty (60) days of when they are due to be performed, except in cases when documents are required or consents needed in less than sixty (60) days in which case failure to render timely shall be deemed to be approval or consent of Landlord (or such additional time as is reasonably required to correct any such default) except for Landlord's default in making timely payment of taxes and interest, in which case Landlord shall be in default when such payments are delinquent or past due. Tenant agrees to give to the

holder of record of any mortgage covering the Leased Premises notice simultaneously with any notice given to Landlord to correct any default of Landlord as hereinabove provided and agrees that the holder of record of any mortgage shall have the right, after receipt of notice of such default, within sixty (60) days after the expiration of Tenant's applicable cure period with respect thereto, to correct or remedy such default before Tenant may take any action under this Lease by reason of such default. Landlord shall also give to the holder of any mortgage copies of any notices of default which it may give or send to Tenant.

Section 20.17 Liens. Tenant shall not do or suffer anything to be done whereby the Leased Premises, or any portion thereof, or any interest therein, may be encumbered by any liens of mechanics, laborers, or materialmen, chattel mortgages or any other liens. Tenant shall, whenever and as often as any such liens are filed against the Leased Premises, or any portion thereof, purporting to be for labor or material furnished or to be furnished to Tenant, discharge the same of record within thirty (30) days after the date of filing by payment, bonding or otherwise, as provided by law. In the event of the default of Tenant in procuring the discharge, as aforesaid, of any such lien, Landlord may, with five (5) days prior notice, procure such discharge and the expenses incurred by Landlord in obtaining such discharge shall be paid by Tenant as Additional Rent within ten (10) days after notice from Landlord of the amount thereof.

Section 20.18 Publicity. All news releases, publicity or advertising by Tenant or their Affiliates through any media intended to reach the general public which refers to Landlord, or its Affiliates, this Lease or the purchase of the Real Property shall be subject to the prior written approval of Landlord.

Section 20.19 Trial by Jury. **TENANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS LEASE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TENANT.**

Section 20.20 Construction and Interpretation. The Parties have each negotiated the terms and conditions hereof and reviewed this Lease carefully. It is the intent of the Parties that each word, phrase, sentence and other part hereof shall be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part hereof against the draftsman, by virtue of being the draftsman, shall not apply.

Section 20.21 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than shall be due hereunder, shall be deemed to be other than a payment on account nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be given any effect or be deemed an accord and

satisfaction, and Landlord may accept such checks without prejudice to any other rights or remedies which Landlord may have.

Section 20.22 Captions and Headings. The captions and headings set forth in this Lease are included for convenience and reference only, and the words obtained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of, or the scope or intent of, this Lease, or any parts hereof or thereof.

Section 20.23 Time is of the Essence. Time is of the essence of each and every term, condition, covenant and warranty set forth herein or in any of the other Lease Documents.

Section 20.24 Successors and Assigns. This Lease and the other Lease Documents shall (a) be binding upon Tenant and Tenant's legal representatives and permitted successors and permitted assigns, and (b) inure to the benefit of Landlord and any other person or entity who may now or hereafter hold the interest of Landlord under this Lease and their respective successors and assigns.

Section 20.25 No Third Party Beneficiaries This Lease is solely for the benefit of Landlord, its successors and assigns, and Tenant, and nothing contained herein shall confer upon any person other than Tenant or Landlord or their respective successors and assigns, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein, except only as may be otherwise specifically provided for in this Lease. All conditions to the obligations of Landlord to advance or make available proceeds of insurance or condemnation are imposed solely and exclusively for the benefit of Landlord, its successors and assigns. No other person or entity shall have standing to require satisfaction of such conditions in accordance with their terms, and no other person or entity shall, under any circumstances, be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Landlord at any time, if in Landlord's sole and absolute discretion, Landlord deems it advisable or desirable to do so.

Section 20.26 Non-Competition and Non-Solicitation

Tenant agrees to the following restrictive covenants and agreements which covenants are not severable from this Lease and which are included to protect the value of the Leased Premises. Accordingly, Tenant agrees that it and their Affiliates will not, during the Term of this Lease at any time for a period of two (2) years after the expiration or early termination of this Lease, directly or indirectly, together or alone or in conjunction with any others, engage in the following:

- (i) compete with the business conducted at the Facility, and for these purposes will not own, manage, operate, join, control or participate in, or be connected as an officer, employee, partner, director, trustee or otherwise in any manner with a company which owns or operates (or provides consulting and/or management services to any skilled nursing facility located within the Primary Market of the Facility or (ii) any company providing hospice services in the Commonwealth of Massachusetts, or, otherwise lend credit to a person, firm or entity of a type which they prohibited from owning,

(ii) solicit or hire any then current or former (having provided services during the period commencing one year prior to such date of solicitation or hire) employees of the Facility (except for employment at the Facility).

(iii) solicit or cause any then current resident of the Facility to move to another nursing facility unless, except during the Term of this Lease the Facility can no longer provide adequate care for such resident.

Tenant acknowledges and agrees that the remedy at law for any breach or threat of breach of the foregoing agreements will be inadequate and that Landlord shall be entitled to injunctive relief in addition to any rights or remedies available to it for any breach or threat of breach hereof. The foregoing covenants shall be deemed to be severable and if the same be held invalid by reason of length of time or area covered, or both, the Tenant agrees that such length of time or area covered, or either of them, shall be reduced to the extent necessary to cure such invalidity and the provisions hereof shall be enforceable to the fullest extent permitted by law.

Section 20.27 Subdivision. If the Leased Premises are in excess of that which is required to operate the Facility in accordance with the Intended Use, Landlord may subdivide the Leased Premises and amend this Lease to include only so much of the Leased Premises as is necessary to operate the Facility in accordance with the Primary Intended Use. If Landlord subdivides the Leased Premises there shall be no change in the Rent payable hereunder. After any such subdivision, Tenant shall have no rights to any land which is no longer part of the Leased Premises and Landlord may sell, lease or develop any land which is no longer part of the Leased Premises. If Landlord elects to subdivide the Leased Premises Tenant shall cooperate with Landlord and take all actions reasonably requested by Landlord to effect such subdivision.

Section 20.28 Landlord Not in Control; No Partnership. None of the covenants or other provisions contained in this Lease shall, or shall be deemed to, give Landlord the right or power to exercise control over the affairs or management of Tenant, the power of Landlord being limited to the rights to exercise the remedies referred to in this Lease. The relationship between Tenant, on the one hand, and Landlord, on the other hand, is, and at all times shall remain, solely that of landlord and tenant. No covenant or provision of this Lease is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand. Landlord undertakes or assumes no responsibility or duty to Tenant or to any other person with respect to the Facility or this Lease, except as expressly provided in this Lease; and notwithstanding any other provision of this Lease (a) Landlord shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Tenant or its stockholders, members, or partners and Landlord never intends to ever assume such status; (b) Landlord shall not in any event be liable for any debts, expenses or losses incurred or sustained by Tenant; and (c) Landlord shall not be deemed responsible for or a participant in any acts, omissions or decisions of Tenant or their stockholders, members, or partners. Landlord, on the one hand, and Tenant, on the other hand, disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand, or any sharing of liabilities, losses, costs or expenses.

Section 20.29 Tenant Cooperation. Tenant agrees to cooperate with Landlord in providing, and upon request by Landlord or its lender, Tenant shall provide or cause its subtenants to provide, such documents, information, financial reports, and such other items as may be required by Mortgagee in connection with Landlord's loan or loans to acquire the Leased Premises. Tenant agrees to cause its outside counsel to provide updated healthcare opinions required by Mortgagee in connection with the healthcare operations by Tenant or its subtenants at the Facility, and if required by Mortgagee, an opinion of counsel as to the due formation of Tenant and its subtenants and due execution by said parties, and Tenant Affiliates, of the Lease, all subleases, all guaranties of the Lease, and any other documents executed by such parties in connection with the loan(s) from Mortgagee to Landlord. Tenant agrees to execute, and cause the subtenants to execute, SNDAs in form and substance required by Mortgagee and by its prospective lender who will be making HUD-insured loans to Landlords. Tenant further agrees to cooperate with Landlord and with its lenders who are processing and will be making HUD Loans to Landlords.

Section 20.30 Capitalized Terms. To the extent capitalized terms used herein are not defined, they shall have the same meaning as capitalized terms in the Loan Documents.

Section 20.31 Affiliate. The term "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

ARTICLE XXI

REMEDIES CUMULATIVE

Section 21.1 The rights and remedies set forth under this Lease are in addition to all other rights and remedies afforded to Landlord under any of the other documents contemplated under this Lease ("Lease Documents") or at law or in equity, all of which are hereby reserved by Landlord, and this Lease is made and accepted without prejudice to any such rights and remedies. All of the rights and remedies of Landlord under each of the Lease Documents shall be separate and cumulative and may be exercised concurrently or successively in Landlord's sole and absolute discretion.

ARTICLE XXII

LIMITATION OF LIABILITY

Section 22.1 Liability. No member, manager, officer, shareholder, employee or agent of Landlord or its respective affiliates shall be held to any personal liability, jointly, or severally, for any obligation of, or claim against Landlord under this Lease. All persons dealing with Landlord, in any way, shall look only to the assets of Landlord for the payment of any sum or the performance of any obligations.



No receipt of any such notice under subsections (a), (b) and (c) shall impose any obligation on Landlord to take any action or to enforce its rights hereunder or otherwise remedy the circumstances leading to such notice.

#### ARTICLE XXIV

#### ANTI-TERRORISM AND ANTI-MONEY LAUNDERING COMPLIANCE

Section 24.1 Compliance with Anti-Terrorism Laws Tenant represents and warrants to Landlord that it is not, and, after making due inquiry, that no person who owns a controlling interest in or otherwise controls Tenant is, (i) listed on the Specially Designated Nationals and Blocked persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (ii) a person (a "Designated Person") either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "Anti-Terrorism Laws". Tenant represents and warrants that it requires, and has taken reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Tenant is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section 24.1 shall not apply to any person to the extent that such person's interest in Tenant is through a U.S. Publicly-Traded Entity. As used in this Lease, "U.S. Publicly-Traded Entity" means a person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person.

Section 24.2 Funds Invested in Tenant. Tenant represents and warrants that it has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in Tenant, to assure that funds invested by such holders in Tenant are derived from legal sources ("Anti-Money Laundering Measures"). The Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.* ("BSA"), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, "Anti-Money Laundering Laws").

Section 24.3 No Violation of Anti-Money Laundering Laws. Tenant represents and warrants to Landlord, to its actual knowledge after making due inquiry, that neither Tenant nor any holder of a direct or indirect interest in Tenant: (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties

under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

Section 24.4 Tenant Compliance with Anti-Money Laundering Laws. Tenant represents and warrants to Landlord that it has taken reasonable measures appropriate to the circumstances (in any event as required by law), to ensure that Tenant is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking.

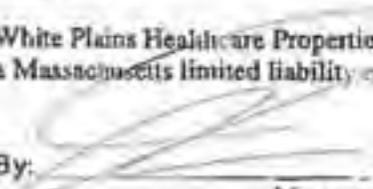
[SEE ATTACHED SIGNATURE PAGES]



IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

White Plains Healthcare Properties I, L.C.,  
a Massachusetts limited liability company

By:   
\_\_\_\_\_  
Manager

**TENANT:**

HBL SNF, LLC,  
a New York limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_





SCHEDULE 18(k)

Health Care Representations

**Health Care Representations.** Tenant, for itself, and for the Subtenants, do hereby represent and warrant to Landlord, its successors and assigns, as of the date of the Lease, that:

(a) All Medicare and Medicaid provider agreements, certificates of need, if applicable, certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by Health Care Authorities (as defined in the Lease) for the legal use, occupancy and operation of the Facility (collectively, the "Health Care Licenses") for the Facility have been obtained by the party required to hold such Health Care Licenses and are in full force and effect, including approved provider status in any approved third-party payor program. Each Subtenant (hereinafter "Operator") owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all such Health Care Licenses and will operate or cause the Facility to be operated in such a manner that the Health Care Licenses shall remain in full force and effect;

(b) The Facility is duly licensed as a skilled nursing facility as required under the applicable laws of the State of New York. The licensed bed capacity of the Facility and the actual bed count operated at the Facility is 160. The Tenant has not applied to reduce the number of licensed or certified beds of the Facility or to move or transfer the right to any and all of the licensed or certified beds of the Facility to any other location or to amend or otherwise change the Facility and/or the number of beds approved by the DOH or other applicable state licensing agency, and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility.

(c) The Health Care License with respect to the Facility (i) has not been and will not be (A) transferred to any location other than the Facility or (B) pledged as collateral security (other than any pledge as collateral security to Tenant's accounts receivable lender approved by Landlord which pledge is subject to the interests of (x) Landlord under the Lease and (y) Mortgagee, including the liens and security interests of the Loan Documents), (ii) is and will continue to be held free from restrictions or known conflicts that would materially impair the use or operation of the Facility as intended, and (iii) is not provisional, probationary, or restricted in any way, except in instances where a Governmental Authority or Health Care Authority has issued a provisional, probationary or restricted license, permit or certification in the ordinary course pending issuance of a final license, permit or certification;

(d) Tenant has or will take any action to rescind, withdraw, revoke, amend, modify, supplement or otherwise alter the nature, tenor or scope of any Health Care

Licenses or applicable provider payment program participation other than non-material alterations effected in the ordinary course of business;

(e) Tenant and the operation of the Facility are in material compliance with the applicable provisions of the Laws and all orders, standards, policies, restrictions or rules of any Health Care Authority having jurisdiction over the ownership, use, occupancy or operation of the Facility, including (i) staffing requirements, (ii) health and fire safety codes including quality and safety standards, (iii) accepted professional standards and principles that apply to the Operator's provision of services at the Facility, (iv) federal, state or local laws, rules, regulations or published interpretations or policies relating to the prevention of fraud and abuse, (v) insurance, reimbursement and cost reporting requirements, government payment program requirements and disclosure of ownership and related information requirements, (vi) requirements of applicable Health Care Authorities, including those relating to the Facility's physical structure and environment, licensing, quality and adequacy of nursing facility care, distributions of pharmaceuticals, rate setting, equipment, personnel, operating policies, and additions of Facility and services, and (vii) any other applicable laws, regulations or agreements for reimbursement for the type of care or services provided by Tenant and/ with respect to the Facility. As used herein, "material compliance" means a level of compliance that would keep Tenant and/ (and the operation of the Facility) free from any final orders or sanctions by any Governmental Authority or Health Care Authority having jurisdiction over the operation of the Facility and would not adversely affect Tenant's and/'s operations, including, but not limited to, its right to receive reimbursement or insurance payments;

(f) Tenant and the Facility are each in material compliance with the requirements for participation in the Medicare and Medicaid programs with respect to the Facility that currently participates in such programs and has a current provider agreement under Title XVIII and/or XIX of the Social Security Act which is in full force and effect. Facility has not had any deficiencies on its most recent survey (standard or complaint that would result in a denial of payment for new admissions with no opportunity to correct prior to termination. The Facility had not any deficiencies at "level G" or above on its most recent survey (standard or complaint), nor has Tenant been cited with any substandard quality of care deficiencies (as that term is defined in Part 488 of 42 C.F.R.) for the past two consecutive surveys. The Facility has not been designated as a Special Focus Facility (as such term is defined by the Centers for Medicare and Medicaid Services Special Focus Facility Program).

(g) Neither Tenant nor the Facility is a target of, participant in, or subject to any action, proceeding, suit, audit, investigation or sanction by any Health Care Authority or any other administrative or investigative body or entity or any other third party payor or any patient or resident (including, without limitation, whistleblower suits, or suits brought pursuant to federal or state False Claims Acts, and Medicaid/Medicare/State fraud/abuse laws, but excluding medical malpractice claims and other civil liability lawsuits for which the Facility is maintaining insurance coverage in the ordinary course of business) which may result, directly or indirectly or with the passage of time, in the imposition of a fine, penalty, alternative, interim or final sanction, a lower rate



(o) All Medicare, Medicaid, and private insurance cost reports and financial reports submitted by or on behalf of the Facility are and will continue to be materially accurate and complete and have not been and will not be misleading in any material respects;

(p) The Facility and the use thereof complies in all material respects with all applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements and no waivers of such physical plant standards exist at the Facility;

(q) Any existing agreement relating to the management or operation of the Facility is in full force and effect and is not in default by any party. In the event any management or operating agreement is terminated or in the event of foreclosure or other acquisition, the subsequent operator need not obtain a certificate of need prior to applying for and receiving a license to operate the Facility or prior to receiving Medicare or Medicaid payments, as applicable;

(r) There are no actions, suits, or proceedings at law or in equity by any person or entity, including any Governmental Authority or any Health Care Authority or other agency now pending or threatened against or affecting Tenant and/or the Facility, which actions, suits or proceedings, individually or collectively, if determined against Tenant and/or the Facility, might materially adversely affect the condition (financial or otherwise) or business of Tenant and/or the condition, ownership or operation of the Facility.

21-22623-SH

SCHEDULE 19.2

"Special Purpose Entity" shall mean a corporation, limited partnership or limited liability company (such entity sometimes referred to herein as the "Company") which at all times on and after the date hereof:

(d) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Leased Premises, entering into this Lease with Landlord, subleasing the Leased Premises to affiliated subtenants; and (ii) transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(e) is not engaged and will not engage, directly or indirectly, in any business unrelated to those activities required or permitted to be performed under the Lease, including pursuant to this definition of "Special Purpose Entity" and Subsection (a) above, as applicable;

(f) does not have and will not have any assets other than those (i) related to the Leased Premises or its partnership interest in the limited partnership or the member interest in the limited liability company that operates the Leased Premises or acts as the general partner or managing member thereof, as applicable, and (ii) incidental personal property necessary for the conduct of its business, as applicable;

(g) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(h) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(i) has not failed and will not fail to correct any known misunderstanding regarding its separate identity;

(j) has maintained and will maintain its accounts, books and records separate from those of any other person, individual or entity (a "Person") and maintain its bank accounts separate from those of any other Person. To the extent required by law to file a tax return, will file its own tax returns, except to the extent it is required to file consolidated tax returns by law;

(k) has maintained and will maintain its own records, books, resolutions and agreements;

(l) has not commingled and will not commingle its funds or assets with those of any other Person and has not participated and will not participate in any cash management system with any other Person other than pursuant to its [insert any credit facilities or accounts receivables financings];

(m) has held and will hold its assets in its own name;

(n) has conducted and will conduct its business in its name;

(o) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(p) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees, if any, in light of its contemplated business operations and in accordance with all Laws;

(q) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(r) has and will have no indebtedness other than (i) liabilities under this Lease or any Sublease (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Leased Premises and the routine administration of Tenant, and (iii) such other liabilities that are permitted under this Lease;

(s) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Lease;

(t) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(u) has allocated and will allocate fairly, reasonably and in accordance with all Laws, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(v) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Tenant or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity;

(w) has not pledged and will not pledge its assets for the benefit of any other Person;

(x) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(y) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(z) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity;

(aa) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(bb) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (A) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are in compliance with all Laws and no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party and (B) in connection with this Lease;

(cc) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Rent payable under this Lease and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Rent is insufficient to pay such obligation;

(dd) it shall consider the interests of its creditors in connection with all limited liability company actions;

(ee) does not and will not have any of its obligations guaranteed by any Affiliate except obligations under this Lease;

(ff) if such entity is a limited liability company, it shall have its own board of directors or board of managers, and shall cause such board to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other corporate formalities;

(gg) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct;

(hh) has not and will not permit any other Person independent access to its bank accounts;

(ii) has caused and will cause all representatives of Tenant to act at all times with respect to Tenant consistently and in furtherance of the foregoing; and

(j) has not and will not form, acquire, or hold any subsidiary or own any equity interest in any other entity.

CHAMBERLAIN





# Exhibit B

## to Nicholson Aff.

**GUARANTY OF LEASE**

THIS **GUARANTY OF LEASE** (this "Guaranty") is made as of November 19, 2015, by Lizer Jozofovic ("Guarantor"), to **WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**, a Massachusetts limited liability company ("Landlord").

**RECITALS**

- A. Landlord has been requested by HBL SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").
- B. Tenant is owned by Guarantor, and Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.
- C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.
- D. Guarantor hereby acknowledges receipt of a copy of the Lease.

**NOW, THEREFORE**, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "**Monetary Obligations**"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "**Obligations**").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "**Action**") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("**Other Guarantor**") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recover against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

3.2 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

### 3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease, (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)

an unconditional Letter of Credit, in accordance with the Section 7.1(a)(ii) of the Lease in the amount of \$3,700,000, or (b) \$3,700,000 in cash to secure the full and timely payment and performance of Tenant's obligations under the Lease, (i) an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached as Exhibit 7.1(a) of the Lease or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months, and (ii) and released to Landlord all funds in the controlled account number [REDACTED] 7272 in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held as an additional Security Deposit by Landlord. After the Guaranty Termination Date, Guarantor shall continue to remain personally liable pursuant to the terms of this Guaranty for (i) all obligations of Tenant under the Lease which arose or accrued on or prior to the Guaranty Termination Date and (ii) any liability of Tenant arising out of a breach of any warranty or representation of Tenant under Lease, and all documents executed by Tenant in connection therewith, (iii) and any liability of Guarantor arising out of a breach of any warranty of representation hereunder.

#### **4. WAIVERS OF GUARANTOR.**

4.1 Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges and amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protect, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

4.2 GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

**5.1** Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

**5.2** After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

**5.3** Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

IF to Landlord:

White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

HBL SNP, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mack Zafra, Esq.

**8. CONSENT TO JURISDICTION.** Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

**9. CERTAIN ADDITIONAL COVENANTS.**

**9.1 Financial Deliveries.** Guarantor shall deliver the following information to Landlord:

**9.1.1** As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

**9.2 Assignment; Sale of Assets; Change in Control.** Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

**9.3 Payment Method; Default Interest.** Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

**10. MISCELLANEOUS.**

**10.1** Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

**10.2** Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

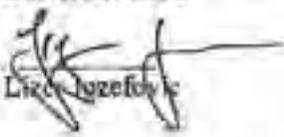
10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

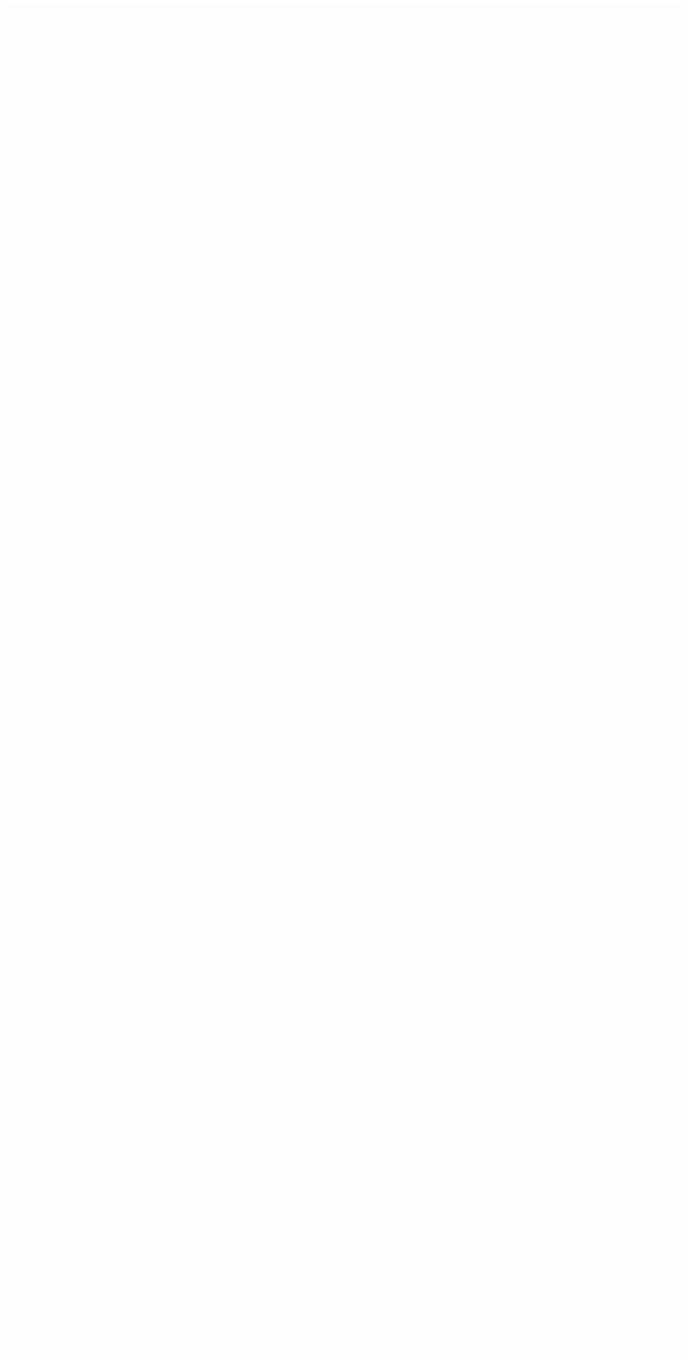
10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:

  
Liza Jozefovic



1304088v4/17057-4

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
Case Type: **Commercial Division**  
Case Status: **Active**  
eFiling Status: **Full Participation Recorded**  
Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

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#	Document	Filed By	Status
76	<a href="#">EXHIBIT(S)</a> - B (Motion #3) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
77	<a href="#">EXHIBIT(S)</a> - C (Motion #3) <i>Complaint in New York Action</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
78	<a href="#">EXHIBIT(S)</a> - D (Motion #3) <i>Judge Bannon's Interim Order</i>	<a href="#">Giardino, J.</a> Filed: 02/05/2021 Received: 02/05/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
79	<a href="#">AFFIDAVIT OR AFFIRMATION IN REPLY</a> (Motion #3) <i>Reply Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
80	<a href="#">EXHIBIT(S)</a> - A (Motion #3) <i>NY County Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
81	<a href="#">MEMORANDUM OF LAW IN REPLY</a> (Motion #3)	<a href="#">Donnellan, A.</a> Filed: 02/18/2021 Received: 02/18/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
82	<a href="#">STIPULATION - DISCOVERY ( REQUEST TO SO</a> <i>ORDER</i> ) (Motion #4)	<a href="#">Giardino, J.</a> Filed: 02/04/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

STIPULATION (Motion #1)

Stipulation regarding document discovery and motion to dismiss

Received: 03/04/2021

83 STIPULATION - SO ORDERED

Court User  
Filed: 03/11/2021  
Received: 03/11/2021

**Processed**  
[Confirmation Notice](#)

84 DECISION + ORDER ON MOTION (Motion #3)

Court User  
Filed: 03/18/2021  
Received: 03/18/2021

**Processed**  
[Confirmation Notice](#)

85 NOTICE OF ENTRY (Motion #3)

[Lara-Garduno, N.](#)  
Filed: 03/19/2021  
Received: 03/19/2021

**Processed**  
[Confirmation Notice](#)

86 COMPLAINT (AMENDED)

First Amended Verified Complaint

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

87 EXHIBIT(S) - 1

Amended and Restated Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
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88 EXHIBIT(S) - 2

Jozefovic Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

89 EXHIBIT(S) - 3

Neuman Guaranty of Lease  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
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90 EXHIBIT(S) - 4

Jozefovic Security Agreement  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

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[Confirmation Notice](#)

91 EXHIBIT(S) - 5

Letter of Intent  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

92 EXHIBIT(S) - 6

Notice of Default  
**Redacted** per 22 NYCRR §202.5(e)

[Donnellan, A.](#)  
Filed: 03/22/2021  
Received: 03/22/2021

**Processed**  
[Confirmation Notice](#)

93 LETTER / CORRESPONDENCE TO JUDGE

[Lara-Garduno, N.](#)  
Filed: 03/26/2021  
Received: 03/26/2021

**Processed**  
[Confirmation Notice](#)

94 LETTER / CORRESPONDENCE TO JUDGE

[Donnellan, A.](#)  
Filed: 04/09/2021  
Received: 04/09/2021

**Processed**  
[Confirmation Notice](#)

95 DECISION + ORDER ON MOTION (Motion #4)

Motion withdrawn without prejudice

Court User  
Filed: 04/20/2021  
Received: 04/20/2021

**Processed**  
[Confirmation Notice](#)

96 ANSWER (AMENDED)

[Barnett-Howell, A.](#)  
Filed: 05/21/2021  
Received: 05/21/2021

**Processed**  
[Confirmation Notice](#)

# Document

Filed By

Status

#	Document	Filed By	Status
97	<a href="#">EXHIBIT(S)</a> - A <i>Incorporated Complaint from New York County</i>	<a href="#">Barnett-Howell, A.</a> Filed: 05/21/2021 Received: 05/21/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
98	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 05/25/2021 Received: 05/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
99	<a href="#">NOTICE TO ADMIT</a>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
100	<a href="#">EXHIBIT(S)</a> - 1 <i>to Notice to Admit - Lease</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
101	<a href="#">EXHIBIT(S)</a> - 2 <i>to Notice to Admit - Development Agreement</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
102	<a href="#">EXHIBIT(S)</a> - 3 <i>to Notice to Admit - Temporary C of O</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
103	<a href="#">EXHIBIT(S)</a> - 4 <i>to Notice to Admit - AJA form 0704</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
104	<a href="#">EXHIBIT(S)</a> - 5 <i>to Notice to Admit - NYSDOH letter</i>	<a href="#">Lara-Garduno, N.</a> Filed: 06/02/2021 Received: 06/02/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
105	<a href="#">ORDER - MEDIATION</a>	Court User Filed: 06/03/2021 Received: 06/03/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
106	<a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
107	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
108	<a href="#">EXHIBIT(S)</a> - A (Motion #5) <i>First Notification of Disposition of Collateral, 10.6.20</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
109	<a href="#">EXHIBIT(S)</a> - B (Motion #5) <i>Second Notification of Disposition of Collateral, 6.9.21</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
110	<a href="#">EXHIBIT(S)</a> - C (Motion #5) <i>Term Sheet, 11.20.15</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
111	<a href="#">EXHIBIT(S)</a> - D (Motion #5) <i>Collateral Assignment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

112	<a href="#">EXHIBIT(S)</a> - E (Motion #5) <i>November 19 Email and Account Statement</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
113	<a href="#">EXHIBIT(S)</a> - F (Motion #5) <i>August 10 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
114	<a href="#">EXHIBIT(S)</a> - G (Motion #5) <i>August 16 Emails</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
115	<a href="#">EXHIBIT(S)</a> - H (Motion #5) <i>August 17 Email</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
116	<a href="#">EXHIBIT(S)</a> - I (Motion #5) <i>Letter of Intent</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
117	<a href="#">EXHIBIT(S)</a> - J (Motion #5) <i>Security Benefit Letters</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
118	<a href="#">EXHIBIT(S)</a> - K (Motion #5) <i>NYSDOH Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
119	<a href="#">EXHIBIT(S)</a> - L (Motion #5) <i>Certificate of Amendment</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
120	<a href="#">EXHIBIT(S)</a> - M (Motion #5) <i>2020 Monthly Invoices</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
121	<a href="#">EXHIBIT(S)</a> - N (Motion #5) <i>September Letter</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
122	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>Proposed UCC Form</i>	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
123	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)	<a href="#">Barnett-Howell, A.</a> Filed: 06/22/2021 Received: 06/22/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
124	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' / Third-Party Plainti ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
125	<a href="#">EXHIBIT(S)</a> - 1 (Motion #5) <i>Exhibit 1 - Bandazian Affidavit</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021 Received: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
126	<a href="#">EXHIBIT(S)</a> - 2 (Motion #5) <i>Exhibit 2 - Prior Order to Show Cause</i>	<a href="#">Malatak, R.</a> Filed: 06/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

Received: 06/25/2021

- |     |  |  |   |
|-----|--|--|---|
| 127 | <a href="#">EXHIBIT(S)</a> - 3 (Motion #5)<br><i>Exhibit 3 - Answer with Cross-Claims</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 128 | <a href="#">EXHIBIT(S)</a> - 4 (Motion #5)<br><i>Exhibit 4 - Decision and Order</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 129 | <a href="#">EXHIBIT(S)</a> - 5 (Motion #5)<br><i>Exhibit 5 - Notice of Sale</i>  | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 130 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #5)<br><i>Third-Party Defendant/Cross-Claimant Metropolitan Commercial Bank's Memorandum of Law in Partial Joi ... show more</i>        | <a href="#">Malatak, R.</a><br>Filed: 06/25/2021<br>Received: 06/25/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 131 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Donnellan, A.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 132 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 133 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #5)<br><i>Affidavit of Lizer Jozefovic</i>   | <a href="#">Giardino, J.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 134 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5)<br><i>Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants' Third-Pa ... show more</i> | <a href="#">Malatak, R.</a><br>Filed: 06/28/2021<br>Received: 06/28/2021   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 135 | <a href="#">LETTER / CORRESPONDENCE TO JUDGE</a> (Motion #5)   | <a href="#">Giardino, J.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021  | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 136 | <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5)<br><i>Affidavit of William A. Nicholson</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 137 | <a href="#">EXHIBIT(S)</a> - A (Motion #5)<br><i>Lease</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 138 | <a href="#">EXHIBIT(S)</a> - B (Motion #5)<br><i>Jozefovic Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 139 | <a href="#">EXHIBIT(S)</a> - C (Motion #5)<br><i>Neuman Guaranty</i><br><b>Redacted</b> per 22 NYCRR §202.5(e)   | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021<br>Received: 06/29/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 140 | <a href="#">EXHIBIT(S)</a> - D (Motion #5)<br><i>Collateral Assignment and Pledge</i>  | <a href="#">Donnellan, A.</a><br>Filed: 06/29/2021                         | <b>Processed</b><br><a href="#">Confirmation Notice</a> |

**Redacted** per 22 NYCRR §202.5(e)

Received: 06/29/2021 Notice Pg 6 of 113

- 141 [EXHIBIT\(S\)](#) - E (Motion #5)  
*UCC Financing Statement*
- 142 [EXHIBIT\(S\)](#) - F (Motion #5)  
*Notice of Defalt*  
**Redacted** per 22 NYCRR §202.5(e)
- 143 [EXHIBIT\(S\)](#) - G (Motion #5)  
*Construction Loan Agreement*
- 144 [EXHIBIT\(S\)](#) - H (Motion #5)  
*Note*
- 145 [EXHIBIT\(S\)](#) - I (Motion #5)  
*Mortgage*
- 146 [EXHIBIT\(S\)](#) - J (Motion #5)  
*Security Benefit Notice of Default*
- 147 [EXHIBIT\(S\)](#) - K (Motion #5)  
*Security Benefit Notice of Default*
- 148 [EXHIBIT\(S\)](#) - L (Motion #5)  
*Security Benefit Complaint*
- 149 [EXHIBIT\(S\)](#) - M (Motion #5)  
*Email*
- 150 [EXHIBIT\(S\)](#) - N (Motion #5)  
*Hebrew Hospital Bankruptcy Filing Notice*

[Donnellan, A.](#)  
Filed: 06/29/2021  
Received: 06/29/2021

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# Exhibit C

## to Nicholson Aff.

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Mark Neuman ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

**RECITALS**

A. Landlord has been requested by HBL SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recover against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

**3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.**

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease, (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)

an unconditional Letter of Credit, in accordance with the Section 7.1(a)(ii) of the Lease in the amount of \$3,700,000, or (b) \$3,700,000 in cash to secure the full and timely payment and performance of Tenant's obligations under the Lease, (ii) an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached as Exhibit 7.1(a) of the Lease or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months, and (iii) and released to Landlord all funds in the controlled account number [REDACTED] 7272 in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held as an additional Security Deposit by Landlord. After the Guaranty Termination Date, Guarantor shall continue to remain personally liable pursuant to the terms of this Guaranty for (i) all obligations of Tenant under the Lease which arose or accrued on or prior to the Guaranty Termination Date and (ii) any liability of Tenant arising out of a breach of any warranty or representation of Tenant under Lease, and all documents executed by Tenant in connection therewith, (iii) and any liability of Guarantor arising out of a breach of any warranty of representation hereunder.

**4. WAIVERS OF GUARANTOR.**

**4.1** Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this **Section 4**, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protect, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

**4.2** GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

**4.3** Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

If to Landlord:

White Plains Healthcare Properties I, LLC  
c/oThe Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Mark Neuman

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

**8. CONSENT TO JURISDICTION.** Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

**9. CERTAIN ADDITIONAL COVENANTS.**

9.1 **Financial Deliveries.** Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 **Assignment; Sale of Assets; Change in Control.** Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

9.3 **Payment Method; Default Interest.** Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. **MISCELLANEOUS.**

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

**10.3** Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

**10.4** If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

**10.5** The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

**10.6** Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

**10.7** Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

**10.8** The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

**10.9** The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

**10.10** This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written,

GUARANTOR:  
  
Mark Neuman

# Exhibit D

## to Nicholson Aff.

COLLATERAL ASSIGNMENT AND PLEDGE  
OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT

THIS ASSIGNMENT made as of August 11, 2017, by Lizer Jozefovic, an individual having an address at 53 Mariner Way, Monsey New York 10952 (the "Assignor") to Howard Fensterman as nominee for White Plains Health Care Properties LLC, a Massachusetts Limited Liability Company (the "Assignee") with reference to the following facts.

WHEREAS, HBL-SNF a New York Limited Liability Company ("Operator/Tenant") an entity controlled by Assignor had entered into a development agreement with WHITE PLAINS HEALTHCARE PROPERTIES I, LLC (the "Developer") dated November 19, 2015 (the "Agreement") which was amended by and between the Parties by that certain first Amcndment to the Development Agreement (the "Amendment") dated as of July 12, 2017.

WHEREAS, the Development Agreement among other things obligated the Tenant to enter into a Lease with Developer in return for the Developer, developing, designing, financing and Building a 160 Bed Skilled Nursing Home for Tenant in White Plains New York; and

WHEREAS the Development Agreement obligated the Tenant to obtain CON approval to build such 160 Bed Skilled Nursing Home for Tenant in White Plains New York and to deliver to Developer such documents as are reasonably requested by Developers lenders; and

WHEREAS, the Tenant has obtained all CON approvals necessary to construct the Skilled Nursing Home and the Developer has obtained all zoning and building department of approvals and a Construction Loan; and

WHEREAS, in or about November 2015 in consideration of Howard Fensterman and/or CCC Equities assigning all mortgages held by them on property owned by Waterview Acquisition I, LLC agreed that he would pre-pay Two Million Two Hundred Thousand Dollars to White Plains Healthcare Properties and would additionally establish a joint signature account in JP Morgan Bank into which the sum of One Million Six Hundred Thousand Dollars was deposited; and

WHEREAS, The Lease requires the sum of 1.6 Million Dollars to be delivered to Landlord at least 60 days prior to the Commencement date of the Lease as additional security for the Tenants faithful performance of the terms and conditions of the Lease; and

WHEREAS, Section 10.2 of the Loan Agreement by and between Developer and its Construction lender restates the language of the Lease and Developer has undertaken to ensure that the 1.6 Million Dollars on deposit with JP Morgan shall be delivered according to the terms and provisions of the Lease; and

WHEREAS, the Sums in the JP Morgan Account entitled HBL SNF, LLC, Account Number [REDACTED] 7272 have been transferred to two JP Morgan Account's entitled Waterview Acquisition I, LLC Account Number [REDACTED] 7002 and Account Number [REDACTED] 0885 in which Howard Fensterman is not a signatory and the parties want to enter into this agreement by which Howard Fensterman will be added as a signatory to such account under terms and conditions set forth below; and

WHEREAS, Tenant and Assignor have promised to add Howard Fensterman as a signatory to such account so as to ensure that no withdrawals may be made so as to reduce the amount of the account below 1.6 Million and so as to ensure that when required 60 days prior to the commencement date the money in the account or equivalent shall be delivered as additional cash security for the lease; and;

WHEREAS in order to secure the promises made by Assignor concerning such account Assignor has agreed to deliver to Assignee this Assignment; and the Assignor desires to pledge to Assignee all of his membership interest in Waterview Acquisition I, LLC (the "Company"), in order to secure the promises made herein and in the Lease and Security Agreement delivered to the Construction Lender;

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignee and the Assignor hereby agree as follows:

1. As collateral security for the Borrowers' obligations under the Lease, the Security Agreement, the Loan, and the Development Agreement the Assignor hereby pledges and assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member in the Company (the "Collateral").

2. Upon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the interest in the Company assigned to the Assignee pursuant to Paragraph 1 hereof shall be automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect. Notwithstanding the foregoing, the Assignee hereby agrees to execute any document reasonably required for the purpose of evidencing the reassignment of such interest and the termination of this Assignment.

3. The Assignor represents, covenants and warrants that he is the legal and beneficial owner of the Collateral and has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in the Company and that there are no current liens or encumbrances that exist as of the day of the execution of this assignment.

4. The Assignor agrees not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

5. The Assignor covenants and agrees not to voluntarily withdraw as the managing member of the Company without the prior written consent of Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

6. The covenants provided for in this Assignment shall be binding upon the

successors and assignees of the parties hereto.

7. This Assignment shall be governed by the laws of the State of New York.

8. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument in writing duly signed by or on behalf of the Assignor or Assignee.

9. Assignor represents and warrants that he has a 71 % membership interest in the Company and that he is manager thereof.

10. In accordance with the laws of the State of New York and as part of the consideration for the making of the Loan, Assignor consents to the jurisdiction of any local, state or federal court located within New York and further consents that all service of process may be made by registered mail to his address set forth below and service so made shall be deemed completed five (5) days after the same shall have been mailed.

11. Assignor covenants and agrees to execute such additional documents and to take such further actions as may be reasonably required to carry out the provisions and intent of this Assignment including, without limitation, executing a financing statement or statements and continuations thereof. In addition, Assignor grants to Assignee a power of attorney coupled with an interest to effectuate the terms of the foregoing sentence and to file all continuations, renewals or amended financing statements without the signature of Assignor.

13. Should Assignor violate the terms and provisions concerning the maintenance of the account as set forth in the resolution of Waterview Acquisition I, LLC annexed hereto as Exhibit A the Assignee shall have:

(a) The right to sell the Collateral in the State of New York at one or more public or private sales at such price and on such terms as Assignee in its discretion accepts, for cash, upon or for future delivery. Upon any such sale, the Assignee shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral. Such purchaser at any such sale shall hold the Collateral sold absolutely free from any claim or right on the part of the Assignor, and the Assignor hereby waives (to the extent permitted by law) all rights of redemption, stay or appraisal which he has or may have under any rule of law or statute now existing or hereafter adopted. The Assignee shall give the Assignor twenty-one (21) days' written notice by registered or certified mail, postage prepaid, return receipt requested (which Assignor acknowledges is reasonable and sufficient), of the Assignee's intention to make any such public or private sale. Such notice, in the case of public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places in the State of New York as the Assignee may fix in the

notice of such sale. The Assignee shall not be obligated to make any sale of the Collateral if it shall determine not to do so, regardless of the fact that notice of such sale of the Collateral may have been given. The Assignee may, upon one day's written notice, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place within in the State of New York to which the same was so adjourned. In case sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Assignee until the sale price is paid by the purchaser or purchasers thereof, but the Assignee shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold, and, in case of any such failure, such Collateral may be sold again upon like notice. As an alternative to exercising the power of sale herein conferred upon it, the Assignee may proceed by a suit or suits at law or in equity to foreclose this Assignment and to sell the Collateral, or any portion thereof, pursuant to a judgment or decree of a court of competent jurisdiction;

(b) such other rights with respect to the Collateral as shall be afforded to secured parties by the Uniform Commercial Code of the State of New York including, but not limited to, the right to setoff; and/or

(c) to apply any proceeds of any disposition of the Collateral to the payment of the cash security required under the terms and provisions of the lease and reasonable expenses of the Assignee in connection with the exercise of its rights or remedies, including reasonable fees and expense of attorneys, and any balance shall be paid to such party as shall be entitled thereto pursuant to law.

13. The Assignor hereby waives any right to require that the Assignee proceed against any real or personal property or any guaranty given as security for the Note, whether or not existing or hereafter given, before exercising its rights and remedies with respect to the Collateral.

14. This Agreement may be executed in counterparts, each of which, when taken together, shall be construed as one and the same instrument.

15. All notices, demands and other communications provided for herein shall be deemed received upon personal delivery or delivery by national overnight delivery service, or three (3) business days following deposit in the U.S. mail, postage prepaid, first class registered or certified,

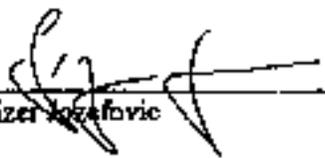
to Assignor or assignee at the following addresses:

If to Assignor:  
Liner Jozefovic  
53 Mariner Way  
Monsey, New York

With a copy to:  
Michelman & Robinson, LLP  
800 Third Avenue  
New York, New York  
Attention: Mark H. Zafin, Esq.

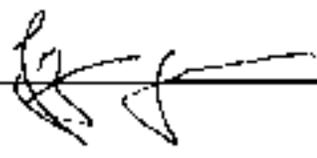
If to Assignee:  
Howard Fensterman  
C/o Abrams, Fensterman et al  
3 Dakota Drive  
Suite 300  
Lake Success, New York 11042

IN WITNESS WHEREOF, Assignor has duly executed this Assignment, as of the day and year first written above.

  
\_\_\_\_\_  
Liner Jozefovic

The Company hereby acknowledges receipt of this Assignment by Assignor.

WATERVIEW ACQUISITION I, LLC

By:   
\_\_\_\_\_



# Limited Liability Company Certification

# Chase Investments

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
Account Maintenance Fax (800) 805-3909

## Account Information

Account Number	0885 (NON MANAGED)	WATERVIEW ACQUISITION I L
Account Description	LTD LIABILITY CO	LC
Rep of Record	0V01	537 RT 22
Completed By	KENNETH GATES (CHCKG17)	PURDYS NY 10578-2900

## Limited Liability Company Information

Use this form to certify the member/manager(s) authorized to act on an investment account for a Limited Liability Company. A Signatory Information Sheet **MUST BE** provided for all signers.

Limited Liability Company Name

Waterview Acquisition I LLC

Limited Liability Company Tax ID Number (TIN)

[Redacted]

Limited Liability Company Type

Member Managed Company

## Member/Manager Information

Member/Manager Name

Mark Neuman

Member/Manager Name

Herbert Jozefovic

Member/Manager Name

Howard Fensterman

Member/Manager Name

[Redacted]

## Certification

In consideration of J.P. Morgan Securities LLC ("JPMS") opening and/or maintaining an investment account ("Account") for the Limited Liability Company ("LLC") named above, the undersigned duly authorized to bind the LLC and all of its Members/Managers personally, certify as follows:

**FIRST:** The name of the LLC to which this Certification applies is as indicated above.

**SECOND:** All Members/Managers are over the age of majority in their respective state of residence. Each of the Members/Managers listed above is hereby individually authorized, for and on behalf of the LLC.

**THIRD:** JPMS is authorized to accept orders for trading, purchases and sales of assets and other instructions for the receipt and withdrawal and disposition of assets to any name, including themselves and third parties, whether free or versus payment, or trade or non-trade related (including to any Members/Managers) from those Members/Managers listed above, pursuant to the terms of the LLC and applicable law. The LLC is duly authorized and permitted to engage in cash and margin transactions in any and all forms of securities including, but not limited to, evidences of interest, participation, or indebtedness, instruments of any issuer (whether publicly registered or exempt from registration) including, but not limited to, common or preferred stock, scrip, warrants and rights; bills, notes, bonds or debentures of any coupon, including "zero coupon" or maturity; certificates of deposit, bank notes or deposit notes; commercial paper, money market instruments; listed and/or over-the-counter options, commodities, commodity futures, options on futures (including single stock futures contracts and other securities futures products), transactions in foreign currencies; limited partnership interests and other interests in hedge funds, buyout funds, real estate investment trusts, venture capital funds, private equity funds and private equity investment vehicles; whole mortgage loans, any and all interests and participations in mortgage loans, mortgage-backed and asset backed securities; any kind of derivative investment, including interest rate, currency, credit, equity or other swap transactions; repurchase and reverse\* repurchase transactions, buy/forward sale transactions, dollar rolls, secured lending transactions and any instrument or interest generally regarded as an investment or hedge, secured or unsecured, or any transaction, that is similar to any of those described above (including an option with respect to any of them).

*(continued on next page)*

### INVESTMENT PRODUCTS ARE:

**NOT FDIC INSURED • NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES • SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED**



### Certification Regarding Municipal Advisor Rule

### Chase Investments

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
Account Maintenance Fax (800) 805-3909

Use this form to certify entity status on an investment account.

#### Account Holder Information

Name of Account Owner ("Entity")

Waterview Aquisition I LLC

For the purposes of Section 15B of the Securities Exchange Act of 1934 (the "Municipal Advisor Rule"), I hereby represent, warrant and certify to J.P. Morgan Securities LLC ("JPMS") on behalf of the Entity, each of the following and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue:

I am a knowledgeable official representative of the Entity, am authorized to sign this certificate, have access to the appropriate information or have direct knowledge of the source of the funds of the Entity that enables me to make these representations; and, if necessary, have consulted with legal counsel, in regard to these representations, warranties and certifications.

#### Certification Regarding Municipal Entity Status (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a **Municipal Entity**
- The Entity is not a **Municipal Entity**

The term "**Municipal Entity**" means any state, political subdivision of a state, or municipal corporate instrumentality of a state, including: (1) any agency, authority or instrumentality of the state, political subdivision or municipal corporate instrumentality; (2) any plan, program or pool of assets sponsored or established by the state, political subdivision or municipal corporate instrumentality thereof; and (3) any other issuer of municipal securities.

#### Certification Regarding Obligated Entity Status (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a **Obligated Person**
- The Entity is not a **Obligated Person**

The term "**Obligated Person**" means any person or entity, including an issuer of municipal securities, who is either generally or through an enterprise, fund or account of such person, committed by contract or other arrangement to support the payment of all, or a part of, the obligations on the municipal securities to be sold in an offering of municipal securities, except the term Obligated Person shall not include: (1) a person who provides municipal bond insurance, letters of credit or other liquidity facilities; or (2) a person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility or other credit enhancement.

#### Certification Regarding Proceeds with JPMS (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- Amounts to be invested in accounts established at JPMS for the entity may constitute **Proceeds of Municipal Securities** or **Municipal Escrow Accounts**
- Amounts to be invested in accounts established at JPMS for the entity may not constitute **Proceeds of Municipal Securities** or **Municipal Escrow Accounts**

The term "**Proceeds of Municipal Securities**" means monies derived by a municipal entity from the primary offering of municipal securities, investment income derived from the investment or reinvestment of such monies, and any monies of a municipal entity or obligated person held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the payment of the debt service on the municipal securities, including reserves, sinking funds and pledged funds created for such purpose, and the investment income derived from the investment or reinvestment of monies in such funds.

The term "**Municipal Escrow Investments**" means proceeds of municipal securities and any other funds of a municipal entity or Obligated Person that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities.

#### Signature

I hereby represent, warrant and certify to JPMS on behalf of the Entity, each of the foregoing and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue.

Authorized Signature 	Date (mm/dd/yyyy) 8-16-17
Authorized Signer Name (please print) Mark Neuman	

**INVESTMENT PRODUCTS ARE:  
NOT FDIC INSURED • NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES • SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED**

**Limited Liability Company Certification**

**Chase Investments**

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
 Account Maintenance Fax (800) 805-3909

**Certification (continued)**

A Member/Manager may: (1) give to, and receive from, JPMS or its affiliates oral, written or electronic instructions, confirmations, notices or demands with respect to the account and any transaction; (2) bind the LLC to enter into and perform any transaction or agreement, amendment or modification thereof, relating to the account and any transaction involving the LLC; (3) lend or borrow money or securities and secure the repayment thereof with the property of the LLC; (4) pay in cash or by check or by credit or debit card or draft drawn upon the funds of the LLC any sums required to be paid in connection with the account and any transaction; (5) direct the sale or exercise of any rights with respect to any securities or other property; (6) agree to any terms or conditions or execute or otherwise assent to any document or agreement affecting the account and any transaction; (7) direct JPMS to surrender any securities or other property for the purpose of effecting any exchange or conversion thereof; (8) appoint any other person or persons to do any and all things which such Member/Manager of the LLC is hereby empowered to do; and (9) generally, take all such action as such Member/Manager of the LLC may deem necessary or desirable to implement or facilitate the trading activities described herein. Members/Managers are permitted to sell, assign and endorse for transfer, certificates representing stocks, bonds or other securities now registered or hereafter registered in the name of the LLC. If a Member/Manager is an entity (e.g., Corporation), then the appropriate ancillary documents (e.g., corporate resolution) is required. If the Members/Managers want to authorize a third party to transact on the account, the General Partners must also submit a JPMS Trading Authorization form naming such party. Subject to the policies of JPMS and its affiliates, or in the event JPMS or its affiliates receive conflicting instructions, or reasonably believe instructions from one Member/Manager might conflict with the wishes of another Member/Manager or other authorized third party, JPMS or its affiliates may do any of the following: (a) choose which instructions to follow and which to disregard; (b) suspend all activity in the Account until written instructions, signed by all Members/Managers, are received; (c) close the Account and deliver all securities and other property, net of debits or liabilities, to the address of record; and/or (d) take other legal action.

**FOURTH:** Members/Managers certify that they have the power under the LLC Agreement and applicable law to open and maintain an Account with JPMS and its affiliates (including margin accounts\*) and to enter into transactions, both purchases and sales, of securities and other property for the LLC. Notwithstanding the herein certifications, any person with actual or apparent authority is authorized and empowered by the LLC to undertake any activity. All actions previously taken by any Member/Manager in connection with or related to the matters set forth in, or reasonably contemplated or implied by the herein certifications be, and each of them hereby is, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the LLC.

**FIFTH:** Members/Managers warrant and represent that the information above is accurate and complete. Members/Managers, jointly and severally, agree to indemnify and hold harmless JPMS, its agents, employees, representatives and affiliates, from and against any and all liabilities, judgments, claims, settlements, losses, damages, obligations, and expenses, including reasonable attorney fees, arising from or relating to this Certification and/or for effecting transactions for the Account in reliance thereon. If fewer than all Members/Managers sign, those signing certify that they are authorized to bind the LLC and all Members/Managers thereof to the terms of this Certification. Members/Managers agree to inform JPMS, in writing, of any changes in the identity of the Members/Managers listed above, any other amendments to the LLC and/or any other event that could alter the Certifications made herein including its revocation. Such written notice should be provided to JPMS at the following address: J.P. Morgan Securities LLC, Attention: Account Processing, IL1-0291 4th Floor, 131 South Dearborn Street, Chicago, IL 60603-5506 or any other address that has been provided by JPMS specifically for such purpose. JPMS may rely on this Certification indefinitely or until written notice to the contrary is received by JPMS. Members/Managers agree that this release and discharge shall survive the revocation of this Certification with respect to transactions entered into prior to the effectiveness of such revocation.

\*Additional Documentation Required

**Member Signature(s)**

Authorized Members

All Members/Managers have signed below

Member Signature <input checked="" type="checkbox"/> <i>Geoffrey...</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <input checked="" type="checkbox"/> <i>[Signature]</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <input checked="" type="checkbox"/> <i>[Signature]</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <input checked="" type="checkbox"/>	Date (mm/dd/yyyy) / /

**INVESTMENT PRODUCTS ARE:**  
 NOT FDIC INSURED • NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES • SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED



EXHIBIT A  
ACTION OF THE MEMBERS AND MANAGERS  
OF  
WATERVIEW ACQUISITION I, LLC  
AUGUST 11<sup>th</sup> 2017

The undersigned, each being a Member or Manager of WATERVIEW ACQUISITION I, LLC, a New York limited liability company (the "Company"), and collectively constituting all of the Members and Managers of the Company, do each hereby consent to and adopt the following resolutions as resolutions of the Members and Managers of the Company:

AUTHORIZATION

WHEREAS, it is deemed to be in the best interests of the Company and its members and affiliates to enter into an agreement with White Plains Health Care Properties as Developer (the "Developer"), for Developer to design and construct a 160 Bed Residential Health Care Facility in White Plains New York ("the Facility").

WHEREAS, Marc Neuman, Lizer Jozefovic and Gerald Neuman and the Company will derive substantial economic benefit by increasing their market share in Westchester County by the construction of the Facility; and

WHEREAS, Waterview Acquisition I, LLC is the owner of that certain account maintained at JP Morgan Account's entitled Waterview Acquisition I, LLC Account Number [REDACTED]002 and Account Number [REDACTED]0885 (the "Account") in which Marc Neuman and Lizer Jozefovic are the sole signatories;

WHEREAS, in order to achieve the Companies goals set for the above it is in the best interest of the Company and its members to add Howard Fensterman as a signatory to that account and place certain restrictions on withdrawals from the account pending the construction of the Facility

THEREFORE, BE IT RESOLVED, that

1. The Company add Howard Fensterman as a co-signatory to the following account Waterview Acquisition I, LLC Account Number [REDACTED]002 and Account Number [REDACTED]0885 at JP Morgan Chase together with Marc Neuman and Lizer Jozefovic;
2. Howard Fensterman' s signature shall be required on any withdrawal or any direction to the Bank on the account where such withdrawal or direction shall cause the balance and value of the account to fall below 1.6 million dollars until such

time as the Facility is completed and an affiliated entity HBL-SNF satisfies its obligation to post a 1.6 million dollar additional cash security deposit according to Section 7.1(a)(iii) of the lease between HBL SNF, LLC as Tenant And White Plains Healthcare Property I, LLC as Landlord which requires Sixty days prior to the anticipated Commencement Date that the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account,

3. Howard Fensterman' s signature shall be required to withdraw all sums in the account in excess of 1.6 million at the direction of Lizer Jozefovic or Marc Neuman and by his signature below agrees to give such consent unless such withdrawal shall cause the balance in the account to fall below 1.6 Million dollars.

RESOLVED FURTHER, that the managers of the Company designated by any of them (such manager or managers, which are authorized to act singly or together pursuant hereto, being hereinafter designated as "authorized managers"), be and they are each hereby authorized, directed and empowered, in the name of the Company, to execute and deliver to JP Morgan Bank and all , agreements or instruments including this Resolution to JP Morgan Bank required to evidence and effectuate the terms of this Resolution which shall be incorporated into a formal resolution and direction to JP Morgan Chase Bank, N.A. evidencing the agreements memorialized by this Resolution.

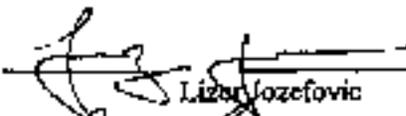
RESOLVED FURTHER, that any and all acts of any of the authorized managers of the Company done or made heretofore in connection with the actions authorized by this Resolution and the execution of all agreements related thereto, are hereby ratified and approved in all respects.

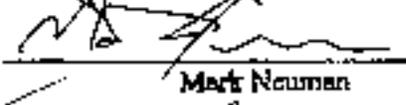
RESOLVED FURTHER, that JP Mortgage Bank may conclusively rely upon a copy of these resolutions and is authorized to act upon these resolutions for past, present and future transactions until (a) written notice of its revocation is delivered JP Morgan Bank. The authority hereby granted shall apply with equal force and effect to the successors in office of the managers herein named.

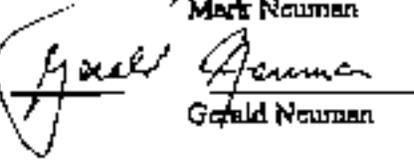
[SIGNATURE PAGE FOLLOWS]

The foregoing action is taken pursuant to the applicable New York limited liability company statutory laws and the operating agreement of the Company, by the written consent of a majority of its members and managers of the Company acting without a meeting.

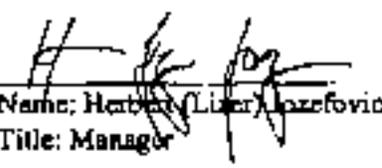
MEMBERS:

  
Liza Jozefovic

  
Mark Neuman

  
Gerald Neuman

MANAGERS:

  
Name: Herbert (Liza) Jozefovic  
Title: Manager

AUTHORIZED SIGNATORY

\_\_\_\_\_  
Howard Fensterman

# Exhibit E

## to Nicholson Aff.

437585 2020 Sep 15 PM01:04

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

**1. DEBTOR'S EXACT FULL LEGAL NAME** - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME				
OR				
1b. INDIVIDUAL'S LAST NAME	1b. FIRST NAME	1b. MIDDLE NAME	1b. SUFFIX	
Jozefovic	Lizer			
1c. MAILING ADDRESS	1c. CITY	1c. STATE	1c. POSTAL CODE	1c. COUNTRY
53 Mariner Way	Monsey	NY	10952	USA
1d. SEE INSTRUCTIONS	1d. ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
				<input type="checkbox"/> NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME** - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S LAST NAME	2b. FIRST NAME	2b. MIDDLE NAME	2b. SUFFIX	
2c. MAILING ADDRESS	2c. CITY	2c. STATE	2c. POSTAL CODE	2c. COUNTRY
537 Rt 22	Purdys	NY	16578	USA
2d. SEE INSTRUCTIONS	2d. ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
		Limited Liability Company	New York	<input type="checkbox"/> NONE

**3. SECURED PARTY'S NAME** (or NAME of TOTAL ASSIGNEE of ASSIGNOR SP) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR				
3b. INDIVIDUAL'S LAST NAME	3b. FIRST NAME	3b. MIDDLE NAME	3b. SUFFIX	
3c. MAILING ADDRESS	3c. CITY	3c. STATE	3c. POSTAL CODE	3c. COUNTRY
3 Dakota Dr., ste 308	Lake Success	NY	11042	USA

4. This FINANCING STATEMENT covers the following collateral:  
**All rights, title and interest of Lizer Jozefovic as a member in Waterview Acquisition I, LLC. This financing statement relates to that certain Collateral Assignment and Pledge of Membership Interest and Security Agreement, dated August 11, 2017, by and between Lizer Jozefovic and Howard Fensterman, as nominee of White Plains Health Care Properties LLC, as it may be amended, restated, supplemented or otherwise modified from time to time.**

5. ALTERNATIVE DESIGNATION (if applicable)	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEY/BAILOER	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Address	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (if optional)		<input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2			

8. OPTIONAL FILER REFERENCE DATA

**Filing Number-202009158394737**

# Exhibit F

## to Nicholson Aff.



THE CONGRESS COMPANIES

West Peabody Executive Center, 2 Bourbon Street, Suite 200, Peabody MA, 01960

Phone: 978.535.6700 Fax: 978.535.6701

### Transmittal Cover Sheet

<b>WHITE PLAINS HEALTHCARE</b>	Project # 415	<b>White Plains Healthcare Properties I, LLC</b>
120 Church Street White Plains, NY 10601	Tel: 978.535.6700 Fax: 978.535.6701	

<b>Date: 01/07/2020</b>	<b>Reference Number: 243</b>
-------------------------	------------------------------

<b>Transmitted To</b>	<b>Transmitted By</b>
Lizer Josefovic HBL SNF, LLC 1280 Albany Post Road Croton-on Hudson, NY 10520 Tel: Fax:	Kim Jackson White Plains Healthcare Properties I, LLC 2 Bourbon Street Peabody, MA 01960 Tel: 978.535.6700 ext. 125 Fax: 978.535.6701

<b>Package Transmitted For</b>	<b>Delivered Via</b>
Information	Email/FedEx Delivery

**Cc:**  
 Alfred Donnellan, Delbello Donnellan Weingarten Wise & Wiederkehr LLP  
 Mark Zafrin, Michelman & Robinson LLP  
 Joshua Roccapriore, White Plains Healthcare Properties I, LLC  
 Lizer Josefovic, Water's Edge Rehabilitation & Healthcare  
 Mark Neuman, Epic Health Care Management, LLC  
 Gerald Neuman, HBL SNF, LLC

#### Remarks

Enclosed for your use and information please find the following document:

\* Notice of Default and Landlord's Election to Terminate Lease and Accelerate All Rents Due for the Balance of the Lease Term dated 01-07-2020 for the Property Located at 116-120 Church Street, White Plains, NY

If you require further assistance please contact Joshua Roccapriore, Owner's Representative at (978) 535-6700 ext. 135 or via email: jroccapriore@congressconstruction.com

Thank you.

encl.

**WISE & WIEDERKEHR, LLP**

Alfred E. Donnellan  
Partner  
aed@ddw-law.com

COUNSELLORS AT LAW  
THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601  
(914) 681-0200  
FACSIMILE (914) 684-0288

Connecticut Office  
111 State Street  
Stamford, CT 06901  
(203) 391-6000

January 7, 2020

BY EMAIL lizerj@watersedgeusa.com  
BY FEDERAL EXPRESS

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**NOTICE OF DEFAULT  
AND LANDLORD'S ELECTION TO TERMINATE LEASE AND  
ACCELERATE ALL RENTS DUE FOR THE BALANCE OF THE LEASE TERM**

**PREMISES: 116-120 Church Street, White Plains, New York ("the Leased Premises")**

Mr. Josefovic:

We are attorneys for your Landlord, White Plains Health Care Properties I, LLC.

**PLEASE TAKE NOTICE**, that HBL SNF, LLC ("HBL") is in material violation of the provisions of its November 19, 2015 Lease, for the above referenced premises ("the Lease"), and the November 20, 2019 Letter of Intent (the "LOI"), the terms of which are in full force and effect (the "LOI"), and is in **DEFAULT** thereof, as follows:

1. Lease Section 3.2, and LOI Para 6) d) ii) - Payment of Rent: HBL has failed or refused to pay the following Rent:
  - a. Rent due for Sept. 30, 2019 - Dec. 31, 2019, totaling \$10,831.79.
  - b. Additional Rent due for Jan. 01 - 31, 2020, due Jan. 1, 2020, totaling \$40,000.00.
  
2. Lease Section 4.2, and LOI Para 6) b) - Payment of Real Estate Taxes: HBL has failed to pay the following Real Estate Tax payments:
  - a. Real Estate Taxes for the period 07/01/19 - 12/31/19, specifically the Tenant's prorated portion thereof, (exclusive of late fees, costs, penalties and interest per municipal regulations and per the Lease), totaling \$61,456.39
  - b. Real Estate Taxes for the period Jan. 01, 2020 - June 30, 2020 totaling \$121,587.12

Attn: Lizer Josefovica  
January 7, 2020  
Page 2

3. LOI Para 6) b), and Lease Section 5.2 – Payment of Utility Deposits and Municipal Maintenance Escrows: HBL has failed to pay the following Utility Deposits and Municipal Maintenance Escrows:
  - a. Utility Deposits totaling \$60,356.10
  - b. Municipal Maintenance Escrows totaling \$5,500.00
  
4. Lease Section 4.1, LOI Section 6) j) - Utility Charges: HBL has failed to pay the following Utility Charges:
  - a. ConEdison invoice paid by the Landlord to avoid power shutoff, in the amount of \$2,972.84.
  
5. Lease Article VI, including Section 6.2; LOI Para 6) h) – Delivery of Insurance Certificates.
  - a. HBL has failed to deliver certificates of insurance to Landlord in accordance with Article VI and Section 6.2 of the Lease.
  
6. Lease Section 7.4 (g) and (j) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility.
  - b. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider updated reimbursement rate sheets for the Facility.
  
7. Lease Section 7.4 (a) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required financial reporting required under the Lease.
  
8. Lease Section 7.4 (B) (vi) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required written reports providing an operational overview of significant events and circumstances at the Facility during each prior month of the Term of the Lease.
  
9. Lease Section 7.1(a)(ii), as amended by LOI Para 6) d) i) – Security Deposit.
  - a. HBL has failed or refused to deliver to the Landlord by December 1, 2019 the security deposit of \$1,000,000.00, to secure full and timely payment and performance of Tenant’s obligations under the Lease.
  
10. Lease Section 7.1(a)(iii), as amended by LOI Para 6) e) – Additional Security Deposit.
  - a. HBL has failed to deliver the blocked account agreement prohibiting any liquidation of the of \$1,600,000.00 held by JPMorgan Chase Bank, N.A. in the controlled account number [REDACTED] 7272.
  
11. Lease Section 4.1, 3.2 (c), and 9.1 (b) – Payment of Late Fees and Costs
  - a. HBL has failed to pay late fees and costs related to the above failures to pay its obligations under the Lease and the LOI in the timeframes required thereunder, as set forth in the attached accounting, totaling \$23,425.09

Attn: Lizer Josefovic  
January 7, 2020  
Page 3

Notice Pg 38 of 113

A true and accurate accounting of the amounts due and owing under the Lease and the LOI is attached herewith.

By reason of the aforementioned material Defaults under the Lease and the LOI, the Landlord, hereby exercises its right under Section 16.1 of the Lease to terminate the Lease as well as Tenant's right of possession of the Leased Premises, effective January 13, 2020 at 5.00 PM NYC time.

**PLEASE TAKE FURTHER NOTICE**, that, in accordance with Section 16.1 of the Lease, all rent for the balance of the term of the Lease is accelerated, and pursuant to said lease provision, HBL is obligated to pay the Landlord \$84,073,989.91, being the present value of such accelerated rent, discounted at the rate of 6% *per annum*.

Landlord reserves all other rights and remedies at law or in equity as against the Tenant, all guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.

Landlord further reserves all rights arising from the Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 ("the Pledge"), including but not limited to all rights to enforce the Pledge through a private or public sale of the assignor's interest in Waterview Acquisition I, LLC or through a judicial foreclosure of the assignee's security interest therein.

Very truly yours.

ALFRED E. DONNELLAN

**AUTHORIZED AND APPROVED:**

White Plains Health Care Properties I, LLC

  
\_\_\_\_\_  
Joshua Roccapriore  
Authorized Representative

cc: By Email (lizerj@watersedgeusa.com) & Federal Express  
Lizer Josefovic, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

Attn: Lizer Josefovic

Notice Pg 39 of 113

January 7, 2020

Page 4

By Email (markn@epicmgt.com) & Federal Express

Mark Neuman, Guarantor, Individually

22 Lyncrest Drive

Monsey, NY 10952

By Email (mzafrin@mrlip.com) & Federal Express

Michelman & Robinson

800 Third Avenue, 24<sup>th</sup> Floor

New York, NY 10022

Attn: Mark Zafrin, Esq.

By Federal Express

Gerald Neuman, Individually

c/o IBI, SNF, LLC

1280 Albany Post Road

Croton-on-Hudson, NY 10520

c/o THE CONGRESS COMPANIES  
 General Contractors, Construction Managers, Property Managers, Development Services  
 165705  
 West Parkway, Eastchester, NY 10523  
 250 South Street  
 Eastchester, NY 10523  
 Phone: 914-356-1000  
 Fax: 914-356-1000

7-Jan-19

**NOTICE OF AMOUNTS AND DELIVERABLES DUE UNDER LEASE & LOI of 11/20/19**

Gentlemen: Pursuant to the Lease and the LOI dated November 20, 2019, the following are due:

	<u>AMOUNTS PAYABLE</u>	<u>Due Date</u>	<u>Am't Due</u>	<u>Amounts Paid</u>	<u>Am't Past Due</u>
1	Rent January, 2020 (See Note 1 Below)	01/01/20	\$ 546,096.50	\$ 506,096.50	\$ 40,000.00
2	Rent 9/30/19 - 11/30/19	12/31/19	\$ 10,831.79	\$ -	\$ 10,831.79
	<b>SUBTOTAL RENT AND ADDITIONAL RENT:</b>		<b>\$ 556,928.29</b>	<b>\$ 506,096.50</b>	<b>\$ 50,831.79</b>
3	RE Taxes 7/1/19-12/31/19, Tenant portion; 09/30/19-12/31/19	12/31/19	\$ 61,456.39	\$ -	\$ 61,456.39
4	RE Taxes for the period 1/1/20 - 6/30/20	12/31/19	\$ 121,597.12	\$ -	\$ 121,597.12
	<b>SUBTOTAL REAL ESTATE TAXES</b>		<b>\$ 183,053.51</b>	<b>\$ -</b>	<b>\$ 183,053.51</b>
5	Utility Deposits	12/31/19	\$ 60,356.10	\$ -	\$ 60,356.10
6	Municipal Deposits	12/31/19	\$ 5,500.00	\$ -	\$ 5,500.00
7	Con Edison Electric Invoice	12/17/19	\$ 2,972.84	\$ -	\$ 2,972.84
	<b>Subtotal</b>		<b>\$ 68,828.94</b>	<b>\$ -</b>	<b>\$ 68,828.94</b>
	<b>TOTAL RENT, RE TAXES, &amp; OTHER</b>		<b>\$ 808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 302,704.24</b>
8	Security Deposit 1st payment	12/31/19	\$ 1,000,000.00	\$ -	\$ 1,000,000.00
	<b>TOTAL AMTS DUE EXCLUDING LATE FEES &amp; COSTS</b>		<b>\$ 1,808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 1,302,704.24</b>
9	Interest on past due real estate taxes on a per-diem basis:	12/15/19	\$ 3,039.68	\$ -	\$ 3,039.68
10	Late Fees of 5% on items 1,2,3,5,6,7	12/15/19	\$ 9,055.86	\$ -	\$ 9,055.86
11	Interest on Items 1,2,3,5 & 6 at the Overdue Rate (Prime+5%)	12/15/19	\$ 11,329.55	\$ -	\$ 11,329.55
	<b>TOTAL LATE FEES AND COSTS</b>		<b>\$ 23,425.09</b>	<b>\$ -</b>	<b>\$ 23,425.09</b>
	<b>TOTAL AMOUNTS DUE</b>		<b>\$ 1,832,225.83</b>	<b>\$ 506,096.50</b>	<b>\$ 1,326,129.33</b>

**ADDITIONAL NOTICE OF ITEMS DUE: As required per the Lease and LOI, please provide the following:**

- 1 Notice is hereby made to that Jan. 2020 & all subsequent Rent shall be due in the amount of: \$546,096.50, calculated as: \$506,096.50 rent plus \$40,000.00 additional rent 2nd Notice
- 2 Notice is hereby made to provide all Medicare and Medicaid provider Agreements and rates. 2nd Notice
- 3 Notice is hereby made to provide Annual Budget, Capital Expenditures, Operating Budget, Annual Financial Reporting, monthly financial reporting, Financial Reporting, Variance Reporting, Unaudited Financial Reports
- 4 Notice is hereby made to provide per a written report of significant events at the facility including: Copies of all documents, reports, licenses and certificates from NY DOH pertaining to the Operations of the Facility 2nd Notice
- 5 Notice is hereby made to provide Evidence of Insurance, including all required coverages under the lease, and all additional insureds. 2nd Notice

# Exhibit H

## to Nicholson Aff.

NOTE

\$38,500,000.00

August 18, 2017

FOR VALUE RECEIVED, WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Borrower") hereby promises to pay to the order of SECURITY BENEFIT LIFE INSURANCE COMPANY ("Lender") under that certain Construction Loan Agreement dated of even date herewith by and among Borrower, Security Benefit Corporation, as agent ("Agent") and Lender (the "Loan Agreement"), without offset, in immediately available funds in lawful money of the United States of America, at the Lender's Office as defined in the Loan Agreement, the principal sum of THIRTY-EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$38,500,000.00) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Construction Loan Agreement of even date herewith (the "Loan Agreement").

1. Note; Interest; Payment Schedule and Maturity Date. This Note (as may be amended, modified, supplemented, restated and replaced from time to time, the "Note") is the Note referred to in the Loan Agreement and is entitled to the benefits thereof and subject to prepayment in whole or in part as provided therein. The entire principal balance of this Note then unpaid shall be due and payable at the times as set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate as set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and, if applicable, a late charge in each case as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes, but is not limited to, a Mortgage Assignment of Leases and Rents, Security Agreement, and Fixture Filing (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the "Security Instrument") dated as of the date hereof from Borrower to Agent, covering certain property in the County of Westchester, State of New York as more particularly described therein (the "Property"). This Note, the Security Instrument, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), as the same have been or may be amended, restated, modified or supplemented from time to time, are herein sometimes called individually a "Loan Document" and together the "Loan Documents."

3. Defaults.

(a) Subject to the terms of the Loan Agreement, upon the occurrence and during the continuance of a Default, Lender shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

(b) All of the rights, remedies, powers and privileges (together, "Rights") of Lender provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it or

preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Lender to exercise, and no delay in exercising any Right, including, but not limited to, the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Lender to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect, or (iii) in any way excuse the existence of a Default.

(c) Borrower agrees to pay all out-of-pocket costs and expenses of the holder of this Note which may be incurred unless Borrower is the sole prevailing party in an action to enforce or protect the rights or interests of such holder, including attorneys' fees and expenses (including the market value of services of in-house counsel), investigation costs and all court costs, whether before or after the Maturity Date defined in the Loan Agreement, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other Person primarily or secondarily liable hereunder. From the time(s) incurred until paid in full to the holder of this Note, all such sums shall bear interest at the Interest Rate set forth in the Loan Agreement until ten (10) days after demand and thereafter at the Default Rate defined in the Loan Agreement.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. Borrower cannot assign this Note or the Loan or any of the obligations hereunder or thereunder without Lender's prior written consent. As further provided in the Loan Agreement, Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Security Instrument and the other Loan Documents on the terms and conditions set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one Person executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that Lender shall not be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in Section 7.14 of the Loan Agreement, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the

application of any provision of this Note to any Person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other Persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. The words "include" and "including" shall be interpreted as if followed by the words "without limitation." THIS NOTE (INCLUDING, WITHOUT LIMITATION, THE RIGHT TO HOLD BORROWER LIABLE FOR ANY DEFICIENCY REMAINING AFTER FORECLOSURE OR TO BRING SUIT UPON THE INDEBTEDNESS WITHOUT HAVING FIRST PROCEEDED AGAINST THE PROPERTY OR OTHER COLLATERAL THEREFOR) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

7. Lost Note. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of this Note, and, in the case of any such loss, theft, destruction or mutilation, upon cancellation of this Note, Borrower will issue, in lieu thereof, a replacement note in the same principal amount thereof and otherwise of like tenor.

8. Exculpation. The exculpation and related provisions set forth in Section 7.22 of the Loan Agreement are hereby incorporated by reference as if fully set forth herein.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN AND AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

[Signature appears on the next page.]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the date first above written.

**BORROWER:**

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
a Massachusetts limited liability company

By:   
William A. Nicholson, a Manager

# Exhibit J

## to Nicholson Aff.



One Security Benefit Place  
Topeka, Kansas 66636  
SecurityBenefit.com

April 16, 2020

**VIA FEDEX DELIVERY and EMAIL [wnicholson@congressconstruction.com](mailto:wnicholson@congressconstruction.com)**

White Plains Healthcare Properties I, LLC  
West Peabody Executive Center, Ste. 200  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William A. Nicholson

Re: Construction loan (the "Loan") evidenced by that certain Promissory Note dated August 18, 2017 (the "Note") in the original aggregate principal amount of \$38,500,000.00 made by White Plains Healthcare Properties I, LLC ("Borrower") to the order of Security Benefit Life Insurance Company ("Lender")

Dear Mr. Nicholson:

Reference is made to the Note and to the Loan Agreement dated August 18, 2017 by and between Borrower and Lender (the "Loan Agreement").

Borrower executed and delivered the Note to Lender. The Note evidences the obligation of Borrower to pay the Loan, including without limitation, the principal amount of the Note and all interest which accrued on the Note.

**Borrower has failed to make, or cause to be made, the monthly payment of interest due under the Note and under Section 2.12 of the Loan Agreement on April 1, 2020, which failure constitutes an Event of Default under the Loan Agreement Section 5.1 (a) (Events of Default). In accordance with the terms and conditions of the Loan Agreement, for so long as any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by applicable law, overdue interest in respect of the Loan, shall each accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained in the Loan Agreement.**

**In addition, pursuant to Section 2.8 of the Loan Agreement, a late charge will be assessed.**

**Finally, despite repeated requests, Borrower has failed to establish the Cash Management Account as required under Section 8.1 of the Loan Agreement.**

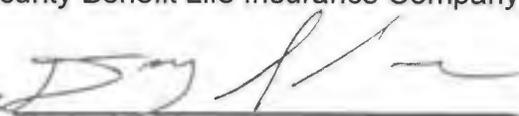
Security Benefit Life Insurance Company

White Plains Healthcare Properties I, LLC  
Attn: William A. Nicholson  
April 16, 2020  
Page Two

The foregoing does not constitute a waiver of any term, provision, condition, covenant or agreement contained in any of the Loan Documents (as defined in the Loan Agreement) or any instrument or agreement evidencing, related to or securing the Note, nor shall it (i) operate as a waiver of any right, remedy, power or privilege thereunder, (ii) prejudice or preclude any other further exercise thereof or the exercise of any right or remedy provided by law or in equity, (iii) entitle Borrower to any other or further notice or demand whatsoever or (iv) in any way modify, change impair, affect, diminish or release any liability of Borrower under or pursuant to any of the Loan Documents.

Please contact Douglas Schneider (785-438-1642) with any questions regarding the content of this letter, or have your counsel contact me directly.

Very truly yours,  
Security Benefit Life Insurance Company

By   
Douglas Schneider  
Investment Analyst

Douglas Schneider (via email - douglas.schneider@securitybenefit.com)

# Exhibit K

## to Nicholson Aff.



One Security Benefit Place  
Tosco, CA 94553  
SecurityBenefit.com

May 22, 2020

**VIA FEDEX DELIVERY and  
EMAIL, [wnicholson@congressconstruction.com](mailto:wnicholson@congressconstruction.com)**

White Plains Healthcare Properties I, LLC  
West Peabody Executive Center, Ste. 200  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William A. Nicholson

**Re: Notice of Default - Construction loan (the "Loan") evidenced by that certain Promissory Note dated August 18, 2017 (the "Note") in the original aggregate principal amount of \$38,500,000.00 made by White Plains Healthcare Properties I, LLC ("Borrower") to the order of Security Benefit Life Insurance Company ("Lender")**

Dear Mr. Nicholson:

Reference is made to the Note and to the Loan Agreement dated August 18, 2017 by and between Borrower and Lender (the "Loan Agreement").

Borrower executed and delivered the Note to Lender. The Note evidences the obligation of Borrower to pay the Loan, including without limitation, the principal amount of the Note and all interest which accrued on the Note.

**Payment Default**

Borrower has failed to make, or cause to be made, the monthly payment of interest due under the Note and under Section 2.12 of the Loan Agreement on May 1, 2020, which failure constitutes an Event of Default under the Loan Agreement Section 5.1 (a) (Events of Default). In accordance with the terms and conditions of the Loan Agreement, for so long as any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by applicable law, overdue interest in respect of the Loan, shall each accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained in the Loan Agreement. In addition, pursuant to Section 2.8 of the Loan Agreement, a late charge will be assessed. Please note that the total principal amount currently due from Borrower, together with late charges and default interest due from Borrower, are shown on Exhibit A.

**Other Defaults**

1. Borrower has failed to establish the Cash Management Account as required under Section 8.1 of the Loan Agreement.

**Security Benefit Life Insurance Company**

White Plains Healthcare Properties I, LLC  
Attn: William A. Nicholson  
May 22, 2020  
Page Two

2. Borrower has failed to send a Tenant Direction Notice to direct the sole tenant, HBL SNF, LLC, to pay rent directly to Lender, as required by Section 8.1 of the Loan Agreement.

3. Borrower has failed to deposit all revenue generated by the Property into the Cash Management Account as required by Section 8.1 of the Loan Agreement. Among other things, we recently learned that the Tenant may have paid Borrower approximately \$2,200,000 in late 2019 or early 2020. Any such revenue should have been deposited with Lender.

4. Borrower has failed to supply the financial statements for Borrower required under Section 3.13 and Exhibit B of the Loan Agreement.

5. Borrower has failed to supply annual financial statements of each Guarantor as required under Section 3.13 and Exhibit B of the Loan Agreement.

**Other Issues**

We also call your attention to the following:

1. **No Distributions.** Section 3.27 of the Loan Agreement prohibits "any distribution" to "any owner of any direct or indirect equity interests of Borrower," with limited exceptions. Please confirm that no prohibited distributions have been made while the Loan has been outstanding.

2. **No Termination of Lease.** We understand Borrower may have sent a Notice of Termination to the tenant under the Operating Lease in late 2019 or early 2020. Please note that pursuant to Section 3.5 of the Loan Agreement, the Operating Lease cannot be terminated without the consent of Lender.

3. **Recourse Liability.** Under the Loan Agreement and the Guaranty Agreement, Borrower and each Guarantor are personally liable to Lender for the "misapplication, misappropriation or conversion by Borrower" of any "Rents" or other monetary collateral for the Loan. We also call to your attention that Borrower and each Guarantor are personally liable to Lender for certain "Losses" arising out of the "willful misconduct" of Borrower in connection with the Loan or Property.

4. **Maturity Date.** We remind you again of the maturity date of the Loan on August 1, 2020.

**Reservation of Rights**

The foregoing does not constitute a waiver of any term, provision, condition, covenant or agreement contained in any of the Loan Documents (as defined in the Loan Agreement) or any

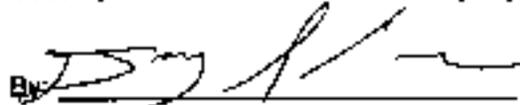
**Security Benefit Life Insurance Company**

White Plains Healthcare Properties I, LLC  
Attn: William A. Nicholson  
May 22, 2020  
Page Three

instrument or agreement evidencing, related to or securing the Note, nor shall it (i) operate as a waiver of any right, remedy, power or privilege thereunder, (ii) prejudice or preclude any other further exercise thereof or the exercise of any right or remedy provided by law or in equity, (iii) entitle Borrower to any other or further notice or demand whatsoever or (iv) in any way modify, change impair, affect, diminish or release any liability of Borrower under or pursuant to any of the Loan Documents.

Please contact Douglas Schneider (785-438-1642) with any questions regarding the content of this letter, or have your counsel contact me directly.

Very truly yours,  
Security Benefit Life Insurance Company

  
\_\_\_\_\_  
Douglas Schneider  
Investment Analyst

- cc: Patrick Formato (via e-mail)
- Howard Fensterman (via Federal Express)
- Matthew Barbera (via Federal Express)
- Paul Barbera (via Federal Express)

# Exhibit L

## to Nicholson Aff.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----	X
SECURITY BENEFIT LIFE INSURANCE COMPANY,	:
SECURITY BENEFIT CORPORATION,	:
	:
<i>Plaintiffs,</i>	:
	:
-against-	:
	:
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,	:
WILLIAM A. NICHOLSON, HOWARD FENSTERMAN,	:
MATTHEW BARBARA, PAUL BARBARA, NEW YORK	:
STATE DEPARTMENT OF TAXATION, CITY OF	:
WHITE PLAINS FINANCE DEPARTMENT, and	:
JOHN DOE NOS. 1-10,	:
	:
<i>Defendants.</i>	:
	:
The Names of the “John Doe” Defendants Being Fictitious	:
and Unknown to Plaintiffs, the Persons and Firms Intended	:
Being Those Who May Be in Possession of, or May Have	:
Possessory, Lien or Other Interests in, the Premises Herein	:
Described.	:
-----	X

Index No.

**VERIFIED COMPLAINT**

Plaintiffs Security Benefit Corporation (“Agent”), a Kansas corporation, and Security Benefit Life Insurance Company (“Security Benefit” and together with Agent, the “Lender”), a Kansas insurance company, by their attorneys, DLA Piper LLP (US), as for their Verified Complaint against the defendants, allege as follows:

**NATURE OF THE ACTION**

1. Lender brings this action to foreclose on real property and improvements in the County of Westchester and State of New York, known as Section 125.67, Block 3 Lot 1 in the City of White Plains and located at 120 Church Street (the “Mortgaged Property”). The Mortgaged Property secures a \$38.5 million loan made to Defendant White Plains Healthcare Properties I, LLC (“Borrower”). Borrower first defaulted on the loan in 2019, long before the COVID-19

pandemic and related government shutdown orders took effect, and failed to pay back all principal and outstanding interest due on the August 1, 2020 maturity date. Lender also sues the individual guarantors who promised to pay the amounts due and owing if Borrower failed to perform, and who promised to cover any deficiencies that arise after application of the proceeds from a public foreclosure auction of the Mortgaged Property.

**THE PARTIES**

2. Security Benefit Life Insurance Company is, and at all relevant times hereinafter mentioned was, an insurance company, organized and existing under the laws of the State of Kansas, with an address at One Security Benefit Place, Topeka, KS 66626-0001.

3. Agent is, and at all relevant times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Kansas, with an address at One Security Benefit Place, Topeka, KS 66626-0001.

4. Upon information and belief, Borrower is a limited liability company organized and existing under the laws of the State of Massachusetts, with an address at West Peabody Executive Center, Suite 200, 2 Bourbon Street, Peabody, MA 01960, and is the fee simple owner of the Mortgaged Property.

5. Upon information and belief, Defendant William A. Nicholson, an individual who at all times hereinafter mentioned was a resident of the State of Massachusetts, is named as a defendant because William A. Nicholson made certain promises and guarantees concerning Borrower's performance under the Loan Documents (as defined herein), as contained in the Guaranty Agreement dated August 18, 2017 (the "Guaranty").

6. Upon information and belief, Defendant Howard Fensterman is, and at all times hereinafter mentioned was, an individual and a resident of the State of New York, and is named as

a defendant because Howard Fensterman also made certain promises and guarantees concerning Borrower's performance under the Loan Documents, as defined herein, and as contained in the Guaranty.

7. Upon information and belief, Defendant Matthew Barbara is, and at all times hereinafter mentioned was, an individual and a resident of the State of New York, and is named as a defendant because Matthew Barbara also made certain promises and guarantees concerning Borrower's performance under the Loan Documents, as defined herein, and as contained in the Guaranty.

8. Upon information and belief, Defendant Paul Barbara (together with Defendant William A. Nicholson, Defendant Howard Fensterman, and Defendant Matthew Barbara, the "Guarantors") is, and at all times hereinafter mentioned was, an individual and a resident of the State of New York, and is named as a defendant because Paul Barbara also made certain promises and guarantees concerning Borrower's performance under the Loan Documents, as defined herein, and as contained in the Guaranty.

9. Upon information and belief, Defendant New York State Department of Taxation and Finance has a principal place of business located at the Office of Counsel, Building 9, W.A. Harriman Campus, Albany, New York 12227, and is made a defendant in this action because it has or may have an interest in or lien against the Mortgaged Property by virtue of any unpaid New York State Franchise taxes, license or maintenance fees which may be due and owing from Borrower.

10. Upon information and belief, Defendant City of White Plains Finance Department has a principal place of business located at 255 Main Street, Room 102, White Plains, New York 10601, and is made a defendant in this action because it has or may have an interest in or lien

against the Mortgaged Property by virtue of any unpaid City of White Plains taxes, license or maintenance fees which may be due and owing from Borrower.

11. Upon information and belief, the “John Doe” defendants constitute those persons or corporations or firms that may be in possession of, or may have contract, possessory, lien or other interests in, the Mortgaged Property.

**JURISDICTION AND VENUE**

12. The Court may exercise jurisdiction over Borrower because Borrower irrevocably submitted to the jurisdiction and venue of this Court in the Loan Documents, as defined herein.

13. The Court may exercise jurisdiction over the Guarantors because they irrevocably submitted to the jurisdiction and venue of the Court in the Guaranty. This Court may also exercise jurisdiction over Defendants Howard Fensterman, Matthew Barbara, and Paul Barbara pursuant to C.P.L.R. Section 301, and over Defendant William A. Nicholson pursuant to C.P.L.R. Section 302.

14. Lender’s collateral—among other things, the real property interest, improvements and personal property securing repayment of the \$38,500,000.00 loan described below—is located in the State of New York and, accordingly, pursuant to C.P.L.R. Section 301, and R.P.A.P.L. Article 1, Section 121, this Court has jurisdiction to grant the relief required by Lender in this Verified Complaint.

15. As to all Defendants, venue is proper in Westchester County pursuant to C.P.L.R. Sections 507 and 509.

**THE MORTGAGED PROPERTY**

16. The Mortgaged Property that is the subject of this action consists of one lot known as Section 125.67, Block 3 Lot 1 in the City of White Plains and located at 120 Church Street, with

appurtenances thereto and improvements thereon, all as more specifically described in Schedule A annexed hereto.

**THE LOAN DOCUMENTS**

17. On or about August 18, 2017, Borrower and Lender entered into a Construction Loan Agreement (the “Loan Agreement”), whereby Lender agreed to make a Building Loan to Borrower in the amount of \$30,293,625, in which all or a portion of the Building Loan Costs would be advanced to Borrower, consisting solely of costs and improvements as defined in Section 2 of the New York Lien Law (the “Building Loan”), and whereby Lender further agreed to make additional loan advances to Borrower for other costs with respect to the Project in the amount of \$8,206,375 (the “Project Loan”, collectively with the Building Loan referred to as the “Loan”) for a total indebtedness of \$38,500,000. The Loan Agreement was duly recorded in the County Clerk’s Office on August 25, 2017, at Control No. 5962984. A true and correct copy of the Loan Agreement is attached hereto as **Exhibit 1.**

18. On or about August 18, 2017, Borrower, for the purpose of evidencing its indebtedness to Lender of the sum of \$38,500,000, executed and delivered to Lender a promissory note dated August 18, 2017 (the “Note”), whereby Borrower was bound and promised to pay Lender such sum, with interest thereon, at the rate therein provided. A true and correct copy of the Note is attached hereto as **Exhibit 2.**

19. As collateral security for the payment of this indebtedness, Borrower simultaneously therewith executed, acknowledged, and delivered to Lender a mortgage dated August 18, 2017 (the “Mortgage”). The Mortgage was duly recorded in the County Clerk’s office on August 31, 2017, at Control No. 572363745 and the mortgage recording tax was then and there duly paid. A true and correct copy of the Mortgage is attached hereto as **Exhibit 3.**

20. The Mortgage granted Lender a security interest in the real property described in Schedule A, improvements, fixtures, equipment, personal property, and leases and rents, among other items described in Section 1.1 of the Mortgage, associated with the Mortgaged Property. (Mortgage § 1.1.)

21. On August 18, 2017, Borrower also executed, acknowledged, and delivered to Lender an Assignment of Leases and Rents dated August 18, 2017 (“Assignment,” and together with the Mortgage, the Note, the Loan Agreement, and all documents or instruments referenced in the definition of Loan Documents in the Mortgage and the Loan Agreement, and all other documents or instruments securing the repayment of the obligations of Borrower to Lender, the “Loan Documents”), as further collateral security for the payment of the indebtedness. The Assignment of Leases and Rents was duly recorded in the County Clerk’s office on August 31, 2017, at Control No. 572363749. A true and correct copy of the Assignment is attached hereto as **Exhibit 4**.

22. The Assignment absolutely and unconditionally assigned and granted to Lender’s Agent, for Lender’s benefit, among other things, all of Borrower’s right, title and interest in the all existing and future Leases of the Borrower affecting the use, enjoyment or occupancy of all or any portion of any space in that certain lot or piece of land, more particularly described in Schedule A annexed hereto, as well as all Rents, as defined in the Loan Agreement. (Assignment § 1.1.)

23. The Loan Documents were delivered to Lender in due course.

24. Lender is the owner and holder of the Loan Documents, and is authorized to exercise all of its rights with respect to the Loan Documents.

**THE GUARANTY**

25. On or about August 18, 2017, the Guarantors executed and delivered to Lender the Guaranty. A true and correct copy of the Guaranty is attached hereto as **Exhibit 5**.

26. Under the terms of the Guaranty, the Guarantors jointly and severally, unconditionally, absolutely and irrevocably guaranteed payment (and not merely collectability) of and agreed to pay, protect, defend and save harmless Lender for, from and against, and indemnify Lender for, from and against any and all liabilities, obligations, actual losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees), causes of action, suits, claims, demands, and judgment of any nature or description whatsoever, which may at any time be imposed upon, incurred by or awarded against Lender as a result of, among other things, misapplication, misappropriation or conversion by Borrower, Guarantor, or any Affiliate of any of them of any Rents. (Guaranty § 1(a)(vii).)

27. The Guarantors also agreed that the Guaranty was an absolute, irrevocable and unconditional guaranty of payment and performance, and each party Guarantor would be jointly and severally liable for the payment and performance of the Guaranteed Obligations, as defined in the Guaranty, as a primary obligor. (Guaranty § 4(a).)

28. The Guarantors further agreed that in the event of the occurrence of a Default under the Loan Documents, the Guaranteed Obligations would become immediately due and payable at the election of the Lender's Agent and the Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, would pay the amounts due to Agent or Lender, and pay all Losses that may arise in consequence of such Event of Default (including, without limitation, all reasonable attorneys' fees and expenses, investigation

costs, court costs, and any and all other costs and expenses actually incurred by Agent or Lender in connection with the collection and enforcement of the Guaranty). (Guaranty § 4(b).)

29. Under Section 4(c) of the Guaranty, the Guarantors specifically agreed that suit may be brought or demand may be made against Borrower or against any or all parties who have signed the Guaranty, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. (Guaranty § 4(c).)

**BORROWER'S OBLIGATIONS AND DEFAULTS**

**Borrower's Obligations under the Loan Documents**

30. Pursuant to Section 3.1(a) of the Mortgage, Borrower agreed to make due and punctual payment of the Secured Indebtedness, as defined under Section 2.2 of the Mortgage to include:

- (i) The Note;
- (ii) All indebtedness, liabilities, duties, covenants, promises and other obligations owed by Borrower to Mortgagee and/or Lender pursuant to the Loan Documents, expressly excluding, however, any obligations of Guarantor under any Guarantor Document and any obligations under any other guaranty executed by a third party, whether now existing or hereafter arising, and whether joint or several, direct or indirect, primary or secondary, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts; and
- (iii) All amounts that Lender may from time to time advance pursuant to the terms and conditions of this Security Instrument with respect to an obligation secured by a lien or encumbrance prior to the lien of this Security Instrument or for the protection of this Security Instrument, together with interest thereon.

(Mortgage §§ 2.2; 3.1(a).)

31. Under the Loan Agreement, Borrower agreed that all accrued and unpaid interest would be due and payable on the first day of each calendar month commencing on September 1, 2017 until the Maturity Date, *i.e.*, August 1, 2020, and that the entire principal balance of the Loan then unpaid and all accrued interest is due and payable in full on the Maturity Date. (Loan Agreement § 2.12.)

32. If Borrower failed to make any payment due under the terms of the Loan Agreement or the Note within five days after such payment was due, Borrower agreed to pay a late charge equal to 5% of such payment. (Loan Agreement §2.8.)

33. In addition to the monetary obligation described above, Borrower also agreed to fulfill certain other obligations under the Loan Documents, including, *inter alia*:

- To establish a Cash Management Account, not later than 60 days prior to the anticipated rent commencement date under the Operating Lease, in the name of Borrower for the sole and exclusive benefit of Agent (on behalf of Lender) into which Borrower shall deposit, or cause to be deposited, all revenue generated at the Mortgaged Property (Loan Agreement § 8.1(a));
- To send a Tenant Direction Notice to direct the sole tenant, HBL SNF, LLC, to pay rent directly into the Cash Management Account set up for Lender’s exclusive benefit (Loan Agreement § 8.1(b));
- To deposit all revenue generated by the Mortgaged Property and received by the Borrower into the Cash Management Account (Loan Agreement § 8.1(b));
- To deliver the Financial Statements and other statements and information at the times and for the periods described in Exhibit “B” attached to the Loan Agreement

and any other Loan Document, including the Financial Statements of Borrower and the annual Financial Statement of each Guarantor (Loan Agreement 3.13; Loan Agreement, Exhibit “B”).

**Events of Default and Borrower’s Defaults**

34. Section 5.1 of the Mortgage defines an Event of Default to include, the occurrence of “Default” as defined in the Loan Agreement. (Mortgage § 5.1.)

35. Under Section 5.1(a) of the Loan Agreement, a Default occurs when any of the indebtedness or any fees payable under the Note or the Loan Agreement are not paid when due, whether on the scheduled due date or upon acceleration, maturity or otherwise. (Loan Agreement § 5.1(a).)

36. Under Section 5.1(b) of the Loan Agreement, a Default occurs when any covenant, agreement of condition in the Loan Agreement or in any other Loan Document is not fully and timely performed, observed or kept by Borrower and if such failure continues unremedied for more than thirty days after notice is given to Borrower by Lender. (Loan Agreement §5.1(b).)

37. Borrower has failed to pay accrued and unpaid interest due on the first day of each calendar month fourteen (14) times, with four of these occasions pre-dating the COVID-19 pandemic and related government shutdown orders:

- (i) Borrower failed to pay accrued unpaid interest for the period beginning October 1, 2019 and ending November 1, 2019 in the amount of \$159,081.07. On October 16, 2019, Lender sent a letter notifying Borrower of its Default.
- (ii) In October 2019, Borrower failed to pay a late charge in the amount of \$12,642.24.

- (iii) Borrower failed to pay accrued and unpaid interest for the period beginning November 1, 2019 and ending December 2, 2019 in the amount of \$159,081.07. On November 5, 2019, Lender sent a letter notifying Borrower of its Default.
- (iv) In November 2019, Borrower failed to pay a late charge of \$22,388.29.
- (v) In December 2019, Borrower failed to pay a late charge of \$22,388.29.
- (vi) Borrower failed to pay accrued unpaid interest for the period beginning April 1, 2020 and ending May 1, 2020 in the amount of \$160,416.67. On April 16, 2020, Lender sent a letter notifying Borrower of its Default.
- (vii) In April 2020, Borrower failed to pay a late charge of \$13,765.56.
- (viii) Borrower failed to pay accrued unpaid interest for the period beginning May 1, 2020 and ending June 1, 2020 in the amount of \$165,763.89. On May 13, 2020, Lender sent a letter notifying Borrower of its Default.
- (ix) In May 2020, Borrower failed to pay a late charge of \$20,829.30.
- (x) Borrower failed to pay accrued unpaid interest for the period beginning June 1, 2020 and ending July 1, 2020 in the amount of \$160,416.67.
- (xi) In June 2020, Borrower failed to pay a late charge in the amount of \$20,505.21.
- (xii) Borrower failed to pay accrued unpaid interest for the period beginning July 1, 2020 and ending August 3, 2020 in the amount of \$176,458.33.
- (xiii) In July 2020, Borrower failed to pay a late charge in the amount of \$8,020.83.

(xiv) In August 2020, Borrower failed to pay a late charge in the amount of \$8,822.92.

38. Borrower has also defaulted on its obligations under the Loan Documents by failing to establish a Cash Management Account, failing to send a Tenant Direction Notice to the sole tenant to pay rent directly into the Cash Management Account, and failing to deposit all revenue generated by the Mortgaged Property into the Cash Management Account, as required under Section 8.1 of the Loan Agreement, as well as by failing to provide the necessary Financial Statements for Borrower and each of the Guarantors, as required by Section 3.13 and Exhibit B to the Loan Agreement. On May 22, 2020, Lender sent a letter to Borrower notifying it of these Defaults.

39. On August 1, 2020, Borrower defaulted on its obligation to repay in full the entire principal balance of the Loan then unpaid and all accrued interest by the Maturity Date.

40. As of May 1, 2021, the total payment due by Borrower, including late charges, attorneys' fees and costs is \$ 41,743,537.06 ("Payoff Statement"). A true and correct copy of the Payoff Statement is attached as **Exhibit 6**.

41. As of the time Lender commenced this action, Borrower had not cured any of its Defaults.

42. Upon information and belief, Lender may also be in breach of other terms of the Loan Documents, including, but not limited to, Section 3.27 of the Loan Agreement, which prohibits "any distribution" to "any owner of any direct or indirect equity interests of Borrower," with limited exceptions, and Section 3.5 of the Loan Agreement, which prohibits Borrower from terminating the Operating Lease without the consent of the Lender.

43. Upon information and belief, Borrower may have sent a Notice of Termination to the tenant under the Operating Lease in late 2019 or early 2020.

44. No prior action or proceeding has been commenced at law or otherwise for the recovery of the sums secured by the Mortgaged Property or any part thereof.

**COMPLIANCE WITH LAWS AND REGULATIONS**

45. Lender has complied with all state and federal statutes, Executive Orders, Administrative Orders, Acts and directives instituted as a result of the COVID-19 pandemic. On March 16, 2021, Lender provided notice to Borrower of its right to submit a hardship declaration under the COVID-19 Emergency Protect Our Small Businesses Act of 2021 (the “Act”). A true and correct copy of the March 16, 2021 notice to Borrower is attached hereto as **Exhibit 7**.

46. On March 22, 2021, Borrower provided Lender with notice of its declaration of COVID-19 related hardship, dated March 18, 2021 (the “Declaration”). A true and correct copy of the Declaration is attached hereto as **Exhibit 8**.

47. Upon information and belief, Borrower is not entitled to the protections of the Act because, *inter alia*, Borrower’s business employs more than fifty (50) individuals, that Borrower’s business is not independently owned and operated, and that Borrower is not a New York resident.

**AS AND FOR A FIRST CAUSE OF ACTION  
(Foreclosure of the Mortgage)**

48. Lender repeats and realleges the allegations contained in paragraphs “1” through “47” as though fully set forth herein.

49. Lender is the owner and holder of the Loan Documents and is authorized to commence a foreclosure action pursuant to the Loan Documents.

50. Pursuant to Section 6.1(c) of the Mortgage, upon the occurrence and continuance of a Default or in the case that the principal of the Note becomes due and payable, whether by

lapse of time or by acceleration, then and in every such case the Mortgagee (Lender) shall have the right to immediately proceed to foreclose the Mortgage lien against the property constituting the Mortgaged Property or any part thereof, in accordance with the laws of New York, including, without limitation, the provisions of Article 13 of the Real Property Actions and Proceedings Law of New York, as such provisions may be extended, renewed, modified or replaced from time to time, and may pursue any other remedy available to a commercial mortgage lender under the laws of New York, including all rights to judicial foreclosure under the laws of New York, and if authorized by the laws of the State of New York, all rights to nonjudicial foreclosure of mortgages. (Mortgage § 6.1(c).)

51. As described above, Borrower has failed to fulfill a number of its obligations under the Loan Documents, which constituted an Event of Default, including but not limited to its failure to repay the Loan in full when the balance became due on the Maturity Date of August 1, 2020.

52. By reason of the foregoing, Borrower is in Default under the Loan Documents.

53. Pursuant to Section 6.1(c) of the Mortgage, and in accordance with the other terms of the Loan Documents, based upon the failure by Borrower to pay all amounts due under the Note on its Maturity Date, Lender elects to foreclose upon the Mortgage and recover the current outstanding principal amount, that, as of May 1, 2021 is \$38,500,000, plus accrued interest, fees and legal fees for a total payoff amount of \$ 41,742,537.06, together with interest, late fees, and any other amounts to be added pursuant to the terms of the Loan Documents, including attorneys' fees (for which Borrower expressly agreed to be responsible, in accordance with Section 6.1(c) of the Mortgage), exclusive of any tax reserves, interest reserves, insurance reserves, or other cash reserves to be applied to the indebtedness.

54. In order to protect its security interest in the Mortgaged Property, Lender, as it is entitled to do under the Loan Documents, may be compelled to pay, during the pendency of this action, local taxes, assessments, water rates, insurance premiums, ground lease rent, and other charges affecting the Mortgaged Property, and any sums thus paid by Lender for such purposes, together with late payments due thereon, should be added to the sums otherwise due and deemed secured by the Mortgage and adjudged a lien.

55. Lender shall not be deemed to have waived, altered, released or changed the election hereinafter made by reason of any payment after the date of commencement of this action of any or all of the defaults mentioned herein, and such election shall continue and remain effective until the costs and disbursements of this action, and any and all future defaults under the Loan Documents and occurring prior to the discontinuance of this action, are fully paid.

56. Lender has complied with all the terms and provisions of the Loan Documents and, pursuant to R.P.A.P.L. 1301(2), no proceeding other than this action has been commenced to recover any part of the debt secured by the Mortgage owed to Lender.

57. Lender states further that the Mortgaged Property is not a borrower-occupied one to four family dwelling or condominium unit, nor is the Mortgaged Property a high cost or subprime home loan as defined by Sections 6-1 and 6-m of the New York Banking Law. Lender has or will comply with the notice provisions of R.P.A.PL. 1303(1)(b).

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Attorneys' Fees, Costs and Expenses)**

58. Lender repeats and realleges the allegations contained in paragraphs "1" through "57" as though fully set forth herein.

59. Under the terms of the Loan Documents, Borrower agreed to pay all out-of-pocket costs and expenses of the holder of the Note which may be incurred unless Borrower is the sole

prevailing party in an action to enforce or protect the rights or interests of such holder, including attorneys' fees and expenses (including the market value of services of in-house counsel), investigation costs and all court costs, whether before or after the Maturity Date defined in the Loan Agreement, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other Person primarily or secondarily liable. (Note § 3(c).)

60. Additionally, under Section 6.1(c) of the Mortgage, Mortgagor (Borrower) agreed to pay, in connection with any foreclosure of the lien or any action to enforce any other remedy of Mortgagee under the Security Instrument, the Note or any other Loan Document, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee including, without limitation, attorneys' fees and disbursements, court costs, appraiser's fees, outlays for documentary and expert evidence, stenographers' chargers, publication costs, and costs of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of title to or the value of the Mortgaged Property, and the right to such fees and expenses shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. (Mortgage § 6.1(c).)

61. Lender has incurred costs and fees in connection with foreclosing the Loan, including attorneys' fees.

62. By reason of the foregoing, Borrower is liable for expenses, including reasonable attorneys' fees, arising from Lender's incurred costs in connection with the foreclosure.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Recovery Under the Guaranty)**

63. Lender repeats and realleges the allegations contained in paragraphs “1” through “62” as though fully set forth herein.

64. Pursuant to the Guaranty, the Guarantors jointly and severally, unconditionally, absolutely and irrevocably guaranteed payment (and not merely collectability) of and agreed to pay, protect, defend and save harmless Lender for, from and against, and indemnify Lender for, from and against any and all liabilities, obligations, actual losses, damages, costs and expenses (including, without limitation, reasonable attorneys’ fees), causes of action, suits, claims, demands, and judgment of any nature or description whatsoever, which may at any time be imposed upon, incurred by or awarded against Lender as a result of, among other things, misapplication, misappropriation or conversion by Borrower, Guarantor, or any Affiliate of any of them of any Rents. (Guaranty § 1(a)(vii).)

65. Borrower defaulted on the Loan Documents and Lender has incurred costs and fees in connection with foreclosing the Loan, including attorneys’ fees.

66. Upon information and belief, Borrower and/or the Guarantors have misapplied, misappropriated or converted Rents collected by them in connection with the Mortgaged Property.

67. By reason of the foregoing, the Guarantors are liable for all liabilities, obligations, actual losses, damages, costs and expenses (including, without limitation, reasonable attorneys’ fees), causes of actions, suits, claims, demands, and judgment of any nature which were incurred in connection with the enforcement of Lender’s rights, remedies or recourse under the Loan Documents due to any misapplication, misappropriation or conversion by Borrower, Guarantor, or any Affiliate of any Rents.

68. Pursuant to the Guaranty, the Guarantors also agreed that the Guaranty was an absolute, irrevocable and unconditional guaranty of payment and performance, and each party comprising Guarantor would be jointly and severally liable for the payment and performance of the Guaranteed Obligations as a primary obligor. (Guaranty § 4(a).)

69. The Guarantors further agreed that in the event of the occurrence of a Default under the Loan Documents, the Guaranteed Obligations would become immediately due and payable at the election of the Lender's Agent and the Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, would pay the amounts due to Agent or Lender, and pay all Losses that may arise in consequence of such Event of Default (including, without limitation, all reasonable attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses actually incurred by Agent or Lender in connection with the collection and enforcement of the Guaranty). (Guaranty § 4(b).)

70. In the event of foreclosure, the Guarantors agreed that only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note and Security Instrument, and the Lender shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment or enforcement. (Guaranty § 4(b).)

71. Borrower is in Default under the Loan Documents.

72. By reason of the foregoing, the Guarantors are liable for all amounts due to Lender by Borrower, including all Losses that arose as a result of Borrower's Default (including, without limitation, all reasonable attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses actually incurred by Agent or Lender in connection with the

collection and enforcement of the Guaranty), and the Guarantors are liable for any deficiency due under the Loan Documents after application of the proceeds in the manner specified by the Court.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Deficiency Judgment)**

73. Lender repeats and realleges the allegations contained in paragraphs “1” through “72” as though fully set forth herein.

74. By virtue of the Loan Documents, as defined herein, Borrower and Guarantors are liable to pay Lender for any deficiency which may remain after applying all of said sales proceeds, together with interest thereon and other charges, in accordance with the Loan Documents. Such indebtedness will continue to accrue and, therefore, the precise amount due from Borrower and Guarantors to Lender through the date of Judgment herein should be determined by the Court.

**WHEREFORE**, Lender demands judgment as follows:

A. That Defendants, or any of them, and persons claiming under them or any of them, and all persons claiming any interest in the Mortgaged Property with all of its fixtures, equipment and personal property thereon, subsequent to the commencement of this action and the filing of the notice of pendency of this action be forever barred and foreclosed of and from all estate, right, title, interest, claim, lien and equity of redemption in and to the Mortgaged Property and each and every part thereof;

B. That the Mortgaged Property be sold to obtain the greatest return of sale, whether sold jointly as a single parcel or sold separately as two or more parcels;

C. That the Mortgaged Property should be sold “As Is” subject to: (i) any state of fact that an inspection of the Mortgaged Property would disclose; (ii) any state of fact that an accurate survey of the Mortgaged Property would show; (iii) covenants, restrictions, conditions; reservations; easements; rights of way and public utility agreements of record, if any; (iv) building

restrictions and zoning ordinances of the municipality in which the Mortgaged Property is located and possible violations of same; (v) any violations, orders, changes or notices now or hereafter found on the Mortgaged Property, or filed in or issued by any governmental authority having jurisdiction over the Mortgaged Property; (vi) existing leases of the Mortgaged Property or any part thereof or rights of tenants in possession other than those tenants and lessees who are party defendants herein at the time of sale; (vii) prior liens of record, if any, and (viii) any equity of redemption of the United States of America to redeem the Mortgaged Property within 120 days from the date of sale;

D. That the amount due to Lender under the Loan Documents be adjudged;

E. That the proceeds of any foreclosure sale of Borrower's interest in the Mortgaged Property be distributed and applied in the following order of priority, as specified in Section 6.1(c) of the Mortgage: (i) first, to payment of all costs and expenses incident to the foreclosure proceedings; (ii) second, to the cost of any search and/or other evidence of title procured in connection therewith and the transfer tax on any deed or conveyance; (iii) third, to all sums expended under the terms hereof, not then repaid with accrued interest at the rate provided herein; (iv) fourth, to payment of all remaining Secured Indebtedness, in such order as Mortgagee may determine in its sole and absolute discretion; and (v) fifth, the remainder, if any to the person or persons legally entitled thereto.

F. That Borrower be adjudged liable for the payment of any costs and fees incurred in connection with foreclosing the Loan, including attorneys' fees;

G. That the Guarantors be adjudged liable under the Guaranty for liabilities, obligations, actual losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees), causes of actions, suits, claims, demands, and judgment of any nature which were

incurred in connection with the enforcement of Lender's rights, remedies or recourse under the Loan Documents due to any misapplication, misappropriation or conversion by Borrower, Guarantor, or any Affiliate of any Rents;

H. That the Guarantors be adjudged liable for the prompt and unconditional payment of all obligations and liabilities of Borrower pursuant to the Loan Documents, and all Losses that arose in consequence of Borrower's Default (including, without limitation, all reasonable attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses actually incurred by Agent or Lender in connection with the collection and enforcement of the Guaranty);

I. That the Guarantors, to the extent the Guarantors have liability under the Guaranty, be adjudged to pay the amount of any deficiency due under the Loan Documents, or any or all of them, or so much thereof as the Court may determine to be just and equitable, of the debt remaining unsatisfied after a sale of the Mortgaged Property and the application of the proceeds pursuant to the directions contained in such judgment, the amount thereof to be determined by the Court, as provided in R.P.A.P.L. section 1371, together with reasonable attorneys' fees, disbursements and court costs incurred in connection with enforcement of their and Borrower' respective obligations under the Loan Documents;

J. That in the event the proceeds from such sale be insufficient to pay the Lender the entire amount due pursuant to the Loan Documents as described above, then Lender shall have a judgment against Borrower and Guarantors for the amount of any such deficiency; and

K. That Lender have such other and further relief as the Court deems just and proper.

Dated: May 1, 2021  
New York, New York

**DLA PIPER LLP (US)**

By: /s/ Christopher M. Strongosky  
Christopher M. Strongosky  
Neal F. Kronley  
Michele Korkhov  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501

*Attorneys for Plaintiffs Security Benefit Life  
Insurance Company and Security Benefit  
Corporation*

### VERIFICATION

STATE OF KANSAS

ss

COUNTY SHAWNEE

Douglas Schneider, being duly sworn, deposes and states:

I am an employee with Security Benefit Life Insurance Company and Security Benefit Corporation. Dependants in this action. Security Benefit Life Insurance Company is an insurance company duly organized and existing under the laws of the State of Kansas, with its principal place of business in Kansas, and Security Benefit Corporation is a corporation duly organized and existing under the laws of the State of Kansas. I have read the attached complaint, and its factual contents are true to my personal knowledge, except as to the matters alleged on information and belief, and as to those matters, I believe them to be true.

Dated: April 30, 2021

  
Douglas Schneider

Sworn to before me  
this 30 of April, 2021

  
Notary Public



SCHEDULE A

LAND

Real property in the City of White Plains, County of Westchester, State of New York, described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE< LYING AND BEING IN THE CITY OF WHITE PLAINS, COUNTY OF WESTCHESTER AND STATE OF NEW YORK, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EASTERLY LINE OF CHURCH STREET WHERE THE SAME IS INTERSECTED BY THE SOUTHERLY LINE OF BARKER AVENUE;

RUNNING THENCE FROM SAID POINT NORTH 70° 40' 10" EAST A DISTANCE OF 173.57 FEET ALONG THE SOUTHERLY LINE OF BARKER AVENUE TO A POINT WHERE THE SAME IS INTERSECTED BY THE DIVISION LINE HEREIN DESCRIBED PARCEL ON THE WEST AND LANDS NOW OR FORMERLY OF KOEPEL & MOHR EQUITIES ON THE EAST;

THENCE FROM SAID POINT AND ALONG SAID DIVISION LINE SOUTH 17° 59' 50" EAST A DISTANCE OF 200.51 FEET TO A POINT IN THE DIVISION LINE BETWEEN THE HEREIN DESCRIBED PARCEL ON THE NORTH AND LANDS NOW OR FORMERLY OF HAMILTON PLAZA COMPANY, INC. ON THE SOUTH;

THENCE FROM SAID POINT AND ALONG SAID LINE SOUTH 71° 01' 50" WEST A DISTANCE OF 173.24 FEET TO THE EASTERLY LINE OF CHURCH STREET;

THENCE FROM SAID POINT AND ALONG SAID LINE NORTH 18° 05' 04" WEST A DISTANCE OF 199.41 FEET TO THE POINT AND PLACE OF BEGINNING.

# Exhibit M

## to Nicholson Aff.

**From:** Mark H. Zafrin (NY) [<mailto:mzafrin@mrlip.com>]  
**Sent:** Tuesday, April 11, 2017 6:04 PM  
**To:** Linda Whitehead  
**Cc:** Bob Shapiro; William Nicholson; Andrew Blatt; Jim Holden; Vincequerra, James; Raymond L. Fink ([rfink@lippes.com](mailto:rfink@lippes.com))  
**Subject:** Re: Workshare Professional Document Distribution

Linda. Your bankruptcy was a large impediment to our financing package that is an immutable fact. I don't want to argue about it. Mr Nicholson will have to provide you with all of the details as to his next steps to finish the financing

---

**Mark H. Zafrin**

Los Angeles|Orange County|San Francisco|Chicago|New York

800 Third Avenue, 24th Floor, New York, NY 10022

**T212.730.7700F212.730.7725**

**[Emzafrin@mrlip.com](mailto:Emzafrin@mrlip.com) [www.mrlip.com](http://www.mrlip.com)**

**BiovCard**

The contents of this e-mail message and its attachments are intended solely for the addressee(s) hereof. In addition, this e-mail transmission may be confidential and it may be subject to privilege protect communications between attorneys or solicitors and their clients. If you are not the named addressee, or if a message has been addressed to you in error, you are directed not to read, disclose, reproduce, distribute, disseminate or otherwise use this transmission. Delivery of this message to any person other than the intended recipient(s) is not intended in any way to waive privilege or confidentiality. If you have received this transmission in error, please alert the sender by reply e-mail; we also request that you immediately delete this message and attachments, if any. UNAUTHORIZED INTERCEPTION PROHIBITED BY FEDERAL LAW (18 U.S.C. 25252).

On Apr 11, 2017, at 5:37 PM, Linda Whitehead <[L.Whitehead@mgslawyers.com](mailto:L.Whitehead@mgslawyers.com)> wrote:

Mark, before you go making comments such as in your last email response to me where you indicated "I understand your outrage after not revealing your bankruptcy for a year" I suggest you get your facts straight as we never hid anything.

We advised you of the bankruptcy immediately prior to filing in January 2016. In fact, in the email from you to me on January 4, 2016 (before HHHW even filed) you recognize that the Agreement will be subject to Bankruptcy Court approval.

# Exhibit N

## to Nicholson Aff.

**U.S. Bankruptcy Court  
Southern District of New York (Manhattan)  
Bankruptcy Petition #: 15-13264-mew**

*Assigned to:* Judge Michael E. Wiles  
Chapter 11  
Voluntary  
Asset

*Date filed:* 12/09/2015  
*341 meeting:* 01/20/2016

**Debtor**  
**Hebrew Hospital Senior Housing Inc.**  
55 Grasslands Road  
Valhalla, NY 10595  
NEW YORK-NY  
Tax ID / EIN: 13-3975534  
*dba* Westchester Meadows Continuing Care  
Retirement Community  
*dba* Fieldstone at Westchester Meadows

represented by **Raymond L. Fink**  
Lippes Mathias Wexler Friedman LLP  
50 Fountain Plaza  
Suite 1700  
Buffalo, NY 14202  
716.853.5100  
Fax : 716.853.5199  
Email: [rfink@lippes.com](mailto:rfink@lippes.com)

**John Mueller**  
Lippes Mathias Wexler Friedman LLP  
50 Fountain Plaza  
Suite 1700  
Buffalo, NY 14202-2216  
716-853-5100  
Email: [jmueller@lippes.com](mailto:jmueller@lippes.com)

**Trustee**  
**U.S. Bank National Association, as Trustee**

represented by **Jeanne P. Darcey**  
Sullivan & Worcester LLP  
One Post Office Square  
Boston, MA 02109  
617-338-2800  
Email: [jdarcy@csandw.com](mailto:jdarcy@csandw.com)

**Amy A. Zuccarello**  
Sullivan & Worcester LLP  
One Post Office Square  
Boston, MA 02109  
(617) 338-2988  
Fax : (617) 338-2880  
Email: [azuccarello@csandw.com](mailto:azuccarello@csandw.com)

**U.S. Trustee**  
**United States Trustee**  
Office of the United States Trustee  
U.S. Federal Office Building  
201 Varick Street, Room 1006  
New York, NY 10014

represented by **Greg M. Zipes**  
Office of the United States Trustee  
33 Whitehall Street  
21st Floor  
New York, NY 10004  
(212) 510-0500

**Claims and Noticing Agent**  
**Prime Clerk LLC Claims Agent**  
 One Grand Central Place  
 60 East 42nd Street, Suite 1440  
 www.primeclerk.com  
 New York, NY 10165  
 (212) 257-5450

**Creditor Committee**  
**Official Committee of Unsecured Creditors of**  
**Hebrew Hospital Senior Housing, Inc.**

represented by **Thomas R. Califano**  
 DLA Piper LLP (US)  
 1251 Avenue of the Americas  
 29th Floor  
 New York, NY 10020-1104  
 (212) 335-4500  
 Fax : (212) 335-4501  
 Email: [thomas.califano@dlapiper.com](mailto:thomas.califano@dlapiper.com)

**There are proceedings for case 15-13264-mew but none satisfy the selection criteria.**

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
06/29/2021 12:32:23			
<b>PACER Login:</b>	edwarsmith81	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	15-13264-mew Fil or Ent: filed From: 6/15/2021 To: 6/29/2021 Doc From: 0 Doc To: 99999999 Format: html Page counts for documents: included
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.10

# Exhibit O

## to Nicholson Aff.



# Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

CERTIFIED MAIL RETURN RECEIPT REQUESTED

April 18, 2016

Mr. Andrew Blatt  
Managing Member  
Pinnacle Health Consultants, LLC  
1890 Palmer Avenue, Suite 204  
Larchmont, New York 10538

Re: 092058-B  
HBL SNF, LLC d/b/a The Rehabilitation and  
Care Institute at White Plains  
(Westchester County)  
Establish and construct a 160-bed residential  
health care facility with no ventilator beds

Dear Mr. Blatt:

This letter is in follow-up to the Potential Abandonment letter dated December 18, 2015. The letter stated that a **full** response to the outstanding contingencies was needed within 30 days from the date of the letter, or the project would be considered abandoned. To date, no responses have been submitted for contingencies #8, #9, #10 and #14.

Your January 15, 2016 letter responding to the Department's potential abandonment letter stated that material responsive to the outstanding contingencies would be submitted to the Department "on or about" various dates from January 26, 2016 thru March 30, 2016. Your letter, also, stated that you would be submitting a formal extension request for these outstanding contingencies. To date there has been no formal extension request submitted.

Also, on February 2, 2016 an Unacceptable Contingency Response letter for contingency #18 was issued. This letter specifically stated what was needed to satisfy the contingency, and that a response was required within 30 days. To date, there has been no response.

Given the age of the project and your failure to provide the requested documents, this project is now considered abandoned pursuant to 10 NYCRR Section 710.10.

If, in the future, you wish to pursue this project, a new Certificate of Need will need to be submitted through the New York State Electronic Certificate of Need (NYSE-CON) system.

If you have any questions, please contact me at 518-402-0967.

Sincerely,  
  
Charles P. Abel  
Deputy Director  
Center for Health Care Facility Planning,  
Licensure and Finance

BD/cj

REC'D 4/25/2016

# Exhibit P

## To Nicholson Aff.

**PINNACLE HEALTH CONSULTANTS, LLC**

1890 Palmer Avenue, Suite 204  
 Larchmont, New York 10538  
 (914) 630-4543 FAX (646) 349-5880  
[www.pinnaclehealthny.com](http://www.pinnaclehealthny.com)

**COPY**

VIA FEDERAL EXPRESS

May 24, 2016

Mr. Charles P. Abel, Deputy Director  
 Center for Health Care Facility Planning, Licensure, and Finance  
 NEW YORK STATE DEPARTMENT OF HEALTH  
 Corning Tower, Empire State Plaza  
 Room 1805  
 Albany, New York 12231

RE: Project No. 092058 B  
HBL SNF, LLC d/b/a Rehabilitation and Care Institute of White Plains  
(Westchester County)  
Establish and Construct a 160 bed Residential Health Care Facility

Dear Mr. Abel:

First off, we would like to take this opportunity to thank you, Ms. Barbara DeCogliano and Mr. George Macko for meeting with us to discuss the current status of the HBL SNF, LLC project. Additionally and as equally important, we thank you for allowing us to submit additional supporting details which will provide a current, comprehensive and complete response pertaining to the status of the projects contingency requirements as well as an expected schedule for each item as to both timeline for the initiation and completion of construction for the project. We believe that the information submitted will validate and prove the applicant's continued commitment to the completion of the construction and opening of the Facility as a completed SNF. The combination of the obstacles we are currently facing are (a) the need for Bankruptcy Court approval of the execution and delivery of the operating agreement by Hebrew Hospital and (b) the market based reality that a construction lender will only issue a final commitment upon the issuance of an approval of the plans by the DOH beyond that the applicant has expeditiously complied with and responded to the other open contingencies and we are truly sorry that we have not properly notified the Department as to the progress of the project as had we done so there would have been no need to solicit the further support of the State Health Department in re-instating the project for continued processing. We believe that all of the factors that resulted in the recommendation for approval for the project still remain:

- There is still an abiding public need for the construction of the Center including local factors. The public need for the nursing facility is still supported by the market demand analysis completed by the Vinea Group that was required as part of the permanent financing initiative.

**COPY**

Mr. Charles P. Abel, Deputy Director  
 May 24, 2016  
 Page 2 of 7

- The construction of a state-of-the-art new nursing facility within Medicaid capital reimbursement parameters;
- Assistance to the County of Westchester in the creation of new jobs from both the construction perspective and also permanent health care professional jobs;
- The operation of a new nursing home by three (3) well-established providers of long-term care services in Westchester County;
- The continued support and request for participation in the operational planning initiatives of the new nursing facility from White Plains Hospital; and
- The operator's payment of the CON filing fee in excess of \$300,000.00.

Specifically, on behalf of our client, HBL SMF, LLC, we are providing you with the following updated responses and information as requested as part of the December 18, 2015, letter.

1. Department of Health Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

**RESPONSE:** Enclosed please find duplicate copies of the checks previously submitted to the Department of Health on December 15, 2015 and again on January 8, 2016.

2. Withdrawal of Project 011102 Bethel Nursing Home Company, Inc. [PMU]

**RESPONSE:** Please refer to the attached letter previously submitted to the Department from Bethel Nursing Home Company, Inc. dated March 4, 2016, acknowledging the withdrawal of Project No. 011102 contingent upon the approval of the current project.

3. Submission of an affidavit signed by the applicant affirming that the facility will be accepting "hard to place patients" which include but are not limited to undocumented patients or charity care patients, patients with behavioral issues, and any other patients that hospitals are having a difficult time placing. [RNR]

**RESPONSE:** Please refer to the attached response to Contingency #3 which was previously submitted to the Department.

4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of PHHPC approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

**COPY**

Mr. Charles P. Mel, Deputy Director  
May 24, 2016  
Page 5 of 7

**RESPONSE:** Please refer to the attached response to Contingency #4 which was previously submitted to the Department.

5. Submission of a plan to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
- a) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
  - d) Submit an annual report for two years to the Department, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
    - Information on activities relating to a-c above;
    - Documentation pertaining to the number of referrals and the number of Medicaid admissions;
    - Other factors as determined by the applicant to be pertinent; and
    - Documents showing which patients were accepted from hospital waiting lists and which are still on the waiting lists. [RNR]

The DOH reserves the right to require continued reporting beyond the two year period.

**RESPONSE:** Please refer to the attached response to Contingency #5 that was previously submitted to the Department.

6. Submission and acceptable programmatic review of a new name which is more descriptive of a nursing home [LTC]

**RESPONSE:** Please refer to the attached response to Contingency #6 which was previously submitted to the Department.

7. Submission and programmatic review and approval of the final floor plans, including layouts showing the placement of furniture, equipment, and storage for all types of resident rooms. [LTC]

**RESPONSE:** Please refer to the attached architectural drawing, A2.20 dated February 3, 2016, which was previously submitted to the Department

8. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]

**COPY**

Mr. Charles P. Abel, Deputy Director  
 May 24, 2016  
 Page 4 of 7

**RESPONSE:** The Applicant has made arrangements for a construction loan from Lancaster Pollard Mortgage Company, LLC. The proposed loan (evidenced by the attached Term Sheet) which will not mature to a commitment until (1) the final approval of the plans by the Department of Health (2) the approval of the Bankruptcy Court since Hebrew is a partner in the Operator entity, has the following terms and conditions:

1. The loan shall have a principal value equal to the lesser of a) \$43,900,000, b) 75% of MAJ Stabilized LTV, c) 75% of Loan to Total Project Costs d) an amount that at the Construction Mortgage Loan Rate yields a maximum debt service coverage ratio of 1.35x after an imputed management fee of 5% and a capital replacement reserve of \$350 per licensed unit based on a minimum of a trailing 6 month annualized basis at Stabilization, as defined below, or e) and amount that is eligible for an FHA insured mortgage take-out. Construction Mortgage Loan proceeds will be drawn over the term of the construction budget, as further underwritten and approved by the Construction Mortgage Lender.
2. Stabilization is defined as the earlier of a) the date the Facility achieves and maintains a debt service coverage ratio on the Construction Mortgage Loan payment of 1.35x for a based upon a test period of (a) trailing six month period where the DSC is maintained as one quarter and a 1.15x or b) the end of the third year after the closing of the Construction Mortgage Loan.
3. The Construction Mortgage Loan Rate: Floating rate of shall be 375 basis points over the 30-day LIBOR with a LIBOR Floor of 3.00% for the term of the Construction Mortgage Loan. Which shall be a five year terms requiring interest only payments for the first 36 months following closing and principal and interest payments based on a 22-year amortization at the Construction Mortgage Rate. The Borrower may prepay the Construction Mortgage Loan in whole or in part subject to a prepayment penalty of 5% on the prepaid amount in the first year, 4% in the second year, 3% in the third year and 1% thereafter. Prepayment penalties will be reduced to 0% if Borrower/Sponsor utilizes Lancaster Pollard for the exit to HUD, which is the intended result.
9. Submission of an executed working capital loan agreement that is acceptable to the Department. (BFA)

**RESPONSE:** Please refer to the attached Contingency response #9, Working Capital Financing Commitment dated May 12, 2016 which was previously submitted to the Department.

10. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAFIP Drawing Submission Guidelines DSCG-01. (AER)

**RESPONSE:** Please be advised that the State Hospital Code drawings were submitted to the Department of Health on April 15, 2016, and were received by the Department of Health on April 18, 2016. We are enclosing an additional set of plans with this submission.

Mr. Charles P. Abel, Deputy Director  
May 24, 2016  
Page 5 of 7

**COPY**

11. Submission of a photocopy of an executed operating lease agreement between White Plains Healthcare Properties 1, LLC and the applicant, which is acceptable to the Department [BFA, CSL]

**RESPONSE:** Please refer to the attached response to Contingency #11 which was previously submitted to the Department.

12. Submission of a photocopy of the Articles of Organization of HBL SNF, LLC, which is acceptable to the Department. [CSL]

**RESPONSE:** Please refer to the attached response to Contingency #12 which was previously submitted to the Department.

13. Submission of a photocopy of a Certificate of Amendment of the Articles of Organization of HBL SNF, LLC which is acceptable to the Department [CSL]

**RESPONSE:** Please refer to the attached response to Contingency #13 which was previously submitted to the Department.

14. Submission of a photocopy of an executed Operating Agreement of HBL SNF, LLC, which is acceptable to the Department. [CSL]

**RESPONSE:** As discussed in our meeting of May 17, 2016, the operating agreement has been finalized by all parties, but Hebrew Hospital Home of Westchester, Inc. is currently in bankruptcy. Per legal counsel of Hebrew Hospital Home of Westchester, Inc., execution of the operating agreement will require the approval of the bankruptcy court and creditors committee. It is our understanding and belief that the creditors committee has recommended approval of the execution of the subject operating agreement and is scheduled for presentation to the bankruptcy courts on June 1, 2016. The Board of Directors of Hebrew Hospital Home of Westchester, Inc. has recommended approval of the execution of the operating agreement, a copy which is included in the response for Contingency 14.

15. Submission of a photocopy of the bylaws of Hebrew Hospital Home of Westchester and Bethel Nursing Home Company. [CSL]

**RESPONSE:** Please refer to the attached response to Contingency #15 which was previously submitted to the Department.

16. Submission of a list providing the name of each member, membership interest, and with percentage ownership interest in Westchester Health Care Properties 1, LLC. [CSL]

**RESPONSE:** Please refer to the attached response to Contingency #16 which was previously submitted to the Department.

**COPY**

Mr. Charles P. Abel, Deputy Director  
May 24, 2016  
Page 6 of 7

17. Submission of a list of all managers of Westchester Health Care Properties I, LLC. [CSI]

**RESPONSE:** Please refer to the attached response to Contingency #17 which was previously submitted to the Department.

18. Submission of a photocopy of the Articles of Organization and any amendments thereto, and the Operating Agreement of Westchester Health Care Properties I, LLC, which is acceptable to the Department. [CSI]

**RESPONSE:** Please refer to the attached response to Contingency 18 which was previously submitted to the Department.

19. Submission of a photocopy of a Development Agreement between HBL SNF, LLC and White Plains Healthcare Properties I, LLC, which is acceptable to the Department. [CSI]

**RESPONSE:** Please refer to the attached response to Contingency #19 which was previously submitted to the Department.

Additionally, as requested in December 18, 2015, we are providing you with an updated timeline for the proposed project in the form of two (2) schedules:

- The first schedule is a timetable of events needed to occur to bring the administrative aspect to conclusion which includes such items as the submission of the two final contingency responses, securing the requisite all contingency satisfied letter as well as receipt of the letters from the Public Health & Health Planning Council confirming that all contingency requirements have been satisfied all the way through the pre-opening survey and commencement of occupancy.
- The second schedule is a detailed construction schedule which is broken down in accordance with standard construction trade sections. As demonstrated on the schedule, there has been significant time spent in the organization of the construction schedule as it is anticipated that ground breaking will occur in the 3<sup>rd</sup> quarter of 2016.

Based on the above construction timetable, we are also requesting revised start and completion dates of construction as follows:

- Start of Construction: September 1, 2016; and
- Completion of Construction: June 2018

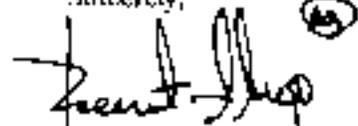
We thank you in advance for your attention and cooperation with this matter and we look forward to hearing back from you with an affirmative response as to the re-instatement of the project within the timeframe prescribed above.

**COPY**

Mr. Charles P. Abel, Deputy Director  
May 24, 2016  
Page 7 of 7

In the interim should you have any questions or require any additional information, please feel free to contact me.

Sincerely,

  
Robert S. Shapiro

Cc: Ms. Barbara DelCogliano, Director, Bureau of Project Management  
HBL SNF, LLC

Enc.

ORIGINATOR: (914) 630-4543  
ANDREW BLATT  
PINNACLE HEALTH CONSULTANTS  
1890 PALMER AVENUE  
SUITE 204  
LARCHMOUNT, NY 10538  
UNITED STATES US

SHIP DATE: 24MAY16  
ACTWGT: 5.00 LB  
CAD: 7849075NET13730

BILL SENDER

TO CHARLES P ABEL  
NEW YORK STATE DEPARTMENT OF HEALTH  
EMPIRE STATE PLAZA  
CORNING TOWER - ROOM 1805  
ALBANY NY 12237

(518) 402-0967 REF: HCL SHF  
NY DEPT

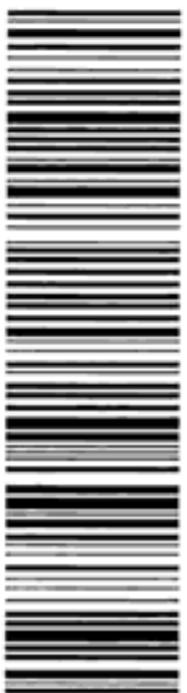
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TRK# 7763 6028 0835  
WED - 25 MAY 3:00P  
STANDARD OVERNIGHT

EI ALBA 12237  
NY-US ALB



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ORIGIN ID: AVBA (914) 630-4543  
ANDREW BLATT  
PAINSOLE HEALTH CONSULTANTS  
1890 PALMER AVENUE  
SUITE 204  
LARCHMONT, NY 10538  
UNITED STATES US

SHIP DATE: 24MAY16  
ACTWGHT: 5.00 LB  
CAD: 1848075NET3730

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TO BARBARA DELCOGLIANO  
NEW YORK STATE DEPARTMENT OF HEALTH  
TOWER BUILDING, EMPIRE STATE PLAZA  
ROOM 1842  
ALBANY NY 12237

(518) 402-0904 REF: HBL SHF

NY

DEPT

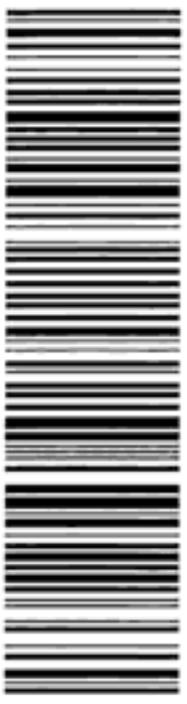
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**COPY**



**THE CONGRESS COMPANIES**  
 General Contractors, Construction Managers, Property Managers, Development Services

**BOSTON:**  
 West Peabody Executive Center  
 2 Bourbon Street  
 Peabody, MA 01960  
 Phone: 978-535-6700  
 Fax: 978-535-6701  
[inquire@congressconstruction.com](mailto:inquire@congressconstruction.com)

**NEW YORK:**  
 1111 Marcus Ave.  
 Building A, Suite LL08  
 Lake Success, NY 11042  
 Phone: 516-328-6490  
 Fax: 516-328-6464

**White Plains Institute for Rehabilitation & Healthcare  
 116-120 Church Street  
 White Plains, New York 10601**

**PROJECT DOH MILESTONE TIMELINE**  
 May 19, 2016

<b>Submit 60% plans to DOH for comments</b>		<b>Submitted on 04/15/16</b>
<b>DOH review and comments upon 60% documents</b>	<b>7 weeks</b>	<b>04/15/16 to 05/31/16</b>
<b>Construction Documents (CD's) Completion</b>	<b>11 weeks</b>	<b>04/15/16 to 06/17/16</b>
<b>Subcontractor Bidding CD's for GMP Cost</b>	<b>5 weeks</b>	<b>06/20/16 to 07/21/16</b>
<b>Submit CD's to Municipal Building Department for Permit</b>	<b>5 weeks</b>	<b>06/20/16 to 07/21/16</b>
<b>Receive Building Permit</b>	<b>1 week</b>	<b>07/18/16 to 07/22/16</b>
<b>Finalize Project Financing &amp; Loan Commitment</b>	<b>6 weeks</b>	<b>05/31/16 to 07/14/16</b>
<b>Loan Closing</b>	<b>10 weeks</b>	<b>07/15/16 to 08/17/16</b>
<b>Owner Notice to Proceed with Construction</b>	<b>1 day</b>	<b>08/17/16</b>
<b>General Contractor Mobilization at Site</b>	<b>1 week</b>	<b>08/18/16 to 08/25/16</b>
<b>Construct parking level &amp; Five Story Building</b>	<b>20 months</b>	<b>08/26/16 to 05/02/18</b>
<b>DOH Pre-Opening Survey ( 90 days prior to completion )</b>	<b>1 day</b>	<b>02/01/18</b>
<b>DOH Pre- Opening Survey (30 days prior to completion)</b>	<b>1 day</b>	<b>04/02/18</b>
<b>Municipality Final Inspections for C of O</b>	<b>2 weeks</b>	<b>05/03/18 to 05/16/18</b>
<b>DOH Final Completion Survey for Occupancy License</b>	<b>3 weeks</b>	<b>05/17/18 to 06/06/18</b>
<b>Building ready for Occupancy by Patients</b>		<b>06/06/18</b>



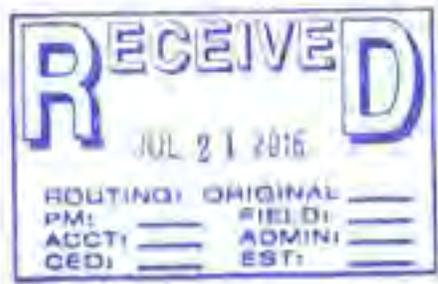


# Exhibit Q

## To Nicholson Aff.

**PINNACLE HEALTH CONSULTANTS, LLC**

1890 Palmer Avenue, Suite 204  
Larchmont, New York 10538  
(914) 630-4543 FAX (646) 349-5889  
[ablatt@pinnaclehealthny.com](mailto:ablatt@pinnaclehealthny.com)



VIA EMAIL, FEDERAL EXPRESS and HAND DELIVERY

July 20, 2016

Ms. Barbara DelCogliano, Deputy Director  
Division of Planning & Licensure  
NEW YORK STATE DEPARTMENT OF HEALTH  
Tower Building, Empire State Plaza  
Room 1842, Corning Tower  
Albany, New York 12237

**RE: Project No. 092058 B**  
**HBL SNF, LLC d/b/a The Rehabilitation and Care Institute of White Plains**  
**(Westchester County)**  
**Establish and Construct a 160 bed Residential Health Care Facility**

Dear Ms. DelCogliano:

As a follow up to the letter received from Mr. Charles P. Abel dated June 20, 2016 and on behalf of our client, HBL SNF, LLC, we are herewith submitting the following response.

In the letter of June 20, 2016 we were requested to provide material to address contingency #8 and #14. As such we offer the following response:

8. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]

**RESPONSE:** Enclosed please find a copy of the term sheet for the construction financing from Lancaster Pollard to Mr. William Nicholson, CEO of the Congress Companies for the benefit of White Plains Healthcare Properties I, LLC.

14. Submission of a photocopy of an executed Operating Agreement of HBL SNF, LLC, which is acceptable to the Department. [CSL]

**RESPONSE:** As discussed in our meeting of May 17, 2016, the operating agreement has been finalized by all parties but Hebrew Hospital Home of Westchester, Inc. is currently in bankruptcy. Per legal counsel of Hebrew Hospital Home of Westchester, Inc., execution of the operating agreement will require approval of the bankruptcy court and creditors committee. Legal Counsel for the creditors committee as well as Hebrew Hospital Home of Westchester, Inc. (HHHW) have reached out to the Mark Noordsy, Esq and Mark Furnish, Esq. of the Division of Legal Affairs of the New York State Department of Health in an

Ms. Barbara DelCogliano, Director  
July 20, 2016  
Page 2 of 2

effort to seek guidance as it pertains to the interest of HHHW. We have enclosed for your review copies of email correspondence that have been provided to us or that we have been included on for your reference. Please note that a conference call between the parties is scheduled for Friday, July 22, 2016 at 1:00pm. Please note that we have also kept your office in the loop as to the progress on this effort.

Additionally, we have received the following correspondence as it addresses the ongoing review of other contingency responses for the project. Please be advised as to the following:

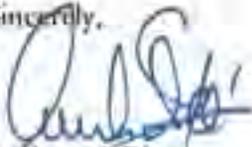
- 9. Submission of an executed working capital loan agreement that is acceptable to the Department. [BFA]

**RESPONSE:** Correspondence was received dated June 22, 2016. As the initial submission was for a line of credit, the applicant has been working with the bank underwriters to provide for a term loan acceptable to the Department of Health. Our office has communicated with the Bureau of Financial Analysis in general terms regarding working capital financing parameters. We are requesting an extension for submission of the required revised working capital financing commitment to Friday, July 29, 2016.

- 10. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

**RESPONSE:** Correspondence was received dated July 10, 2016. Staff from the Bureau of Architecture and Engineering Review has been in communication with the applicants architectural design team and are addressing the letter of July 10, 2016.

In the interim should you have any questions or require any additional information, please feel free to contact me.

Sincerely,  
  
Andrew S. Blatt

Cc: HBL SNI, LLC

Enc.

ORIGIN D: A09BA (914) 630-4543  
ANDREW BLATT  
CONSULTANTS  
1990 PALMER AVENUE  
SUITE 204  
LANCASHIRE, NY 10538  
UNITED STATES US

SHIP DATE: 20 JUL 18  
ACTWGT: 5.1 LB  
CIC: 7549075NET 2190  
BILL SENDER

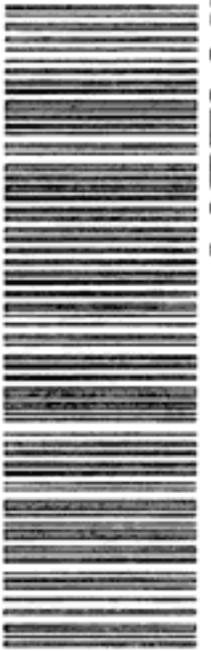
TO  
**BARBARA DELCOGLIANO**  
NEW YORK STATE DEPARTMENT OF HEALTH  
TOWER BUILDING, EMPIRE STATE PLAZA  
ROOM 1842  
ALBANY NY 12237

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**HBL SNF, LLC**  
**d/b/a WHITE PLAINS INSTITUTE FOR REHABILITATION AND**  
**HEALTHCARE**  
**PROJECT No.: 092058-B**  
**CONTINGENCY 8**  
**EXECUTED PERMANENT FINANCING AGREEMENT**  
**REVISED SUBMISSION – JULY 20, 2016**



July 18, 2016

Mr. William Nicholson  
 CEO, The Congress Companies  
 White Plains Healthcare Properties I, LLC  
 West Peabody Executive Center, Suite 200  
 2 Bourbon Street  
 Peabody, MA 01960

Dear Mr. Nicholson:

We are pleased to provide this term sheet of anticipated terms for construction financing of the The Rehabilitation and Care Institute of White Plains, a to-be-built 160-bed licensed skilled nursing facility located in White Plains, NY. (the "Project"). The purpose of the term sheet is to describe the anticipated general terms of a senior construction loan for the Project. Lancaster Pollard is not providing a senior construction loan for the Project; rather, Lancaster Pollard will serve as placement agent for the senior construction loan for the Project, utilizing its best efforts to place the debt with a senior construction lender.

Anticipated Sources and Uses for the Project are as described below:

- **Sources**
  - Senior Mortgage Loan Amount: to be no more than \$42,240,000
  - Sponsor's Equity: The Sponsor shall provide a current balance sheet with a minimum \$14,391,759 unencumbered Equity.
- **Uses:** total project costs are estimated to be \$56,631,759 ("Total Project Costs"):
  - Land Acquisition \$4,528,333
  - New Construction \$37,282,722
  - Design Contingency \$1,864,136
  - Construction Contingency \$1,864,136
  - Architect/Engineering Fees \$2,982,618
  - Construction Manager Fees \$745,654
  - Other Fees (Consultant) \$750,000
  - Movable Equipment \$1,480,000
  - Financing Costs \$2,112,000
  - Interim Interest Expense \$2,710,400
  - CON Application Fee \$2,000
  - CON Processing Fee \$309,760
- The difference between Construction Mortgage proceeds and total project costs will be supplied by Sponsor in the form of cash equity or contributed equity such as land (subject to Construction Mortgage Lender approval) or allowable prepaid expenses included in the Total Approved Project Cost (as approved by the NY Department of Health).
- Sponsor's Equity will be provided to the Construction Mortgage Lender at Closing and will be used to pay project costs prior to loan proceeds. It is the intent of this transaction that the land will be contributed at historical cost to the transaction to fill a portion of this equity requirement. The contributed cost of the land allowed will be the lesser of what was actually paid for the land or the

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2

current value. The land value will be determined by a MAI appraisal that is satisfactory to the Mezzanine Lender.

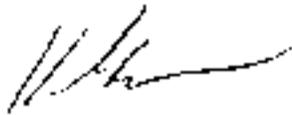
Other anticipated terms are as follows:

- **Borrower:** Single purpose limited liability entity owning the real estate of the Collateral Facility, as defined below (collectively, the "Borrower").
- **Collateral Facility:** The Rehabilitation and Care Institute of White Plains, a to-be-built 160-bed licensed skilled nursing facility located in White Plains, NY.
- **Sponsor:** White Plains Healthcare Properties I, LLC and other partners that comprise the equity ownership of the Borrower. The Sponsor will lease out the Collateral Facility to the Lessee who will operate the Collateral Facility.
- **Financing Purpose:** To provide funds for the construction of the Collateral Facility, to fund capitalized interest and to pay closing costs.
- **Senior Construction Mortgage Lender:** to be determined
- **Mezzanine Lender:** anticipated to be LTC REIT
- **Lessee:** An entity to be established to lease and operate the Collateral Facility. This entity will be owned by Lizer Josefovic, an owner/operator of skilled nursing facilities in Westchester County (where White Plains is located). The Lessee will supply a) the working capital to lease up and operate the Collateral Facility and b) a substantial Lease guaranty that needs to be satisfactory to the Construction Mortgage Lender.
- **Construction Mortgage Loan Rate:** Floating rate of 375 basis points over the 30-day LIBOR with a LIBOR Floor of 3.00% for the term of the Construction Mortgage Loan.
- **Construction Mortgage Loan Term:** Minimum five year term requiring interest only payments on the Construction Mortgage for the first 36 months following closing and principal and interest payments based on a 22-year amortization at the Construction Mortgage Rate.
- **Security / Collateral Facility:** Construction Mortgage Loan will be secured by a senior mortgage on the Collateral Facility and a priority lien on all other assets of the Borrower, both tangible and intangible. Additionally, Borrower shall provide an assignment and subordination of any Lease Agreements and/ or Management Agreements, if applicable. Subject to an intercreditor agreement with the Mezzanine Lender that is satisfactory to the Construction Mortgage Lender, and an intercreditor agreement with the Lessee's Accounts Receivable Lender which needs to be satisfactory to the Construction Mortgage Lender.
- **Guarantors:** Key principals of the Sponsor (and spouses if assets are jointly owned) and the Sponsor will joint and severally personally guaranty all obligations of the Construction Mortgage Loan. The Lessee will guaranty all obligations under the Lease and the guaranty will be assigned to the Construction Mortgage Lender as additional collateral.
- **Expenses:** All out of pocket expenses of both Borrower and Construction Mortgage Lender are the responsibility of Borrower and Guarantors.

The undersigned acknowledges and agrees that this term sheet is a non-binding expression of interest only. This is not a commitment to lend, nor will Lancaster Pollard act as direct lender on this transaction. Lancaster Pollard's sole role is to arrange debt placement for a senior construction loan on a best efforts basis only. The terms described are an estimate of the terms Lancaster Pollard will use its best efforts to arrange from a senior construction lender, but Lancaster Pollard cannot guarantee a senior construction lender will provide a commitment with the terms described herein. This term sheet does not create a binding obligation for Lancaster Pollard or any senior construction lender, or any other party.

Sincerely,

Lancaster Pollard & Co



Kenneth Gould  
Senior Managing Director

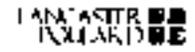
Acknowledged this 20th day of July, 2016.

**BORROWER:** White Plains Health Care Properties 1, LLC

By: [Signature]  
Its: Manager

**GUARANTOR:** William A. Nicholson

By: [Signature]  
Its: An Individual



**HBL SNE, LLC**

**d/b/a WHITE PLAINS INSTITUTE FOR REHABILITATION AND  
HEALTHCARE**

**PROJECT No.: 092058-B**

**CONTINGENCY 14**

**EXECUTED OPERATING AGREEMENT – HBL SNE, LLC**  
**EMAIL CORRESPONDENCE DOCUMENTATION**

**Andrew Blatt**

---

**From:** Mark H. Zafrin (NY)  
**Sent:** Wednesday, July 20, 2016 1:11 PM  
**To:** Andrew Blatt; Bob Shapiro  
**Subject:** FW: Telephone conference

**Mark H. Zafrin**

**M<sup>i</sup>R MICHELMAN & ROBINSON, LLP**

Los Angeles | Orange County | Sacramento | San Francisco | Chicago | New York

800 Third Avenue, 24th Floor, New York, NY 10022  
T 212.730.7700 F 212.730.7725  
E [mzafrin@mrlp.com](mailto:mzafrin@mrlp.com) [www.mrlp.com](http://www.mrlp.com)  
B io v Card

**From:** Noordsy, Mark (HEALTH) [<mailto:mark.noordsy@health.ny.gov>]  
**Sent:** Tuesday, July 19, 2016 12:14 PM  
**To:** 'Levy, Jerome T.' <[JTLevy@duanemorris.com](mailto:JTLevy@duanemorris.com)>; Mark H. Zafrin (NY) <[mzafrin@mrlp.com](mailto:mzafrin@mrlp.com)>  
**Cc:** Furnish, Mark W (HEALTH) <[Mark.Furnish@health.ny.gov](mailto:Mark.Furnish@health.ny.gov)>  
**Subject:** RE: Telephone conference

1:00 PM on Friday, 7/22 is good for us. Please include Mark Furnish on the meeting notice.

**Mark Noordsy**  
Bureau of Health Facility Planning & Development  
Division of Legal Affairs  
NYS Dept. of Health  
518-473-3303  
[mark.noordsy@health.ny.gov](mailto:mark.noordsy@health.ny.gov)

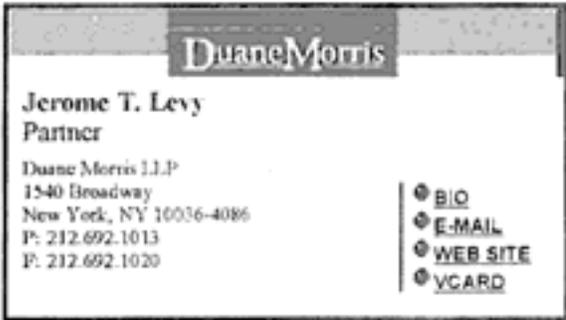
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**From:** Levy, Jerome T. [<mailto:JTLevy@duanemorris.com>]  
**Sent:** Tuesday, July 19, 2016 12:10 PM  
**To:** Mark H. Zafrin (NY) <[mzafrin@mrlp.com](mailto:mzafrin@mrlp.com)>; Noordsy, Mark (HEALTH) <[mark.noordsy@health.ny.gov](mailto:mark.noordsy@health.ny.gov)>  
**Subject:** RE: Telephone conference

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How about 1:00 PM on Friday, 7/22.

Jerry



**From:** Mark H. Zafrin (NY) [mailto:mzafrin@mrlip.com]  
**Sent:** Tuesday, July 19, 2016 12:07 PM  
**To:** Noordsy, Mark (HEALTH); Levy, Jerome T.  
**Subject:** RE: Telephone conference

Lets just pick a time and I can circulate a call in number

Mark H. Zafrin

**M<sup>r</sup> MICHELMAN & ROBINSON, LLP**  
Los Angeles | Orange County - Sacramento - San Francisco | Chicago | New York  
  
800 Third Avenue, 24th Floor, New York, NY 10022  
T 212.730.7700 F 212.730.7725  
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**Sent:** Tuesday, July 19, 2016 12:03 PM  
**To:** 'Levy, Jerome T.' <JTLevy@duanemorris.com>  
**Cc:** Mark H. Zafrin (NY) <mzafrin@mrlip.com>  
**Subject:** RE: Telephone conference

Jerry – Sorry but the best we can do is the afternoon of Friday 7/22, noon or after. Mark

Mark Noordsy  
Bureau of Health Facility Planning & Development  
Division of Legal Affairs  
NYS Dept. of Health  
518-473-3303  
[mark.noordsy@health.ny.gov](mailto:mark.noordsy@health.ny.gov)

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**From:** Levy, Jerome T. [mailto:JTLevy@duanemorris.com]  
**Sent:** Monday, July 18, 2016 4:25 PM  
**To:** Noordsy, Mark (HEALTH) <mark.noordsy@health.ny.gov>  
**Cc:** Mark H. Zafrin (NY) <mzafrin@mrlip.com>  
**Subject:** Telephone conference

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**Mark:**

As I said in my phone message, Mark Zafrin and I would like to discuss with you the situation presented by the Bethel Beds, and the bankruptcy of Hebrew Hospital of Westchester.

Are you available anytime tomorrow, or Wednesday Afternoon to discuss the situation.

Please let me know.

Thanks very much.

**Jerry Levy**



**Jerome T. Levy**  
Partner

Duane Morris LLP  
1540 Broadway  
New York, NY 10036-4086  
P: 212.692.1013  
F: 212.692.1020

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**Andrew Blatt**

---

**From:** Noordsy, Mark (HEALTH)  
**Sent:** Tuesday, July 12, 2016 5:22 PM  
**To:** 'Bob Shapiro'; Andrew Blatt; mzafrin@mrlip.com; JVincequerra@duanemorris.com; JTLevy@duanemorris.com; rfink@hselaw.com  
**Cc:** Furnish, Mark W (HEALTH)  
**Subject:** RE: HBL SNF, LLC - Project No. 092058

I will be out of the office the rest of the week, and Mark Furnish will be the contact person on this matter during that time period.

Thank you,

**Mark Noordsy**  
Bureau of Health Facility Planning & Development  
Division of Legal Affairs  
NYS Dept. of Health  
518-473-3303  
[mark.noordsy@health.ny.gov](mailto:mark.noordsy@health.ny.gov)

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**From:** Bob Shapiro [mailto:bshapiro@pinnaclehealthny.com]  
**Sent:** Monday, July 11, 2016 10:45 AM  
**To:** Noordsy, Mark (HEALTH) <mark.noordsy@health.ny.gov>; Andrew Blatt <ablatt@pinnaclehealthny.com>; mzafrin@mrlip.com; JVincequerra@duanemorris.com; JTLevy@duanemorris.com; rfink@hselaw.com  
**Cc:** Furnish, Mark W (HEALTH) <Mark.Furnish@health.ny.gov>  
**Subject:** RE: HBL SNF, LLC - Project No. 092058

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

We will review internally and get back to you.

Thanks and have a great day.

Bob S.  
  
Office: (914) 630-4543  
FAX: (914) 206-4131  
Mobile: (914) 260-9777

**From:** Noordsy, Mark (HEALTH) [mailto:mark.noordsy@health.ny.gov]  
**Sent:** Monday, July 11, 2016 10:22 AM  
**To:** 'bshapiro@pinnaclehealthny.com'; 'ablatt@pinnaclehealthny.com'; 'mzafrin@mrlip.com';

'Micaela@duanemorris.com'; 'Flew@duanemorris.com'; 'rjink@hselaw.com'

Cc: Furnish, Mark W (HEALTH)

Subject: RE: HBL SNF, LLC - Project No. 092058

Good morning - following up on my email of last week:

If I understand the situation correctly, the pending motion requests Court approval for HHHW to execute and assume the Operating Agreement and the Bethel/HHW Agreement regarding HBL SNF, LLC. HBL is the Joint Venture Company described in the motion papers and the applicant on Project No. 092058. Once court approval is obtained for HHHW to enter into these Agreements, it is anticipated that HHHW will propose by way of its proposed plan of liquidation that its 9.9% interest in HBL be transferred to a liquidating trust. It is for this last transfer that the approval of DOH/PHHPC is requested.

Would you please provide us with a copy of the draft plan of liquidation, or a plan of liquidation from another proceeding that involves a liquidating trust, and advise of any other transactions that you are aware of where an ownership interest in a PHHPC applicant or approved operator was transferred to a similar liquidating trust.

Thank you,

Mark Noordsy  
Bureau of Health Facility Planning & Development  
Division of Legal Affairs  
NYS Dept. of Health  
518-473-3303

mark.noordsy@health.ny.gov

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# Exhibit R

## To Nicholson Aff.

**Bill Coleman**

---

**From:** William Nicholson  
**Sent:** Tuesday, October 11, 2016 4:38 PM  
**To:** 'Andrew Blatt'; 'Bob Shapiro'  
**Cc:** 'Mark Zafrin'; 'Lizer Jozefovic'  
**Subject:** RE: HBL SNF

All

The fact is that we will need the NYDOH green light, the Operating Agreement and the Appraisal (among other things) to obtain a commitment,

No Lender will bring this into committee without an Operator.

We've naturally had to disclose the bankruptcy issue to the lenders,  
And we have not been able to deliver an actual signed Operating Agreement for the Operator entity due to this issue, to get through underwriting.

Obtaining NYDOH approval of this situation in some form or fashion is important to the Lenders who do not want to get caught up in the cross fire of the Bankruptcy courts, and need a Tenant Operating Entity that is not a moving target or a "story", which is all we have had to work with thus far,

This is no one's fault on this team for sure.

Now the passage of time created by this issue, have caused 3<sup>rd</sup> party reports (including Appraisal, and others) to go "stale".

I understand NYDOH's position.

The reality is that a bone-fide commitment isn't going to happen until we get the entire parade in stride.

I apologize that we couldn't arrange a call this morning.

I am available to speak this afternoon, tomorrow afternoon and Thursday AM.

William A. Nicholson  
CEO



The Congress Companies  
West Peabody Executive Center, Suite 200  
2 Bourbon Street  
Peabody, MA 01960

Telephone: 978-535-6700 Ext. 122, Ext 125 for my Assistant  
Cell: 508-527-6700  
Fax: 978-535-6701  
Website: [www.congresscompanies.com](http://www.congresscompanies.com)

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

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Sort By:

#	Document	Filed By	Status
151	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
152	<a href="#">EXHIBIT(S)</a> - P (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
153	<a href="#">EXHIBIT(S)</a> - Q (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
154	<a href="#">EXHIBIT(S)</a> - R (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
155	<a href="#">EXHIBIT(S)</a> - S (Motion #5) <i>Bankruptcy Court Order</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
156	<a href="#">EXHIBIT(S)</a> - T (Motion #5) <i>Operating Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
157	<a href="#">EXHIBIT(S)</a> - U (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

	FILED, 06/29/2021 Received: 06/29/2021	Notice - Pg 2 of 69
158 <a href="#">EXHIBIT(S)</a> - V (Motion #5) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
159 <a href="#">EXHIBIT(S)</a> - W (Motion #5) <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
160 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
161 <a href="#">EXHIBIT(S)</a> - X (Motion #5) <i>Notification of Disposition of Collateral</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
162 <a href="#">EXHIBIT(S)</a> - Y (Motion #5) <i>June 10,2021 Letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
163 <a href="#">EXHIBIT(S)</a> - Z (Motion #5) <i>Publication</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
164 <a href="#">EXHIBIT(S)</a> - AA (Motion #5) <i>Terms of Sale</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
165 <a href="#">EXHIBIT(S)</a> - BB (Motion #5) <i>Amended and Restated Operating Agreement of Waterview</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
166 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affidavit of Howard Fensterman</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
167 <a href="#">EXHIBIT(S)</a> - CC (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
168 <a href="#">EXHIBIT(S)</a> - DD (Motion #5) <i>Fed Ex Receipt</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
169 <a href="#">MEMORANDUM OF LAW IN OPPOSITION</a> (Motion #5)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
170 <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Supplemental Affidavit of Brett Bandazian in Partial Joinder and Support of Defendants'/Third-Party ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
171 <a href="#">EXHIBIT(S)</a> - 6 (Motion #5) <i>Exhibit 6 Certificate</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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172	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF CROSS-MOTION</a> (Motion #5) <i>Second Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants'/T ... show more</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
173	<a href="#">EXHIBIT(S)</a> - 7 (Motion #5) <i>Exhibit 7 - Article</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
174	<a href="#">ORDER TO SHOW CAUSE</a> (Motion #5)	Court User Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
175	<a href="#">NOTICE OF ENTRY</a>	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
176	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> *Corrected*	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
177	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> (Motion #5) *Corrected* <i>Notice of Appeal</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
178	<a href="#">COUNTY CLERK CERTIFICATION OF MINUTES</a>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
179	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 1 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
180	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 2 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
181	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/10/2021 Received: 08/10/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
182	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/13/2021 Received: 08/13/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
183	<a href="#">NOTICE OF MOTION</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
184	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affirmation of Alfred E. Donnellan, Esq.</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
185	<a href="#">EXHIBIT(S)</a> - 1 (Motion #6) <i>Summons &amp; Complaint - Westchester County action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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186	<a href="#">EXHIBIT(S)</a> - 2 (Motion #6) <i>Answer with Counterclaims and Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
187	<a href="#">EXHIBIT(S)</a> - 3 (Motion #6) <i>Amended Verified Complaint 2020.11.30</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
188	<a href="#">EXHIBIT(S)</a> - 4 (Motion #6) <i>Reply to Counterclaims and Answer to Third-Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
189	<a href="#">EXHIBIT(S)</a> - 5 (Motion #6) <i>First Amended Verified Complaint 2021.03.22</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
190	<a href="#">EXHIBIT(S)</a> - 6 (Motion #6) <i>Summons &amp; Complaint - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
191	<a href="#">EXHIBIT(S)</a> - 7 (Motion #6) <i>Answer - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
192	<a href="#">EXHIBIT(S)</a> - 8 (Motion #6) <i>Answer of MCB - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
193	<a href="#">EXHIBIT(S)</a> - 9 (Motion #6) <i>Decision and Order 2021.04.08</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
194	<a href="#">EXHIBIT(S)</a> - 10 (Motion #6) <i>First Amended Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
195	<a href="#">EXHIBIT(S)</a> - 11 (Motion #6) <i>Notice to Admit with exhibits</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
196	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of William Nicholson</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
197	<a href="#">EXHIBIT(S)</a> - 12 (Motion #6) <i>Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
198	<a href="#">EXHIBIT(S)</a> - 13 (Motion #6) <i>Development Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
199	<a href="#">EXHIBIT(S)</a> - 14 (Motion #6) <i>Jozefovic Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
200	<a href="#">EXHIBIT(S)</a> - 15 (Motion #6) <i>Neuman Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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201	<a href="#">EXHIBIT(S)</a> - 16 (Motion #6) <i>Pledge Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
202	<a href="#">EXHIBIT(S)</a> - 17 (Motion #6) <i>Letter of Intent</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
203	<a href="#">EXHIBIT(S)</a> - 18 (Motion #6) <i>White Plains TCO</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
204	<a href="#">EXHIBIT(S)</a> - 19 (Motion #6) <i>AIA form G704</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
205	<a href="#">EXHIBIT(S)</a> - 20 (Motion #6) <i>NYSDOH letter 2019.12.02</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
206	<a href="#">EXHIBIT(S)</a> - 21 (Motion #6) <i>NYSDOH email 2019.10.01</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
207	<a href="#">EXHIBIT(S)</a> - 22 (Motion #6) <i>Term Sheet 2015.11.20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
208	<a href="#">EXHIBIT(S)</a> - 23 (Motion #6) <i>Jozefovic Affidavit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
209	<a href="#">EXHIBIT(S)</a> - 35 (Motion #6) <i>Operating Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
210	<a href="#">EXHIBIT(S)</a> - 36 (Motion #6) <i>Zafrin e-mail dated 4-11-17</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
211	<a href="#">EXHIBIT(S)</a> - 37 (Motion #6) <i>Estoppel Certificate to Security Benefit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
212	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Edward Tabor</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
213	<a href="#">EXHIBIT(S)</a> - 24 (Motion #6) <i>Itemization of amounts due under lease and LOI</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
214	<a href="#">EXHIBIT(S)</a> - 25 (Motion #6) <i>List of Rents &amp; Late Charges</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
215	<a href="#">EXHIBIT(S)</a> - 26 (Motion #6) <i>Notice of Default</i> # <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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216	<a href="#">EXHIBIT(S)</a> - 27 (Motion #6) <i>Accelerated Rent (NPV)</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
217	<a href="#">EXHIBIT(S)</a> - 28 (Motion #6) <i>Professional Fees</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
218	<a href="#">EXHIBIT(S)</a> - 29 (Motion #6) <i>Security Benefit Notice of Default dated 4-16-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
219	<a href="#">EXHIBIT(S)</a> - 30 (Motion #6) <i>Notice of Default 5-22-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
220	<a href="#">EXHIBIT(S)</a> - 31 (Motion #6) <i>Complaint in Security Benefit Foreclosure Action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
221	<a href="#">EXHIBIT(S)</a> - 32 (Motion #6) <i>Itemization of Amounts Due</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
222	<a href="#">EXHIBIT(S)</a> - 33 (Motion #6) <i>Unreimbursed Deposits and Payments</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
223	<a href="#">EXHIBIT(S)</a> - 38 (Motion #6) <i>Payment of Real Estate Taxes</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
224	<a href="#">EXHIBIT(S)</a> - 39 (Motion #6) <i>Certificates of Insurance</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
225	<a href="#">EXHIBIT(S)</a> - 40 (Motion #6) <i>Tenant Insurance Analysis</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Exhibit T

## To Nicholson Aff.

**OPERATING AGREEMENT****OF****HBL SNF, LLC**

**THIS OPERATING AGREEMENT OF HBL SNF, LLC (this "Operating Agreement") is made as of this / day of February, 2017 by and between HEBREW HOSPITAL HOME OF WESTCHESTER, INC., a New York not-for-profit corporation with an address at 55 Grasslands Road, Valhalla, New York 10595 (hereinafter "Hebrew"); BETHEL NURSING HOME COMPANY, INC., a New York not-for-profit corporation with a principal office address of 67 Springvale Road, Croton on Hudson, New York 10520 (hereafter "Bethel"); and WESTCHESTER HEALTH CARE PROPERTIES I, LLC, a New York limited liability company having an office at 537 Route 22, Purdys, New York 10578 (hereafter "WHCP"). Hebrew, Bethel and WHCP are referred to herein individually as a "Member" and collectively as the "Members". Each of Hebrew, Bethel and WHCP are sometimes referred to individually as a "Party" and collectively as the "Parties".**

**RECITALS:**

**WHEREAS, Bethel is licensed by the New York State Department of Health ("DOH") under Article 28 of the New York Public Health Law to operate a residential health care facility known as "The Bethel Nursing Home" located at 17 Narragansett Avenue, Ossining, New York 10562; and**

**WHEREAS, Hebrew is licensed by the New York State Department of Health ("DOH") under Article 28 of the New York Public Health Law to operate a residential health care facility known as "Hebrew Hospital Home of Westchester" located at 61 Grasslands Road, Valhalla, New York 10595; and**

**WHEREAS, Bethel has heretofore submitted to the DOH for a Certificate of Need Project No. 011102, entitled Bethel Nursing Home Company, Inc. (the "Bethel Application"), at its sole cost and expense, to construct an additional 18 Residential Health Care Beds at 19 Narragansett Avenue, Ossining, New York 10562 (the "Bethel Beds") which application had been approved by the New York State Department of Health Public Health and Health Planning Council; and**

**WHEREAS, Hebrew has heretofore submitted to the DOH for a Certificate of Need Project No. 021033, entitled Establishment and Construction Hebrew Hospital Home of Westchester (the "Hebrew Application"), at its sole cost and expense, to construct an additional 70 Residential Health Care Beds at 61 Grasslands Road, Valhalla, NY 10595 (the "Hebrew Beds") which application had been approved by the predecessor, New York State Department of Health Public Health Council; and**

**WHEREAS, the Company has heretofore submitted to the DOH for a Certificate of Need Project No. 092058B, entitled HBL SNF, LLC d/b/a The Rehabilitation and Care Institute at White Plains (the "Application"), to establish and construct a 160 bed Residential Health Care Facility at 116-120 Church Street, White Plains, New York (the "Church Street Location") which application incorporates the Bethel Beds and the Hebrew Beds and for the purchase of 91 beds from Westchester University Medical Center (the "Taylor Care Beds") which Application was contingently approved on November 15<sup>th</sup> 2012; and**

**WHEREAS, as part of the Application, Hebrew and Bethel were required to withdraw the Hebrew Application and the Bethel Application respectively as the beds were a part of this new**

application; and

WHEREAS, White Plains Healthcare Properties, LLC (hereinafter "WPHP, LLC") has purchased a parcel of land located at 116-120 Church Street, White Plains, New York (hereinafter the "Church Street Property") and has entered into a development contract with WHCP to finance and construct a new 160 bed Skilled Nursing Facility on such parcel and has entered into a Lease with WHAP for such newly constructed Nursing Home; and

WHEREAS, upon the Effective Date, WPHP, LLC or its construction contractor will provide a completion bond to guarantee the construction of the Facility at the Church Street Property and such bond will include the Company and each of the Members as a Beneficiary; and

WHEREAS, each of Hebrew, Bethel and WHCP have agreed to jointly have their respective Beds constructed in a single building located on the Church Street Property pursuant to the Application; and

WHEREAS, each of Hebrew, Bethel and WHCP have agreed to enter into this agreement to memorialize and set forth the terms and conditions of their joint venture and to have this governance document control the operation of such Skilled Nursing Facility after the same is constructed and licensed.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

1.1 **Certain Defined Terms.** The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

1.1.1 "Act" will mean the New York Limited Liability Company Law as amended from time to time.

1.1.2 "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year or any shorter period for which a determination is required to be made, after giving effect to the following adjustments:

- (i) credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Operating Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b) (2) (ii) (d) of the Regulations and shall be interpreted consistently therewith.

1.1.3 Reserved.

1.1.4 "Articles of Organization" shall mean the Articles of Organization filed with the Secretary of State of the State of New York on August 14, 2012.

1.1.5 "Capital Account" as of any given date shall mean the Initial Capital Contribution to the Company by a Member as adjusted thereafter pursuant to Article VIII.

1.6 "Capital Contribution" Shall mean a contribution to the capital of the Company in cash or property by a Member whenever made, including the Initial Capital Contribution. "Initial Capital Contribution" shall mean the initial contribution of the Member to the capital of the Company pursuant to the Prior Agreement.

1.1.7 "Class" shall mean any Transferees thereof who are Members.

1.1.8 "Code" shall mean the Internal Revenue Code of 1986, as amended (or corresponding provision or provisions of subsequent superseding federal revenue laws).

1.1.9 "Company" shall mean HBL SNF, LLC.

1.1.10 "Company Property" shall mean (a) the Bethel Approval to construct an 18 Residential Health Care Beds in Westchester County; (b) the Hebrew Approval to construct 70 Residential Health Care Beds in Westchester County; (c) that certain Contract by and between WHCP and Westchester University Medical Center to purchase 91 beds from Westchester University Medical Center (the "Taylor Care Beds") and all other additions purchased in the name of the Company and/or subsequent rights, licenses or approvals granted to the Company including without limitation any rights to construct a Nursing Home approved by the Department of Health of the State of New York.

1.1.11 "Distributable Cash" shall mean the excess of cash income over cash outflow. Cash income shall include all cash, revenues and funds received by the company whether from Company operations, refinancing sale, or otherwise. Cash outflow shall include all of the following to the extent paid or set aside by the Company: (a) all principal and interest payment on indebtedness of the Company and all other sums paid to lenders; (b) all cash expenditures incurred incident to the normal operation of the Company's business; and (c) Reserves.

1.12. "HUD" shall mean the Secretary of Housing and Urban Development, its successors and assigns.

1.1.13 "Effective Date" is the date that the application to construct the Facility has received final approval and a construction start date from the Public Health and Health Planning Council.

1.1.14 **"Entity"** will mean any general company, limited company, limited liability Company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

1.1.15 **"Facility"** shall mean that certain Skilled Nursing Facility of 160 beds to be built at 116-120 Church Street, White Plains, New York.

1.1.16 **"Family Transferee"** will mean any one of the descendants of any Member and/or any trust whose sole beneficiaries are such descendants as long as any one of such beneficiaries is then surviving, or any company, limited liability company or other Entity all of whose partners, Members or other equity holders are descendants of any Member and/or trusts whose sole beneficiaries are such descendants for so long as any one of such descendants is then surviving;

1.1.17 **"Fiscal Quarter"** will mean the three month periods ending on March 31, June 30, September 30 and December 31 of each year.

1.1.18 **"Fiscal Year"** will mean the Company's fiscal year, which will be the calendar year.

1.1.19 **"Gross Asset Value"** means, (i) with respect to any asset other than cash contributed to the Company by a Member, the agreed upon value of such asset on the date such asset is contributed to Company, as set forth on Schedule B annexed hereto and made a part hereof and (ii) with respect to any other asset other than cash owned by the Company, such asset's adjusted basis for Federal income tax purposes, except that the Gross Asset Value of all Company assets will be adjusted to equal the fair market value of such assets (x) whenever such adjustment is required in order for allocations under this Operating Agreement to have "economic effect" within the meaning of Regulations Section 1.704-1(b)(2)(ii) or (y) in the Manager's discretion, whenever such adjustment is permitted under Regulation Section 1.704-1(b)(2)(ii). If the Gross Asset Value of any Company asset is so adjusted, then such Gross Asset Value shall thereafter be adjusted by the depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

1.1.20 **"Guarantee"** will mean any Guarantee of WESTCHESTER HEALTH CARE PROPERTIES me, LLC or any of its Members given to either the Lardlord or a lending institution securing any operating capital loans or lines of credit and any replacements of same.

1.1.22 **"Manager"** will mean the Board of Managers.

1.1.23 **"Member"** will mean each of the parties who execute a counterpart of this Operating Agreement as a Member and each Person who hereafter becomes a Member pursuant to the terms, conditions and requirements of this Operating Agreement.

1.1.23.1 **"Institutional Class Member"** means, each individually, Hebrew and Bethel.

1.1.24 **"Member Nonrecourse Deductions"** has the meaning set forth in Sections 1.704-2(j) (1) and 1.704-2(i) (2) of the Regulations.

1.1.25 **"Membership Interest"** or **"Interest"** will mean a Member's entire interest in the

Company, including a Member's share of the Company's Profits and Losses and distributions of the Company's assets pursuant to this Operating Agreement and the right to participate in the management or affairs of the Company such as the right to vote on, consent to or otherwise participate in any decision of the Members.

1.1.26 "Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(b) (1) of the Regulations.

1.1.27 "Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b) (3) of the Regulations.

1.1.28 "Operating Agreement" will mean this Operating Agreement as originally executed and as amended from time to time.

1.1.29 "Partner Nonrecourse Debt" has the meaning set for in Section 1.704-2(b) (4) of the Regulations.

1.1.30 "Partner Nonrecourse Debt Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

1.1.31 "Partner Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i) (1) and 1.704-2(d) of the Regulations.

1.1.32 "Partnership Minimum Gain" has the meaning set forth in Sections 1.704-2(b) (2) and 1.704-2(d) of the Regulations.

1.1.33 "Person" will mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

1.1.34 "Prime Rate" will be the rate announced from time to time by the Company's primary financial institution as its prime rate (or base rate if a prime rate is not announced). Any interest rate referred to in this Operating Agreement which is based upon the Prime Rate will automatically change with any change in the Prime Rate.

1.1.35 "Profits" and "Losses" will respectively mean that net profits and the net losses of the Company, the determination of which will be made pursuant to Article IX hereof and will take into consideration the income (both taxable and exempt from tax), expenditures (both those that are deductible in determining taxable income or loss and those that are not deductible and not capital expenditures), gains and losses of the Company.

1.1.36 "Project" shall mean the construction of a Residential Health Care Facility providing Skilled Nursing containing 160 beds at 116-120 Church Street, White Plains, New York.

1.1.36 "Regulations" will include proposed, temporary and final regulations promulgated under the Code in effect as of the date hereof that amend or supersede such regulations.

1.1.37 "Requisite Consent" will be the consent of all of the Members of the Company.

1.1.38 "Reserves" will mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which will be maintained in amounts deemed necessary, sufficient or appropriate by the Manager with requisite consent for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

1.1.39 "Transferee" will mean the Person to whom a Transferor, Transfers an Economic Interest or Membership Interest.

1.1.40 "Transferor" will mean a Member who Transfers a Membership Interest or an Economic Interest.

1.1.41 "Transfer" will mean give, sell, assign, transfer, pledge, encumber, bequeath or otherwise voluntarily or involuntarily dispose, whether pursuant to operation of law, court order, levy, attachment or otherwise or the act of so doing.

1.1.42 "Wrongful Act" will mean an act of fraud, deceit, gross negligence, willful misconduct, and/or breach of fiduciary duty or a wrongful taking by the Manager.

**ARTICLE II  
FORMATION OF COMPANY; OTHER FILINGS**

2.1 Formation. WIICP has caused the Company to be formed by the filing of the Articles of Organization in the office of the Secretary of State of the State of New York in accordance with and pursuant to the Act.

2.2. Name. The name of the Company continues to be: **HBL SNF, LLC**

2.3 Principal Place of Business. The principal place of business of the Company is 537 Route 22, Purdys, New York 10578. The Company shall upon completion of the Project locate its principal place of business at 116-120 Church Street, White Plains, New York. The Company may locate its places of business at any other location, as the Manager may from time to time deem advisable.

2.4 Registered Office. The Company's registered office is located at c/o Michelman & Robinson, 800 3<sup>rd</sup> Avenue, New York, New York

2.5 Term. The term of the Company will be (i) at least ten (10) years past the satisfaction of any HUD Insured Loan, and/or (ii) to the extent there are no outstanding HUD Insured obligations, perpetual (unless the Company is earlier dissolved in accordance with either the provisions of this Operating Agreement or the Act).

2.6 Other Instruments. The Manager will hereafter, as may from time to time be necessary, cause such other certificates, instruments and documents to be recorded and filed with the office of the Secretary of State of the State of New York and in all offices as, when and to the extent

required by law.

2.7 Reporting Requirements; Maintenance of Limited Liability Company Status. The Manager will take such steps as are necessary to ensure that the Company fulfills reporting requirements imposed upon it by law including, but not limited to, the filing of annual and any other reports in the office of the Secretary of State of the State of New York. All fees for filing and/or recordings will be paid out of the Company's assets. The Manager will take all other necessary action required by law to perfect and maintain the Company as a limited liability company under the laws of the State of New York and to assure the limited liability of the Members.

**ARTICLE III  
BUSINESS OF COMPANY**

3.1 Purposes. The purposes for which the Company has formed are limited to: entering into a development agreement with White Plains Health Care Properties (WP1ICP) wherein and whereby WPHCP will develop, finance and construct a new 160 Bed Skilled Nursing Facility and thereafter the leasing and operation of that certain skilled nursing facility to be known as "The Rehabilitation and Care Institute at White Plains" located at 116-120 Church Street, White Plains, New York;

3.2 Permitted Activities. The activities of the Company will be:

3.2.1 To accomplish any lawful activities whatsoever, or which will at any time appear conducive to or expedient either for the protection or benefit of the Company and its assets or to further the limited purposes of the Company set forth in Section 3.1, above.

3.2.2 To exercise all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act.

3.2.3 To engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

3.3 Charitable Purposes. Notwithstanding anything to the contrary contained in this Agreement, so long as any Institutional Class Member or an Affiliate thereof is a Member of the LLC, all acts, activities, and business carried on by the Company shall be consistent with, and in furtherance of, the charitable purposes and tax-exempt status under Section 501(c) (3) of the Code, of such Institutional Class Member (the "Charitable Purposes"). An Institutional Class Member shall notify the Company if a proposed action of the Company could cause the Company to operate inconsistently with such Institutional Class Member's Charitable Purposes and the Company shall resolve any issue in favor of operation in furtherance of Charitable Purposes. The Members agree that the Company's duty to further the charitable purposes of its Institutional Class Member(s) shall override the Company's duty to operate for the financial benefit of its members.

**ARTICLE IV  
NAMES AND MEMBERSHIP INTERESTS OF MEMBERS**

The names and Membership Interest of each Member is set forth on Schedule A, attached hereto, which Schedule shall be amended from time to time to reflect admission of any additional Members in accordance with the terms of this Operating Agreement.

## **ARTICLE V**

### **MANAGEMENT; RIGHTS AND DUTIES OF MANAGER**

5.1 Management of the Company. Except as otherwise specifically provided by this Agreement or required by the Law, the Board of Managers shall manage the Company in accordance with this Agreement and shall have full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company and to take all such actions as the Board deems necessary or appropriate to accomplish the purpose of the Company as set forth herein. All action required or permitted to be taken by the Company shall be taken by or at the direction of one or more officers of the Company appointed pursuant to the provisions hereof, who shall be subject to the supervision, direction and control of the Board. The Board shall have the power and authority to direct the officers to, and the officers shall upon such direction by the Board, take such action as the Board shall deem proper, convenient or advisable to carry on the business and purposes of the Company and to exercise any and all of the powers of the Company set forth in Section 3.2 and, consistent with such direction, shall have the authority to bind the Company. All meetings of the Board, whether in person, by telephone or otherwise, shall be chaired by the chairman (the "Chairman"), who shall be appointed by a majority vote of the Board, the initial Chairman is Lizer Jozefovic. The voting rights of the Board set forth in this Section 7.1 shall supersede all voting rights of the Members under the New York Act except as otherwise provided herein or as required by law.

#### 5.1.1 The Board of Managers.

(a) Number of Authorized Votes. The Board shall consist of three (3) members, each having one vote. Each Board member shall hold office until (i) his or her successor shall have been elected and qualified or designated pursuant to subsection (c) below or (ii) until such Board member shall resign or shall have been removed in the manner provided herein, or (iii) until the resignation or removal of the Member, which has designated such Board member.

(b) Mandatory Voting. Each member of the Board of Managers shall vote his or its vote and shall take all other necessary or desirable actions within his control (whether in his capacity as Member, member of the Board or any committee thereof, officer of the Company, or otherwise) including, without limitation, attendance at meetings in person or by proxy for purposes of obtaining a quorum and execution of written consents in lieu of meetings, and the Company shall take all necessary and desirable actions within its control (including, without limitation, calling special Board and Member meetings), so that the following persons shall be elected to the Board: (i) one person designated by Hebrew (a "Hebrew Representative"), the initial Hebrew Representative shall be \_\_\_\_\_; (ii) one person designated by Bethel (a "Bethel Representative"), the initial Bethel Representative shall be \_\_\_\_\_; and (iii) one person designated by WHCP (a "WHCP Representative"), the initial WHCP Representative is Lizer Jozefovic.

- (c) **Replacement of Representatives.**
- (i) Each such representative, upon written notice to the Board and to the Company but without further action, may be removed at any time by the person originally entitled to designate such Board member.
  - (ii) In the event that any member of the Board designated hereunder for any reason ceases to serve as a member of the Board, the resulting vacancy on the Board shall be filled by a representative designated by the person originally entitled to designate such member. If any Member fails to designate a replacement Board member pursuant to the terms of this Section 5 within five (5) business days of removal of such a Board member, such Board member shall be designated by a vote of Members.
  - (iii) If any member of the Board who is also an officer, employee, or agent of the Company ceases to hold his respective office or position or if his agency with the Company terminates, such member of the Board shall simultaneously be deemed to have been removed from the Board, without need for further action, provided, however, that such former member of the Board will provide written confirmation of such removal upon request by the Company.
- (d) **Resignation.** Any Person may resign as a member of the Board at any time by giving written notice to the Board. Any such resignation shall take effect at the time specified therein, or, if the time is not specified, immediately upon its receipt by the Board. Acceptance of such resignation shall not be necessary to make it effective.
- (e) **Meetings; Place of Meetings; Telephonic Participation.** Meetings of the Board may be held at such times and places within or without the State of New York as the Board may from time to time by resolution designate or as shall be designated by the Person or Persons calling the meeting in the notice or waiver of notice of any such meeting. Regular meetings of the Board shall be held not less than once during every year. Special meetings of the Board shall be held whenever called by a member of the Board, or by the Chairman. Notice of the time, place and purpose or purposes of each such special meeting shall be sent by email, facsimile transmission, telegraph or cable or be delivered personally or mailed to and received by each member of the Board not less than 48 hours before the time at which the meeting is to be held. Notice of any meeting of the Board shall not be required to be given to any member of the Board who waives such notice in writing or who is present at such meeting, except a member who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. At the request of any Board member, any or all Board members may participate in any meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all Persons participating in the meeting of the Board can hear each

other, and such participation shall constitute presence in person at such meeting.

(f) **Manner of Acting and Quorum; Unanimous Vote Required.** Except as otherwise provided in this Agreement or by law, the presence of a majority of the total authorized votes of the Board shall be required to constitute a quorum for the transaction of business at any meeting of the Board. The Board members shall act only as a Board, and the individual Board members shall have no power as such. Except as set forth herein, all matters shall be deemed approved by the Board and all consents of the Board deemed given, at any meeting duly called and held, a quorum being present, by the affirmative vote of all of the members of the Board.

(g) **Action without Meeting.** Any action required or permitted to be taken or which may be taken, and any consent required or which may be required and given, at any meeting of the Board or of any committee thereof may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken or the consent so given, shall be signed by all of the members of the Board. In any event, such written consent shall be filed with the minutes of proceedings of the Board and a copy thereof provided promptly to the other members of the Board who did not sign such consent.

(h) **Observation Rights.** The Board may from time to time appoint one or more individuals to serve as "Non-Voting Managers" and any individual so appointed shall be entitled to receive notice of, and to attend, meetings of the Board, but shall have no right to vote or otherwise approve any item hereunder and shall not for any purpose of this Agreement or otherwise be deemed a member of the Board; provided, however, that any such Non-Voting Manager may be required by the Board to temporarily leave a meeting of the Board if the presence of such Non-Voting Manager at the meeting at such time would prevent the Company from asserting the attorney-client or other privilege with respect to matters discussed before the Board at such time or if otherwise requested by the Chairman

- (i) **Reserved Initiation Rights.** Notwithstanding the general powers of governance and management granted to the Board, in order to ensure that the Company is operated in a manner that promotes the Charitable Purposes of its Institutional Class Member(s), each Institutional Class Member shall have the unilateral right to initiate and to implement, in its sole and absolute discretion, any action that:
- a. the Institutional Class Member deems necessary to ensure that the indigent care policies and community health needs policies of the Company and the Institutional Class Member and its Affiliates are effectively implemented in accordance with the directions of the Institutional Class Member;
  - b. the Institutional Class Member deems necessary to ensure that Medicare and Medicaid patients of the Company are treated without discrimination;
  - c. the Institutional Class Member deems necessary to ensure effective access to treatment at the Company for medically underserved and elderly populations within the community served by the Institutional Class Member and its Affiliates; or

- d. in the opinion of counsel for the Institutional Class Member, is more likely than not necessary so as not to (i) adversely affect the Section 501(c)(3) tax-exempt status of the Institutional Class Member or the tax-exempt status of any of its Affiliates, whether by revocation of such status or by the imposition of a penalty or sanction short of revocation; (ii) result in the imposition of any penalty tax under Section 4958 of the Code or otherwise on either the Institutional Class Member and/or any of its Affiliates thereof, including, without limitation, any trustee, director, officer, shareholder, member, partner or employee of the foregoing; or (iii) result in such Institutional Class Member's distribution of profit from the Company being characterized as unrelated business income by the IRS.

**5.2 Certain Powers of the Board of Managers.** Subject to this Operating Agreement, the Public Health Law and the rules and regulations promulgated by the Department of Health and the Public Health and Health Planning Council, as the same may exist from time to time, the full right, power, authority and control over the general management and operation of the Nursing Home shall be vested in the Board of Managers. In furtherance thereof the Managers shall for the benefit of the Nursing Home:

- 5.2.1 **Manage and control the business and affairs of the Nursing Home and**
- 5.2.2 **Determine all matters of general policy regarding the regular course of its business in operating the same. It shall employ a licensed Nursing Home Administrator and fix his or her duties, responsibilities and compensation. The Nursing Home Administrator shall perform all of the responsibilities of a registered nursing home administrator as required by Section 415.26 of the Public Health Law as the same shall be amended from time to time, who shall report to the Board of Managers at regular intervals and who shall be responsible for the administration and implementation of those policies and procedures adopted from time to time by the Board of Managers for the operation and maintenance of the Company and for the establishment and evaluation of the Company's practices.**
- 5.2.3 **Plan for the growth and development of the Nursing Home; provide for the evaluation of the conduct of the Nursing Home including the care and treatment of its residents; the control, conservation and utilization of its physical and financial assets; and the procurement and direction of all personnel employed from time to time by the Nursing Home; all for the proper and necessary carrying out of the functions of the Nursing Home.**
- 5.2.4 **Assure the performance by the Nursing Home Administrator of his or her responsibilities in accordance with the provision of Section 415.26 of the Public Health Law.**
- 5.2.5 **Retain all responsibilities for the operation and maintenance of the Nursing Home including evaluation of all Nursing Home practices.**
- 5.2.6 **Employ other administrative, clerical and fiscal personnel and staff personnel required for the operation of the Nursing Home. It shall also have the power to em-**

ploy lawyers, accountants, experts, consultants, and other professionals and agents and to fix their duties, responsibilities and compensation.

- 5.2.7 Be responsible for providing, maintaining and repairing the physical plant of the Nursing Home, keeping it properly equipped and staffed so as to maintain the needed facilities and to provide services for the Nursing Home's residents, all in accordance with the laws of the State of New York and the rules and regulations promulgated from time to time by the Department of Health.
- 5.2.8 Under its direction, there shall be prepared an overall plan and budget which shall provide for an annual operating budget and a capital expenditure plan in accordance with the requirements of the Department of Health and the rules and regulations adopted by that department from time to time.
- 5.2.9 Be responsible for all considerations relative to the future planning and growth of the Nursing Home.
- 5.2.10 Develop whatever committee structure is necessary to fulfill its responsibilities and to assess the results of its programs.
- 5.2.11 It shall have all of the powers, duties and responsibilities consistent with the Articles of Organization, as amended from time to time, applicable laws and regulations of the State of New York and the regulations of the Department of Health, and this Operating Agreement.
- 5.2.12 It shall appoint and reappoint all members to the Medical Staff, in accordance with the Medical Staff Bylaws as the same may exist from time to time.
- 5.2.13 It shall establish and maintain financial reserves of every kind as it deems necessary or advisable for the operation of the Nursing Home.
- 5.2.14 In its discretion it shall fix the terms and amounts of all distributions from profits to be paid from time to time to the Members, subject to the provisions of Section 3.3 of this Agreement.
- 5.2.15 It shall determine all matters relating to the borrowing of money for the carrying on of the day-to-day regular business of the Company.
- 5.3 In addition to the foregoing, and not by way of limitation of the same, but subject to the Public Health Law, and the rules and regulations of the Department of Health, as the same may exist from time to time, and except as otherwise expressly provided in or limited by this Operating Agreement, the Board of Managers shall have the full right, power and authority to manage all of the business, assets, affairs and operations of the Company, with all rights and powers and the full authority necessary, desirable or convenient to administer and operate the same and to make all decisions and do all things necessary or desirable in connection therewith, including, but not limited to all duties, rights, powers and authority to:
- 5.3.1 negotiate, investigate, incur, assume, or enter into any contract, debt, loan, guar-

antec, mortgage, lease, sublease, license, employment or consulting arrangement or any other obligation or duty;

- 5.3.2 purchase, rent, lease, license or otherwise acquire (including, but not limited to, any mortgage, lien or other security interest) any real or personal property (or any interest therein);
- 5.3.3 sell, rent, lease, license or otherwise Transfer any or all of the real or personal property of the Company (or any interest therein);
- 5.3.4 place or allow any lien, mortgage, security interest or other encumbrance to be placed against any property of the Company;
- 5.3.5 settle or compromise any amount owed to or by the Company or any other contract, obligation or duty of or with the Company; or
- 5.3.6 Conduct or settle any audit, administrative proceeding, lawsuit, claim or other proceeding or action.

**5.4 Need For Requisite Consent.** The Board of Managers will obtain Requisite Consent before taking any of the following actions:

- 5.4.1 Executing any contract or deed for the sale of the Company Property or any interest therein;
- 5.4.2 Borrowing money secured by a mortgage or other encumbrance on the Company Property in which case no Member may unreasonably withhold his consent to such Borrowing by the Company; provided, however, that the Member(s) may not under any circumstances withhold their consent from the initial proposed purchase or working capital loan or to give their personal guarantees for said loan or for any replacement of said loan. Neither Hebrew nor Bethel nor their principals or affiliates shall under any circumstances be required to guaranty any loan.
- 5.4.3 Borrowing money outside the ordinary course of Company business not secured by a mortgage or other encumbrance on the Company Property; \
- 5.4.4 Leasing of the Company Property or any portion thereof;
- 5.4.5 Establishing Reserves pursuant to Section 10.1 of this Operating Agreement;
- 5.4.6 Making any decisions concerning matters where any member of the Board of Managers will have a conflict of interest; and
- 5.4.7 Effectuation the dissolution of the Company.
- 5.4.8 Issue Units in a transaction that results in the Company receiving less than fair market value for such Units, or redeem Units in a transaction that results in the Company paying more than fair market value for such Units, as determined in the Institutional Class Member's reasonable judgment;

- 5.4.9 Authorize the merger or consolidation of the Company into another entity if the terms of the proposed transaction would, in the reasonable judgment of the Institutional Class Member, result in the Institutional Class Member's receipt of money or property with a value less than the Institutional Class Member's interest in the Company preceding the transaction;
- 5.4.10 Authorize the Company's sale of substantially all of its assets on terms that, in the reasonable judgment of the Institutional Class Member, result in the receipt of less than fair market value for such assets;
- 5.4.11 Amend this Agreement, or the Articles, in any respect that would, in the reasonable judgment of the Institutional Class Member, adversely affect the powers or protections provided to the Institutional Class Member or the charitable obligations of the Company;
- 5.4.12 Require additional capital contributions or require a Member to provide debt guarantees of the Company in excess of \$10,000,000, except that in no event shall any Institutional Class Member be required to make additional capital contributions or guarantee any debt;
- 5.4.13 Approve significant changes in the Company's services or locations if the change in question does not require approval of the New York Department of Health and the Institutional Class Member determines, in its reasonable judgment, that the change would adversely affect the charitable operations of the Company.
- 5.5 Liability Only for Certain Acts. Each Member of The Board of Managers shall perform his/her duties as a in good faith, in a manner they reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. Any member of the Board of Managers who so performs the duties as a Member of the Board of Managers shall not have any liability by reason of being or having been a Member of the Board of Managers of the Company. The Board of Managers does not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. The Board of Managers shall not be liable to the Company or any Member for any loss or damage sustained by the Company or any Member unless the loss or damage shall have been the result of a Wrongful Act by the Board of Managers.
- 5.6 Manager Has No Exclusive Duty to Company. The members of the Board of Managers shall only be required to devote such time to the management of the Company that in their judgment will be reasonably required. The Members of the Board of Manager may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company, nor any Member will have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of any member of the Board of Managers or to the income or proceeds derived therefrom. No member of the Board of Managers will incur any liability to the Company or any Member as a result of engaging in any other business or venture. Neither the Company nor any Member will incur any liability due to any outside activities engaged in by any member of the Board of Managers.

5.7 Bank Accounts. The Board of Managers may from time to time open bank accounts in the name of the Company and any officer designated by the Board of Managers will be the signatory or signatories thereon.

5.8 Indemnification. The Company shall to the maximum extent permitted under the Act: (a) indemnify the Board of Managers and hold the Board of Managers harmless from and against any and all claims and demands whatsoever; and (b) make advances to the Board of Managers for all costs, attorneys' fees and expenses of litigation with respect to such indemnifying and holding the Board of Managers harmless including, but not limited to, the enforcement of this Section. The Company shall indemnify its employees and other agents who are not members of the Board of Managers only to such extent as permitted by law and as approved by the Board of Managers. The Company shall purchase Directors and Officers insurance for the benefit of the Board of Managers and the Officers.

5.9 Authorized Signatures.

5.9.1 All Company documents, including but not limited to, all leases, deeds, agreements and mortgages may be made, executed and delivered on behalf of the Company by the Chief Executive Officer of any other officer named by the Board of Managers after specific approval of same by the Board of Managers.

5.9.2 All Company documents made, executed and delivered pursuant to this Section 5.9 will be valid and binding on the Company and on all other Persons, and all Persons may rely on such execution without inquiring into any such authority.

5.10 Reliance by Third Parties. Any Person dealing with the Company or the Board of Managers may always rely on a certificate signed by the Board of Managers:

5.10.1 As to the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Board of Managers or by the Company or are in any other manner germane to the affairs of the Company;

5.10.2 As to the authenticity of any signature or any copy of this Operating Agreement; or

5.10.3 As to any act or failure to act by the Company, or its Members, or as to any other matter whatsoever involving the Company or any Member.

5.11 Duty to Inform. The Board of Managers shall inform the Members of any offers received by him for a sale or lease substantially all of the assets of the Company.

5.12 Officers.

- (a) Designation and Appointment. The Board may, from time to time, employ and retain Persons as may be necessary or appropriate for the conduct of the Company's business (subject to the supervision and control of the Board), including employees, agents and other Persons (any of whom may be a Member or Director) who may be designated as

Officers of the Company, with titles including but not limited to "chief executive officer," "chairman," "president," "vice president," "treasurer," "secretary," "general manager," "director" and "chief financial officer," as and to the extent authorized by the Board. Any number of offices may be held by the same Person. In its discretion, the Board may choose not to fill any office for any period as it may deem advisable. Officers need not be residents of the State of New York or Members. Any Officers so designated shall have such authority and perform such duties as the Board may, from time to time, delegate to them. The Board may assign titles to particular Officers. Each Officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. The salaries or other compensation, if any, of the Officers of the Company shall be fixed from time to time by the Board.

- (b) **Resignation/Removal.** Any Officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Board. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any Officer may be removed as such, either with or without cause at any time by the Board. Designation of an Officer shall not of itself create any contractual or employment rights.
- (c) **Duties of Officers Generally.** The Officers, in the performance of their duties as such, shall owe to the Company duties of loyalty and due care of the type owed by the officers of a corporation to such corporation and its stockholders under the laws of the State of New York.
- (d) **Chief Executive Officer.** Subject to the powers of the Board, the chief executive officer of the Company shall be in general and active charge of the entire business and affairs of the Company, and shall be its chief policy making officer. The chief executive officer shall initially be Lizer Jozefovic.
- (e) **Chief Financial Officer.** The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses and capital. The chief financial officer shall have the custody of the funds and securities of the Company, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company, and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board. The chief financial officer shall have such other powers and perform such other duties as may from time to time be prescribed by the chief executive officer or the Board. The chief financial officer shall initially be Marc Neumann.

**ARTICLE VI  
RIGHTS AND OBLIGATIONS OF MEMBERS**

6.1 Limitation of Liability. Each Member's liability will be limited as set forth in this

Operating Agreement, the Act and other applicable law.

**6.2 Company Debt Liability.** Except as provided in Section 6.5 herein or as otherwise required by law, a Member will not be personally liable for any debts or losses of the Company.

**6.3 Acts and Decisions.** Except as otherwise expressly provided in this Operating Agreement, all acts and decisions of the Members will be taken by Requisite Consent.

**6.4 Hebrew and Bethel Priority on Return of Capital.** Upon the Effective Date, Hebrew will be entitled to receive the sum of \$560,000.00 and Bethel the amount of \$126,000 as a priority return of their capital. Same shall be paid in part from the \$343,000.00 currently held in escrow by McCullough, Goldberger and Staudt, LLP and the balance from WHCP.

**6.4.1 No Priority on Return of Capital** Except as set forth in paragraph 6.4 above, no member may have priority as to the return of Capital Contributions and as to Net Profits, Net Losses or distributions; provided, however, that this Section will not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

**6.5 Liability of a Member to the Company.** A Member who receives a distribution (including, but not limited to, a return of all or any part of his Capital Contributions) from the Company in violation of this Operating Agreement will be liable to the Company for a period of six (6) years after such distribution for the amount of the distribution.

**6.5.1 Indemnification by WHCP and the Parent and Affiliate Companies and Principals.** WHCP and its Parent and Affiliate Companies, and Principals comprised of Gerald Neuman, Mark Neuman, and Lizer Jozefovic individually, (each, an "Indemnitor") agree jointly and severally to indemnify and hold harmless Hebrew and Bethel and their directors, officers, agents, subsidiaries, and affiliates (each an "Indemnitee") subject to the terms and provisions of the Public Health Law, harmless from and against any and all claims, actions, losses, damages, costs, liabilities or expenses, including without limitation, reasonable attorneys fees (the "Losses") of any kind or character, whether or not such Losses are known or asserted before or after the Effective Date, to the extent that such Losses arise from or relate to the Operation of the Company or the Facility including but not limited to:

- (a) The eventual sale of the Indemnitee's interests in the Project as defined herein to Indemnitor and/or its successors, assigns, personal representatives, heirs and legatees;
- (b) Any breach or default by Indemnitors of a representation, warranty or covenant contained in the this Agreement;
- (c) Any income or other tax assessed against Indemnitees or the Company arising out of or related to:
  - (i) the operation of the Assets and the Facility for the period commencing on the Effective Date and terminating on such date that either or both of Bethel or Hebrew withdraw from the Company pursuant to the further terms and conditions of this Agreement; (ii) any transaction or activity with regard to the activities of the Members or the Company that occurs prior to the Effective Date; (iii) any income derived by Company or the Sellers prior to the Effective Date (including income relating to services rendered by the Facility or the Premises prior to the Closing Date) (iv) any debts, obligations, fines, guarantees, representations, warranties, statements made in applications arising out of the construction and opening of

the facility after the Effective Date all of which shall be the financial responsibility of the Indemnitor.

(d) Any lawsuit, claim, or proceeding against any of the Members, the Board of Managers, the Company, the Assets or the Facility based upon any act or omission by, or obligation of, WHCP or the Company;

(e) All wages salaries, bonuses, commissions, rebates, expenses, benefits, and other compensation or fees of any nature payable to any of the employees, directors, officers, contractors, agents or representatives of Company that arise prior to the Effective Date or that arise after the Effective Date but accrue before the date of the withdrawal of any Indemnitee except for those wages, salaries and benefits as owed by Bethel of Hebrew directly and not having anything to do with the Project;

(f) The operation of the Company or operation of the Facility that accrue prior to or after the Effective Date including but not limited to;

- (a) All Contracts for services, including without limitation Leases for services and equipment;
- (b) Any Liability arising out of or relating to services or products of the Company rendered or sold after the admission of the first patient;
- (c) amounts that are to become due and payable on or after the Effective Date in payment for services or goods provided to or delivered to the Facilities prior to the Effective Date, including without limitation Accounts Payable;
- (d) any gain on sale and any recapture that may be recognized under the federal Medicare program, the New York State Medicaid program and other third party payor programs based on the transaction, arising from the period on or before the Effective Date;
- (e) any amounts due Medicare, Medicaid and other third party payors, as a result of retroactive rate reductions, disallowed services or payments, denials, audits or otherwise, related to services provided by the Facility;
- (f) professional or general liability claims or claims of any kind;
- (g) any Liability for Taxes, including (a) any Taxes arising as a result of the establishment and construction of the facility prior to the Effective Date, (b) any deferred Taxes of any nature;
- (h) any Liability relating to payroll, vacation, sick leave, workers' compensation, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, health care plans or benefits or any other employee plans or benefits of any kind for the Companies employees or former employees or both;
- (i) any Liability under any employment, severance, retention or termination agreement with any employee of the Company;
- (j) any Liability arising out of or relating to any employee grievance;
- (k) any Liability of WHCP to any Parent Organization;
- (l) any Liability to indemnify, reimburse or advance amounts to any officer, director, employee or agent of WHCP or any investor in, creditor or Member of WHCP;
- (m) any Liability arising out of any Proceeding commenced after the Effective Date and arising out of or relating to any occurrence or event happening prior to the Effective Date;
- (n) any Liability arising out of any Contract after the Effective Date and arising out of or relating to any occurrence or event happening prior to the Effective Date;
- (o) any Liability arising out of or resulting from any compliance or noncompliance with any Law or Order of any Government Entity prior to the Effective Date; and
- (p) Any Liability of the Company or Bethel or Hebrew based upon any WHCP's acts or omissions.

**(q) Any Hill-Burton Obligations:**

The Parties agree that there shall be a 10% penalty in the event any party fails to timely pay all sums due for such liabilities, and the defaulting party shall be responsible for payment of all attorneys' fees incurred by the other party as a result of the defaulting party's failure to pay such liabilities

6.5.2 Indemnification by Hebrew and Bethel. Hebrew and Bethel severally agree to indemnify and hold harmless WHCP, the Parent Organizations and their respective directors, officers, agents and affiliates from and against, and shall reimburse on demand for, any and all Losses which may be incurred by WHCP relating to, based upon, resulting from or arising out of:

- (a) The breach of any representation or warranty made by Hebrew and Bethel in this Agreement;
- (b) The breach of any agreement, covenant or obligation of Hebrew and Bethel in this Agreement;
- (c) any acts taken by Hebrew, Bethel or any of its members, directors, officers and/or employees after the Effective Date that constitute a breach of its obligations under this agreement or are intentionally performed against the best interests of the Company, its assets or its operations.

6.5.3. The parties agree that the entry in to this agreement shall constitute a cancellation of any contracts between the parties for the sale of the right to make an application for the construction of the Beds on the premises and each party acknowledges that it has been and continues to be represented by separate counsel and shall remain responsible for their own fees and expenses and that any further fees and expenses for the furtherance of the aims of this operating agreement shall be taken from the cash capital contributed and no the property and shall be an obligation of the Company and not any of its individual members.

6.5.4 Change of Law : In the event there is any dispute among the parties or there is any legal development, including without limitation, a change in (or a change in the interpretation of) Medicare, Medicaid or other federal or state statutes, rules, regulations, principles or interpretations, that renders any of the material terms of this Agreement unlawful or unenforceable (including any services rendered or compensation to be paid hereunder) or adversely affects the tax-exempt status of any Institutional Class Member or an Affiliate thereof, or a definitive judicial or State of New York interpretation of New York law that substantially affects the business, governance, or economics of the Company in an adverse manner (collectively a "Negative Legal Development"), any Member affected by such Negative Legal Development shall have the immediate right upon notice to the other Members to initiate the renegotiation of the affected term or terms of this Agreement, so as to remedy the impacts of the Negative Legal Development in a manner that substantially maintains the then existing economic and governance relationships of the Members, if it is legal to accomplish the change while maintaining substantially such economic and governance relationship.

## **ARTICLE VII**

### **MEETINGS OF MEMBERS**

7.1 Annual Meetings. Annual meetings of the Members will be held on a date to be set by the Board of Managers, for the purpose of transacting such business as may properly come before the meeting.

7.2 Special Meetings. Special meetings of the Members, for any purpose or purposes, may be called by the Board of Managers or by any Member.

7.3 Place of Meetings. The Board of Managers may designate any place within the State of New York, as the place of meeting for any annual or special meeting of the Members. If no designation is made, the meeting will be held at the principal place of business of the Company in the State of New York.

7.4 Notice of Meetings. Except as provided in Section 7.5 and 7.10, notice stating the place, day and hour of a meeting and the purpose or purposes for which the meeting is called will be given not less than ten (10) and no more than sixty (60) days before the date of such meeting, by or at the direction of the Board of Managers or Member calling the meeting, to each Member entitled to vote at such meeting.

7.5 Meeting of all Members. If all of the Members will meet at any time and place, either within or outside of the State of New York, and consent in writing to the holding of a meeting at such time and place, such meeting will be valid without notice and at such meeting lawful action may be taken.

7.6 Record Date. For the purpose of determining Members entitled to notice or to vote at any meeting of Members, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is given or the date of the resolution declaring such distribution is adopted, as the case may be, will be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination will apply to any adjournment thereof.

7.7 Manner of Acting. The Requisite Consent of Members at such meeting will be required to take any action.

7.8 Proxies. At all meetings of Members, a Member may vote in person or by written proxy executed by the Member or by a duly authorized attorney-in-fact. If such proxy is given to a non-member, the Member giving the proxy may not delegate operating authority and/or responsibility by such proxy. If a non-member is authorized to vote by proxy on behalf of a Member, such proxy document must provide specific instructions and directions as to how to vote. A non-member may not be granted discretion by such proxy as to how to vote by proxy concerning the operation and management of the Company. Such proxy will be filed with the Board of Managers before or at the time of the meeting. No proxy will be valid after three (3) months from the date of its execution, unless otherwise specifically

provided therein.

**7.9 Action by Members without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by unanimous consent of all the Members. Such consent will be delivered to the Board of Managers for inclusion in the minutes or for filing with the Company records. The record date for determining Members entitled to take action without a meeting will be the date the first Member signs a written consent.

**7.10 Waiver of Notice.** When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at, or after the time stated therein, will be equivalent to the giving of such notice.

### **ARTICLE VIII**

#### **CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS**

**8.1 Bethel and Hebrew's Capital Contribution.** Bethel and Hebrew shall have the single and sole obligation to make their initial capital contribution which shall be the initial Gross Asset Value of any property (other than money) contributed to the Company by such Member (comprised only of any rights under those certain approvals referred to in the recitals to construct respectively 18 and 70 Skilled Nursing Beds in Westchester County as such rights may be recognized by the New York State Department of Health Converted Units as of the Effective Date) and noted on the books and records of the Company. Neither Bethel nor Hebrew shall be obligated to make any other capital contribution.

**8.2 WHCP's Capital Contributions.** It shall be the responsibility of the WHCP to contribute all other capital contributions to the Company including but not limited to.

- (a) A sum equal to \$343,000.00 presently held in escrow by McCullough, Goldberger & Staudt, LLP which sum shall be released from escrow on the Effective Date of this agreement.
- (b) An additional contribution of \$343,000.00 to be paid to the Company on the Effective Date of this Agreement and distributed to Bethel and Hebrew as priority return of capital in accordance with Section 6.4 above.
- (c) The contribution to provided as "Working Capital" and "operating deficit" letters of credit as specifically defined in any HUD Firm Commitment.
- (d) The Department of Health processing fee.
- (e) Any and all sums required over and above the Working Capital letters of credit required to satisfy any shortfall between revenues and expenses of the Business.

**8.3** In furtherance of the foregoing, each Member is hereby deemed to have pledged its Membership Interest as security for such Member's obligations to make any type of capital contributions as required herein. Accordingly, in the event of a default as described in this Section 8.3, the non-Defaulting Members shall have a lien on, and security interest in, the Membership Interest of the Defaulting Member to secure repayment of any loan or other amount due from the Defaulting Member hereunder and all interest accrued thereon and expenses incurred in connection therewith. The Defaulting Member shall pay all fees, costs and expenses (including reasonable fees and disbursements of counsel) in connection with the preparation and review of the instruments necessary to perfect such security interest and otherwise to enforce it.

8.3.1 All of the foregoing remedies and actions may be exercised from time to time by the Board of Managers and shall be deemed cumulative and two or more may be exercised simultaneously.

**8.4 Capital Accounts.**

8.4.1 A separate Capital Account will be maintained for each Member commencing with their initial capital contribution. Each such Capital Account will be increased by (a) the amount of cash contributed by such Person to the Company pursuant to Section 8.2 hereof; and (b) allocations to such Person of Profits. Each such Capital Account will be decreased by (a) the amount of money distributed to such Person by the Company; (b) the fair market value of property distributed to such Person by the Company (net of liabilities secured by such distributed property that such Person is considered to assume or take subject to under Section 752 of the Code); and (c) allocations to such Person of Losses. The allocations of equity and capital and the right to receive distributions shall be made in accordance with the Membership Interests set forth on Schedule A.

8.4.2 The following additional rules will apply in maintaining Capital Accounts.

8.4.2.1 If property is distributed by the Company, Capital Accounts will be adjusted as though such property had been sold on the date of such distribution for its then fair market value and any gain or loss on such sale had been allocated in accordance with Article IX.

8.4.2.2 The Capital Accounts upon the Initial Capital Contribution of the Members will be adjusted in accordance with Treasury Regulation Section 1.704-1(b) (2)(iv)(d) and will be subsequently adjusted in accordance with Treasury Regulation Section 1.704-1(b) (2)(iv)(g).

8.4.2.3 If, in any Fiscal Year, the Company has in effect an election under Section 754 of the Code, Capital Accounts will be adjusted in accordance with Treasury Regulation Section 1.704-1(b) (2)(iv)(m).

8.4.2.4 Except as may otherwise be provided in this Operating Agreement, whenever it is necessary to determine the Capital Account of a Person for purposes of Article IX, the Capital Account of such Person will be determined after giving effect to all allocations and distributions for transactions effected prior to the time as of which such determination is to be made.

8.4.2.5 In the event of a Transfer of a Membership Interest, the Capital Account of the Transferor will become the Capital Account of the Transferee to the extent it relates to the transferred Membership Interest in accordance with Section 1.704-1(b) (2)(iv) of the Regulations.

8.5 Adjustments to Comply with Code. The manner in which Capital Accounts are to be maintained pursuant to Section 8.4 above and in which the income, gain, loss, deductions and credits of the Company are to be allocated pursuant to Section 9.1 below are intended to comply with the requirements of Section 804(b) of the Code and the Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to Section 8.4 or Profits or Losses, or items included therein, are to be allocated pursuant to Section 9.1 should be modified in order to comply with Section 704(b) of the Code and the Regulations thereunder, then notwithstanding anything contained in Section 8.4 or 9.1, the method in which Capital Accounts are maintained and/or Profits or Losses, or items included therein, are allocated will be so

modified; provided, however, that any change in the manner of maintaining Capital Accounts or allocating Profits or Losses, or items included therein, will not materially alter the economic agreement between or among the Members.

**8.6 No Interest on Capital Accounts.** No interest will be paid on the amount of any Person's Capital Account.

**8.7 Return of Capital.** No person will have the right to demand the return of all or any part of such Person's Capital Account or such Person's Capital Contributions except for the initial return to Hebrew and Bethel of their excess contributions to capital as set forth above.

**8.8 Borrowing from Members.** In the event the Company has insufficient funds to meet its obligations as they become due and to carry out its routine, day to day affairs, then, in lieu of the Company borrowing from third parties or selling assets to provide required funds, the Company may, but will not be required, to borrow such funds from one or more of the Members; provided that: (a) the terms of such borrowing will be no less favorable to the Company than for similar borrowing from commercial lending institutions, (b) the Company will not pledge its assets to secure such borrowing, and (c) the prior written approval of the Board of Managers is obtained. Provided, however, that for so long as HUD is the holder or insurer of any indebtedness secured by the Project (as defined in Section 14.1), any indebtedness by the Company other than that held or insured by HUD shall be subject to HUD's prior approval, which approval shall be evidenced by documents prescribed by HUD.

**8.9 No Obligation to Restore Negative Capital Account.** Except as provided in Section 6.5, no Member will have any liability to restore all or any portion of a deficit balance in such Member's Capital Account.

#### ARTICLE IX

#### ALLOCATION OF PROFITS, LOSSES AND CERTAIN EXPENSES; ALLOCATION OF GAIN OR LOSS ON SALE OR LIQUIDATION

##### 9.1 Profits and Losses.

(a) Profits. After giving effect to the special allocations set forth in Sections 9.2 and 9.3 hereof, Profits for each Fiscal Year shall be allocated in the following order and priority:

(i) first, to the Members which have previously been allocated Losses, pro rata, pari passu, in such amounts as shall be required to offset any prior allocations of Losses pursuant to Section 9.1(b)(i) in the reverse order in which such Losses were allocated under such Section, until each Member has been allocated an aggregate amount of Profits under this Section 9.1(a)(i) equal to the aggregate amount of Losses previously allocated to such Member pursuant to Section 9.1(b)(i);

(ii) Thereafter, to the Members in accordance with their respective Membership Interests.

(b) Losses. After giving effect to the special allocations set forth in Sections 9.2 and 9.3 hereof, Losses for each Fiscal Year shall be allocated in the following order and priority:

(i) first, to the Members which have previously been allocated Profits, pro rata, pari passu, in such amounts as shall be required to offset any prior allocations of Profits until each Member has been allocated an aggregate amount of Losses under this Section 9.1(b) (i) equal to the aggregate amount of Profits previously allocated to such Member pursuant to Section 9.1 (a) (i); and

(ii) Thereafter, (A) to the Members in accordance with their Capital Accounts, until such Capital Accounts have been reduced to zero and (B) then to the Members in accordance with their respective Membership Interests.

Notwithstanding anything otherwise set forth herein, that any Losses allocated pursuant to this Section 9.1(b) shall not exceed the maximum amount of Losses that can be so allocated to each Member without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year, such limitation to be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b) (2) (ii) (d) of the Regulations.

## 9.2 Special Allocations.

(a) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member. The items to be so allocated shall be determined in accordance with Sections 1.704-(f) (6) and 1.704-2(j) (2) of the Regulations. This Section 9.2(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, each Person who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Person's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Sections 1.704(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 9.2(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i) (4) of the Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 9.2(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all allocations provided for in this Operating Agreement have been tentatively made as if this Section 9.2(c) were not in the Operating Agreement.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of the amount such Member is obligated to restore pursuant to any provision of this Operating Agreement and the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Operating Agreement have been made as if Section 9.2(c) hereof and this Section 9.2(d) were not in the Operating Agreement.

(e) Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any Fiscal Year shall be specifically allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(j)(1).

(f) Liquidation of the Company. Upon liquidation of the Company, Profits, Losses and items thereof (including gross income and gross deductions for the year in which such liquidation occurs and the immediately preceding year, if advisable for proper allocation of such Profits, Losses and items thereof) shall be allocated among the Members in such manner as is necessary to adjust the Capital Account of each Member to an amount equal to the amount of distributions each Member would be entitled to receive if liquidating distributions were made in accordance with Section 13.3 hereof.

9.3 Curative Allocations. The allocations set forth in the last paragraph of Section 9.1(b) and in Sections 9.2(a), 9.2(b), 9.2(c), 9.2(d) and 9.2(e) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 9.3.

#### 9.4 Other Allocation Rules

(a) For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a permissible method under Code Section 708 and the Regulations thereunder.

(b) For purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), such Members' interests in Company profits are in proportion to their Membership Interests.

(c) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Board of Managers shall endeavor to treat distributions of available cash as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

9.5 Tax Allocations: Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Member's so as to take account of any variation between the adjusted basis of such property to the Company for Federal income tax purposes and its initial Gross Asset Value. In the event the Gross Asset Value of any

Company asset is adjusted (including, without limitation, the adjustment to the Gross Asset Value of the Company's assets made on the date hereof), subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for Federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Board of Managers in any manner that reasonably reflects the purpose and intention of this Operating Agreement. Allocations pursuant to this Section 9.5 are solely for purposes of Federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Operating Agreement.

9.6 Charitable Purposes. All provisions of this Article IX are subject to the provisions of Section 3.3.

## ARTICLE X DISTRIBUTIONS

10.1 Reserves. Subject to Section 5.3.5, the Board of Managers shall establish and set aside such Reserves as the Board of Managers deems to be in the best interests of the Company. Notwithstanding the foregoing, if the Board of Managers is aware or becomes aware of the possibility that recoupment's may be made against the Company by Medicare, Medicaid or any other health care reimbursement or payment intermediary, the Board of Managers, in its sole discretion, shall include as part of the Reserves any amounts the Board of Managers deems appropriate to satisfy such recoupment obligations. In addition, until all recoupments have been paid in full, the Board of Managers shall not be required to make distributions as set forth in Section 10.3, below except for distributions made to Members necessary to satisfy tax obligations on money earned by the Member but not received.

10.2 Reimbursement of Expenses. The Board of Managers shall be entitled at all times, upon presentation of receipts, to reimbursement from the Company for reasonable and ordinary expenses incurred in furthering the Company business.

10.3 Distributions. Subject to Section 10.1, above, the Board of Managers shall make regular distributions of Distributable Cash to the Members.

10.4 Distributions in Cash and Proportionate to Membership Interests. All distributions made pursuant to this Article X shall be made to the Members in proportion to their respective Membership Interests on the record date of such distributions.

10.5 Distributions upon Refinancing. Upon the refinancing of any existing (or proposed) mortgage on the Company's property, any surplus proceeds after payment of all outstanding liabilities shall be first applied to the reduction of the members capital accounts in accordance with their respective Membership Interests.

## ARTICLE XI ACCOUNTING, BOOKS AND RECORDS

11.1 Accounting Period. The Company's accounting period will be the Fiscal Year.

11.2 Records, Audits and Reports. At the expense of the Company, the Board of Managers will maintain records and accounts of all operations and expenditures of the Company. At a minimum the Company will keep at its principal place of business the following records:

11.2.1 A current list of the full name and last known business, residence, or mailing address of each Member and Board of Managers, both past and present;

11.2.2 A copy of the Articles of Organization and Operating Agreement and all amendments thereto;

11.2.3 Copies of the Company's Federal, state and local income tax returns and financial statements, if any, for the six (6) most recent years;

11.2.4 Minutes of every annual and special meeting; and

11.2.5 Any written consents obtained from Members for actions taken by Members without a meeting.

11.3 Examination of Books. The Company's books and records will be open for examination by the Members (and their duly authorized representatives) at any time and from time to time during normal business hours upon reasonable prior notice to the Board of Managers.

11.4 Returns and Tax Elections.

11.4.1 The Board of Managers will cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to applicable law. Copies of such returns will be furnished to the Members by March 15 of each year.

11.4.2 Upon a Transfer of a Membership Interest or in the event of the distribution of Company Property to a Member, the Board of Managers, on behalf of the Company may (in its sole discretion) file an election in accordance with Section 754 of the Code, and applicable Regulations, to cause the basis of the Company Property to be adjusted for Federal income tax purposes, as provided by Sections 734 and 743 of the Code.

11.4.3 All elections permitted to be made by the Company under Federal and state tax laws, in addition to the election described in Section 11.4.2, will be made by the Board of Managers on behalf of the Company.

11.4.4 Except as otherwise decided by the Members by the Requisite Consent, the Board of Managers is hereby designated as the "Tax Matters Partner" under Code Section 6221 et seq. (the Person serving as the Tax Matters Partner is hereinafter referred to in this subsection as the "Tax Matters Partner").

11.4.4.1(a) Upon receipt of notice from the Internal Revenue Service of the beginning of an administrative proceeding at the Company level with respect to a Company item ("Audit"), the Tax Matters Partner will furnish to the Internal Revenue Service the name, address, profits interests, and taxpayer identification number of each person who was a Member at any time during the

taxable year in issue. If the Tax Matters Partner later discovers that the information furnished to the Internal Revenue Service was incomplete or incorrect, it will furnish such revised or additional information as may be necessary.

(b) After commencement by the Internal Revenue Service of any Audit, the Tax Matters Partner will be responsible for meeting with representatives of the Internal Revenue Service, conducting negotiations and providing information. The Tax Matters Partner will furnish each of the Members with all information regarding the Audit.

(c) The Tax Matters Partner may, on behalf of all Members enter into an agreement with the Internal Revenue Service extending the period for assessing any income tax attributable to any Company item. It is anticipated that such agreement will be binding on all Members.

(d) In the event the Tax Matters Partner arrives at a settlement with the Internal Revenue Service with respect to a Company item, each Member will choose whether or not to become a party to the settlement agreement. No Member will otherwise be bound by a settlement between the Tax Matters Partner and the Internal Revenue Service.

(e) Upon receipt by the Tax Matters Partner of a final Company administrative adjustment (FPAA), the Tax Matters Partner may, within ninety (90) days of such receipt and subject to jurisdictional requirements, file a petition for readjustment in the Tax Court, the District Court of the United States, or the Court of Claims. Upon commencement of such action by the Tax Matters Partner, no Member may commence a similar action and all Members will become parties to such action and will be bound thereby. In the event the Tax Matters Partner does not commence an action as above provided, any Notice Partner or any Five (5%) Percent Group (as such terms are defined in Code Section 6231(a)) may, within sixty (60) days after the close of the ninety (90) day period set forth above, and subject to jurisdictional requirements, file a petition for readjustment to the Tax Court, the District Court of the United States, or the Court of Claims. The Tax Matters Partner may intervene in any such action and all Members will become parties to such action and will be bound thereby.

11.4.4.2 The Company will reimburse the Tax Matters Partner for all documented expenses incurred by the Tax Matters Partner in its capacity as Tax Matters Partner.

11.4.4.3 The Company, will indemnify and hold harmless the Tax Matters Partner from and against any claim, loss, expense, liability, action, or damage resulting or arising from its acting or its failure to take any action as the Tax Matters Partner, including, without limitation, costs and expenses of litigation and appeal (and fees and expenses of attorneys engaged by the Tax Matters Partner in defense of such act or omission) and including, without limitation, costs and expenses of litigation and appeal (including fees and expenses of attorneys engaged by the Tax Matters Partner) related to the enforcement of the Company's indemnification obligation under this Section 11.4.4.3, provided that any such claim, loss, expense, liability, action or damage does not arise from negligence of the Tax Matters Partner. Any such indemnity will be provided out of and to the extent of Company assets only. Provided, however, that for so long as HUD is the holder or insurer of any indebtedness secured by the Project any indemnification or payments relating to the premiums for director and officer insurance provided by the Company to the Tax Matters Partner shall be limited to the extent of available "Surplus Cash" as defined in the HUD Regulatory Agreement.

## **ARTICLE XII**

### **TRANSFERS**

12.1 **General Prohibition.** Notwithstanding anything in the Articles of Organization or this Operating Agreement to the contrary, the issuance, transfer or other dispositions of Membership Interests or voting rights in the Company is to be strictly controlled by the provisions of § 2801-a(4)(b) of the New York State Public Health Law. No person may own ten percent (10%) or more of the Membership Interests of the Company unless he has been approved for such ownership by the Public Health and Health Planning Council of the State of New York. Any transfer, assignment or disposition of ten percent (10%) or more of the Membership Interests of the Company or the transfer, assignment or other disposition of the Membership Interests in the Company which results in the ownership or control of ten percent (10%) or more of the Membership Interests of the Company by any person will be subject to approval by the Public Health Council. Except as otherwise specifically provided in Sections 12.2 and 12.3, a Member may not Transfer all or any fraction of his entire Membership Interest. Notwithstanding any provision of this Article XII, no Transfer may take place prior to the issuance of the operating certificate to the Facility, except as set forth in Section 12.7.2.

12.2 **Permissible Transfer in General.** A Member, upon obtaining Requisite Consent, may Transfer his entire Membership Interest, during his lifetime or upon his death, to any person.

12.2.1 If any Member or (hereinafter called the "Seller") desires to sell the Membership Interest (or any fraction thereof) owned by him and such Seller will have received a bona fide arm's length written offer, which is unconditional except as hereinafter provided (hereinafter called the "Bona Fide Offer"), for the purchase of such Interest from a party who is not a Member pursuant to the terms of this Operating Agreement (hereinafter called the "Outside Party"), the Seller will give a notice in writing (hereinafter called the "Option Notice") to the other Members (hereinafter called the "Remaining Members"), setting forth such desire to sell such Interest, which notice will be accompanied by a photocopy of the original executed Bona Fide Offer and will set forth at least the name and address of the Outside Party and the price and terms of such offer.

12.2.1.1 Within thirty (30) days after the giving of the Option Notice, any or all of the Remaining Members may elect to purchase the interest of the Seller for which the Bona Fide Offer was made, at the same price and upon the same terms and conditions as contained in the Bona Fide Offer, in which event the Remaining Members will be obligated to purchase and the Selling Member will be obligated to sell such Membership or Economic Interest at the same price per unit and upon the same terms and conditions as contained in the Bona Fide Offer. Each Remaining Member will be required to purchase the Interest of the Seller in proportion to the Interest in the Company of each Remaining Member.

12.2.1.1.1 If any Remaining Member is unable to purchase his proportionate share of the Selling Member's interest then and in that event any other of the Remaining Members may purchase that share.

12.2.1.2 Failure of the Remaining Members to exercise their right of first refusal will not constitute Requisite Consent to the sale by the Seller to an Outside Party; however the Remaining Members may not unreasonably withhold their consent from said transfer and upon such Requisite Consent the purchaser will become a Member without any further vote being required.

12.2.2 A Member may leave his entire Interest or any portion thereof by testamentary devise to one or more distributees or devisees. Such a testamentary devise will not *ipso facto* constitute dissolution of the Company or a withdrawal event. For a period of one (1) year after the death of such Member, his Estate or personal representative will be entitled to exercise the deceased Member's rights as a Member. However, the Estate will have one (1) year from the date of death of the Member to obtain a *bona fide* purchaser to purchase the entire interest of the deceased Member. Should said *bona fide* purchaser make an offer and the remaining Members do not exercise their right of first refusal hereunder and vote to allow such a sale, then the *bona fide* purchaser will become a Member without the necessity of any further approval by the Members and the Company will become reconstituted with the purchaser as a new Member.

12.3 Permissible Transfer to Family Transferees. Subject to following the express provisions of § 2801-a (4) (b) of the New York State Public Health Law and the regulations promulgated by the New York State Department of Health under such statute, a Member may Transfer all or any fraction of his Membership Interest to a Family Transferee who will become a Member, after following the procedures set forth for such membership by the New York State Department of Health.

12.4 Conditions Precedent to Permissible Transfer. As a condition to the Company recognizing the effectiveness and binding nature of a permissible Transfer pursuant to Section 12.2 or 12.3, whichever is applicable, the Transferor and the Transferee will execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform such other acts which legal counsel to the Company reasonably deems necessary or desirable to:

12.4.1 In the case of a Transferee who is not a Member, confirm that the Person desiring to acquire an interest or interests in the Company has accepted, assumed and agreed to be subject to and bound by all of the terms, obligations and conditions of the Operating Agreement;

12.4.2 Preserve the Company after the completion of such Transfer under the laws of each jurisdiction in which the Company is qualified, organized or does business;

12.4.3 Maintain the status of the Company as a Partnership for Federal income tax purposes;

12.4.4 Establish a reasonably convenient date for the Company to deem the Transfer effective;

12.4.5 Assure compliance with any applicable state and Federal laws including securities laws and regulations and the rules and regulations of the New York State Department of Health; and

12.4.6 Indemnify the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any such Transfer.

#### 12.5 Transferee Not Member in Absence of Consent.

12.5.1 A Transferee who is neither a Member nor a Family Transferee may become a Member only upon obtaining requisite consent of the Members, which consent is deemed to

have been given as a consequence of the consent to the Transfer given pursuant to Section 12.2 or at any time thereafter.

12.6 Member Ceases to Be Member Upon Transfer of Entire Interest. A Member who Transfers his entire Membership Interest, regardless of whether the Transfer is permissible under this Article XII or whether his Transferee becomes a Member, will cease to be a Member upon such Transfer. Any non-permissible transfer will not be effective as against the Member.

12.7 Mandatory Transfer:

12.7.1 Call Option: Notwithstanding the provisions of Section 12.2 and 12.3 following the issuance of an operating certificate to the Facility as defined herein WHCP shall have an option to purchase from Bethel and Hebrew (either or both being referred to as "Seller") all, but not less than all, of their Membership Interests (the "Call Option"), for an amount equal to \$2,240,000.00 for the Hebrew interest and \$504,000.00 for the Bethel interest (the "Call Price"), that shall be payable by WHCP at the Closing

(a) WHCP may, at its option and sole discretion, deliver a written notice (a "Call Notice") to Seller indicating Purchaser's decision to exercise the Call Option, and Closing shall take place within five (5) days of delivery of the Call Notice, or, if consent of the NYSDOH is required to allow the transfer, within five (5) days of receipt of such consent. If such consent and thereby Closing is delayed by more than 90 days, WHCP shall pay interest on the Call Price at the rate of 3% per annum.

(b) Upon the delivery of a Call Notice, Bethel and Hebrew agree to, and shall be obligated to, sell all of their outstanding Membership Interests to WHCP, and WHCP agrees to, and shall be obligated to, purchase from Bethel and Hebrew at the Closing all of the Membership Interests at the Call Price.

12.7.2 Put Right. Notwithstanding the provisions of Section 12.2 and 12.3, following the issuance of an operating certificate to the Company by the New York State Department of Health and subject to the terms set forth herein, Bethel and/or Hebrew shall have the option to sell to WHCP all, but not less than all, of their outstanding Membership Interests (the "Put Right"), for an amount equal to \$2,240,000.00 for the Hebrew Membership Interest and \$504,000.00 for Bethel Membership Interest (the "Put Price"), that shall be payable by WHCP at the Closing.

(a) Bethel and Hebrew may, at their option and sole discretion, deliver a written notice (a "Put Notice") to WHCP indicating their decision to exercise the Put Right.

(b) Upon delivery of a Put Notice, WHCP agrees to, and shall be obligated to, within five (5) days of delivery of the Put Notice, or, if consent of the NYSDOH is required to allow the transfer, within five (5) days of receipt of such consent, purchase all of the Membership Interests from Bethel and Hebrew, and Bethel and Hebrew agree to, and shall be obligated to, sell to WHCP at the Closing all of the Membership Interests at the Put Price. If such

consent and thereby Closing is delayed by more than 90 days, WHCP shall pay interest on the Put Price at the rate of 3% per annum

(c) WHCP agrees that it will have prior to the Effective Date deposited the sum of \$1,500,000.00 in an account at Chase Manhattan Bank in the name of HBL-SNF and advanced the sum of \$2,200,000.00 to White Plains Healthcare Properties so as to have a balance sheet demonstrating \$3,700,000.00 in paid in capital which shall act as a reasonably acceptable proof of ability to pay the Put Price.

12.7.3 For the avoidance of doubt, the mandatory transfer provisions set forth in this Section 12.7 shall not be subject to the provisions of Sections 12.2 and 12.3.

12.8 Hebrew Chapter 11 Assignment. Notwithstanding anything in this Section XII to the contrary, the Parties acknowledge that Hebrew filed a voluntary petition under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") on January 8, 2016 (the "Petition Date") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") in case number 16-10028-mew, jointly administered under case number 15-11158 (the "Chapter 11 Proceeding"), and Hebrew's interests in the Company constitute property of Hebrew's estate pursuant to Bankruptcy Code §541. Further, pursuant to an eventual confirmed Chapter 11 plan ("Chapter 11 Plan") that Hebrew's interests in the Company may be assigned, transferred and conveyed to a resulting Chapter 11 plan designee, trustee or estate representative which person or entity will succeed to Hebrew's rights, interests and obligations as a member of the Company; provided, however, that neither Hebrew or the aforesaid successor shall become the manager of the Company or operator of the skilled nursing facility.

**ARTICLE XIII  
DISSOLUTION AND TERMINATION**

**13.1 Dissolution.**

13.1.1 The Company will be dissolved upon the occurrence of any the following events:

- 13.1.1.1 The expiration of the term set forth in Section 2.5 hereof;
- 13.1.1.2 Requisite Consent thereto being given; or
- 13.1.1.4 The sale of all the Company Property.

13.1.2 If a Member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the deceased or incapacitated Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling his estate or administering his property.

**13.3 Winding Up, Liquidation and Distribution of Assets.**

13.3.1 Upon dissolution, an accounting will be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Board of Managers will immediately proceed to wind up the affairs of the Company.

13.3.2 If the Company is dissolved and its affairs are to be wound up, the Board of Managers will:

13.3.2.1 Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Board of Managers may determine to distribute any assets to the Members in kind);

13.3.2.2 Allocate any Profit or Loss resulting from such sales to the Members' Capital Accounts in accordance with Article IX hereof;

13.3.2.3 Discharge all liabilities of the Company and establish such Reserves as may be reasonably necessary to provide for contingent or fixed liabilities of the Company;

13.3.2.4 Distribute the remaining assets in the following order:

(a)(i) Every reasonable effort will be made to dispose of the assets of the Company upon dissolution so that the distribution may be made to the Members in cash. If at the time of the dissolution of the Company, the Company owns any assets in the form of notes, deeds of trust or other noncash assets, such assets, if any, will be distributed in kind to the Members in lieu of cash, proportionately to their right to receive such remaining assets of the Company. For purposes of determining Capital Accounts, each such noncash asset will be treated as having been sold at net fair market value and the Capital Accounts of the Members will be adjusted pursuant to the provisions of Sections 8.3 and 9.1 of this Operating Agreement to reflect such deemed sale.

(ii) For purposes of this Section 13.3.2.4, the net fair market value of the noncash assets of the Company will be determined as follows: The parties will first attempt to agree upon the "net fair market value of the assets." For this purpose, "Net fair market value of the assets" will mean the cash price which a sophisticated purchaser would pay on the financing then encumbering the assets, such valuation to be made on the assumption that those assets which are subject to agreements will not be released from such agreements. A sophisticated purchaser will be one who would take into account the nature, extent, maturity date, and other terms of the liabilities encumbering such assets, whether fixed or contingent, including the favorable or unfavorable nature of any financing, and the prospects that the income from the assets would be sufficient to satisfy such liabilities when due, excluding any liability under any financing already taken into account.

(iii) In the event the Members are unable to agree upon the net fair market value of the noncash assets of the Company, such value will be settled as provided in Section 15.1 hereof.

(b) The positive balance (if any) of each Member's Capital Account (after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs) will be distributed to the Members, either in cash or in kind, as determined by the

### Requisite Consent of the Members.

13.3.3 Upon completion of the winding up, liquidation and distribution of the assets, the Company will be deemed terminated.

13.3.4 The Board of Managers and the Members will comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

13.4 Document Holding Period. All documents and records will be delivered to the Board of Managers upon dissolution of the Company. The Board of Managers will retain such documents and records for such a period of time ("Document Holding Period") as may be required by any regulation, decree, code, ordinance, rule or law of any city, county, state, or federal government or governmental agency having jurisdiction (including the requirements of the Internal Revenue Service) and will make the documents available during normal business hours to the other Members for inspection and copying at such other Member's cost and expense. In the event any Member ("Withdrawing Member") for any reason ceases to be a Member at any time prior to the dissolution of the Company, and the Company is continued without the Withdrawing Member, the documents for the period prior to the date of the termination of the Withdrawing Member's interest will be maintained by the Board of Managers for the Document Holding Period; provided, however, that if there is an audit or threat of audit, such documents will be retained until the audit is completed and any tax liability finally determined. Said documents will be available for inspection, examination and copying by the Withdrawing Member in the same manner as provided above in this Section 13.4 with respect to dissolution of the Company.

13.5 Certificate of Dissolution. Upon the filing of the certificate of dissolution, the existence of the Company will cease. The Board of Managers will have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

13.6 Return of Contribution Nonrecourse to Other Members and Board of Managers. Upon dissolution, each Member will look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the contribution of one or more Members, such Member(s) will have no recourse against any Member or the Board of Managers unless such insufficiency arose out of any act of fraud, deceit, gross negligence, willful misconduct, breach of fiduciary duty or a wrongful taking.

## ARTICLE XIV WITHDRAWAL

14.1 The death, retirement, resignation, expulsion, bankruptcy or dissolution of any Member shall not constitute a dissolution of the Company.

14.2 Withdrawal. No Member shall have the power to retire or withdraw from the Company by voluntary act. Any attempted voluntary withdrawal or retirement by a Member shall be null and void and of no force or effect whatever. The retirement or withdrawal of a Member shall only be permitted

upon the written consent of the Managers; provided, however, upon the occurrence of any of the following events the Company will permit the retirement of such Member without requiring consent:

(a) The Transfer of all of such Person's Membership Interests by means of a Permitted Transfer, by means of a Transfer to which the Managers consent pursuant to, and in accordance with the requirements of this agreement and the public health law;

(b) The death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member shall not automatically terminate the right of that member, its estate or any legal successor to continue to receive the benefits of membership including but not limited to the return of the value of their capital contribution subject only to the rules and regulations of the New York State Department of Health and Article 28 of the Public Health Law governing membership.

(c) If such Person is itself a limited liability company, partnership, or similar entity, the dissolution and commencement of winding up of such limited liability company, partnership, or similar entity;

(d) If such Person is a corporation, ninety (90) days after (i) the filing by such Person of a Certificate of dissolution or its equivalent, (ii) the revocation of such Person's charter, or (iii) the suspension by the jurisdiction of such Person's incorporation of such Person's right to conduct business, unless prior to the end of such ninety-day period the Certificate of dissolution or its equivalent is revoked or such Person's charter or right to conduct business is reinstated; or

(e) Such Person's withdrawal or resignation in violation of this Operating Agreement.

#### **ARTICLE XV MISCELLANEOUS PROVISIONS**

15.1 Determination of Amounts under this Agreement. All determinations with respect to Profits and Losses, Capital Accounts, Distributable Cash and any other amounts payable by or to the Company under this Operating Agreement, except as otherwise specifically provided in this Operating Agreement, will be made by the accountants regularly engaged to maintain the books and records of the Company at the time when such determinations are made, in accordance with the accounting practices and procedures regularly employed by such accountants in preparing financial reports and tax statements for companies conducting the same business as the Company.

15.2 Notices. Any notice, demand or communication required or permitted to be given by any provision of this Operating Agreement will be in writing and will be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or sent by registered or certified mail, postage and charges prepaid, addressed to the address of the Board of Managers, Company, Member, as the case may be, which is set forth in this Operating Agreement or in a notice given by such Person to the Board of Managers. Except as otherwise provided herein, any such notice will be deemed to be given three (3) business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

**15.3 Application of New York Law.** This Operating Agreement, and the application and interpretation hereof, will be construed, governed and enforced exclusively by its terms and by the Act and other laws of the State of New York.

**15.4 Waiver of Action for Partition.** Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

**15.5 Entire Understanding; Amendments.** This Operating Agreement constitutes the entire understanding of the Members with respect to the subject matter hereof, and no amendment, modification or alteration hereof will be binding on any Person unless in writing executed by all of the Members of the Company. No amendment, supplement or termination of this Operating Agreement will affect or impair any rights or obligations which have heretofore matured hereunder.

**15.6 Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designation, powers of attorney and other instruments necessary to comply with any laws, rules or regulations. In addition, certain financing obligations of the Company or the Department of Health may require the Member hereof to execute and deliver certain documents, such as affidavits, personal guaranties, certifications and resolutions. The Members acknowledge and agree that the failure to promptly execute and deliver any such document at the request of the Board of Managers shall allow the Board of Managers to avail itself of the rights and remedies set forth in Section 8.3, herein as if such Member had failed to make an Additional Capital Contribution.

**15.7 Construction.** Whenever the singular number is used this Operating Agreement and when required by the context, the same will include the plural and vice versa, and the masculine gender will include the feminine and neuter genders and vice versa.

**15.8 Headings.** The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

**15.9 Waivers.** The failure of any Person to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement will not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

**15.10 Rights and Remedies Cumulative.** The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party will not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

**15.11 Severability.** If any provision of this Operating Agreement or the application hereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application hereof will not be affected and will be enforceable to the fullest extent permitted by law.

**15.12 Binding Effect.** Each and all of the covenants, terms, provisions and agreements

herein contained will be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

15.13 Creditors. None of the provisions of this Operating Agreement will be for the benefit of or enforceable by any creditors of the Company.

15.14 Counterparts. This Operating Agreement may be executed in counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument.

15.15 Investment Representations.

15.15.1 The Members understand (a) that the Membership Interests evidenced by this Operating Agreement have not been registered under the Securities Act of 1933, New York securities laws or any other state securities laws (the "Securities Acts") because the Company is relying upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering, (b) that the Company has relied upon the fact that the Membership Interests are to be held by each Member for investment, and (c) that said exemption from registration would not be available if the Membership Interests were acquired by a Member with a view to distribution.

15.15.2 Accordingly, each Member hereby confirms to the Company that such Member is acquiring the Membership Interests for such Member's own account, for investment and not with a view to the resale or distribution thereof.

15.15.3 Prior to acquiring its Membership Interest each Member has made an investigation of the Company and its business and has had made available to it all information with respect thereto which such Member needed to make an informed decision to acquire its Membership Interest. Each Member considers itself to be a Person possessing experience and sophistication as an investor which is adequate for the evaluation of the merits and risks of such Member's investment in the Company.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the undersigned have duly executed this Operating Agreement as of the date first written above.

MEMBER:  
WESTCHESTER HEALTHCARE PROPERTIES I, LLC

\_\_\_\_\_  
Lizer Jozefovic, Manager

MEMBER:  
HEBREW HOSPITAL HOME OF WESTCHESTER, INC

*Mary Frances Burnett*  
By:

MEMBER:  
BETHEL NURSING HOME COMPANY, INC.

\_\_\_\_\_  
By:

As to indemnification provisions in paragraph 6.5.1

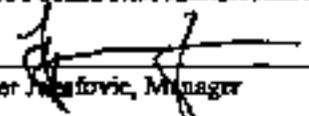
\_\_\_\_\_  
Gerald Neuman

\_\_\_\_\_  
Mark Neuman

\_\_\_\_\_  
Lizer Jozefovic

IN WITNESS WHEREOF, the undersigned have duly executed this Operating Agreement as of the date first written above.

MEMBER:  
WESTCHESTER HEALTHCARE PROPERTIES I, LLC

  
Lizer Jozanovic, Manager

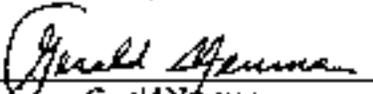
MEMBER:  
HEBREW HOSPITAL HOME OF WESTCHESTER, INC

By: \_\_\_\_\_

MEMBER:  
BETHEL NURSING HOME COMPANY, INC.

By: \_\_\_\_\_

As to indemnification provisions in paragraph 6.5.1

  
Gerald Newman

  
Mark Newman

  
Lizer Jozanovic

i  
/

IN WITNESS WHEREOF, the undersigned have duly executed this Operating Agreement as of the date first written above.

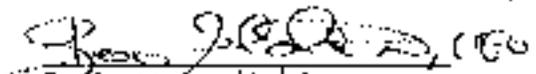
MEMBER:  
WESTCHESTER HEALTHCARE PROPERTIES I, LLC

-----  
Lizer Jozefovic, Manager

MEMBER:  
HEBREW HOSPITAL HOME OF WESTCHESTER, INC

-----  
By:

MEMBER:  
BETHEL NURSING HOME COMPANY, INC.

  
By: Bethel Nursing Home Company, Inc.

As to indemnification provisions in paragraph 6.5.1

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Gerald Neuman

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Mark Neuman

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Lizer Jozefovic

**SCHEDULE A**

<u>Name</u>	<u>Membership Interest</u>
WHCP	51%
BETHEL	10%
HEBREW	39%

**SCHEDULE B**

**Company Property**

The agreed upon value of the Property contributed by Hebrew is \$2,800,000.00 and by Bethel is \$630,000.00

**SCHEDULE C  
ENABLING RESOLUTION**

# Exhibit U

## To Nicholson Aff.



# Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

July 26, 2017

Mr. Andrew Blatt  
Managing Member  
Pinnacle Health Consultants, LLC  
1890 Palmer Avenue, Suite 204  
Larchmont, New York 10538

Re: 092058-B  
HBL SNF, LLC d/b/a The Rehabilitation and Nursing Care Center of White Plains (Westchester County)  
Establish and construct a 160 bed RHCF; HBL SNF, LLC d/b/a The Rehabilitation and Nursing Center of White Plains  
**Total Project Cost: \$56,631,759**

Dear Mr. Blatt:

The Department of Health has reviewed the documentation addressing the contingencies that were related to the proposed approval of the above project. As of this date, all contingencies on this project have been satisfied.

Construction must start on or before September 15, 2017 and construction must be completed by July 15, 2019. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. At the time construction begins, you must complete the attached Construction Start Confirmation form and return it to the Bureau of Project Management.

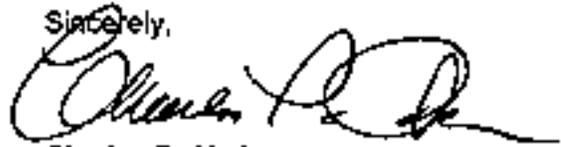
The Department considers the commencement of construction your acknowledgment that project costs will not exceed the total project costs indicated above. Additional costs will not be eligible for reimbursement without the prior approval of the Department.

Per 710.9 you must notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date, so that the pre-opening survey can be scheduled. You must contact the Regional Office using the "Regional Office" tab in NYSE-CON. The "Regional Office" tab enables applicants to propose pre-opening survey dates and request Department staff to schedule surveys. Additionally, the tab enables entry of applicant contact information and electronic communications during the pre-opening process. If you have questions, please contact your Regional Office.

Certificate of Need staff are interested in your experience with the CON process for this project. Please take a short survey to let us know how we are doing. The web address to the survey is <https://www.surveymonkey.com/s/9Y6258P>

If you have any questions regarding this letter, please contact the Bureau of Project Management at 518-402-0911, New York State Department of Health, Center for Health Care Facility Planning, Licensure and Finance, Room 1842, Coming Tower, Empire State Plaza, Albany, New York 12237.

Sincerely,



Charles P. Abel  
Deputy Director  
Center for Health Care Facility  
Planning, Licensure and Finance

Enclosure

New York State Department of Health  
Division of Planning and Licensure

# CONSTRUCTION START CONFIRMATION

Upon the start of construction, please complete the following information and return this form to:

Bureau of Project Management  
New York State Department of Health  
ESP - Corning Tower - Room 1842  
Albany, New York 12237

CON Project Number: \_\_\_\_\_ County: \_\_\_\_\_

Facility Name: \_\_\_\_\_

Project Description: \_\_\_\_\_  
\_\_\_\_\_

Construction Start Date: \_\_\_\_\_

Percent Complete to Date (if any): \_\_\_\_\_ %

Anticipated Completion Date: \_\_\_\_\_

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Exhibit V

## To Nicholson Aff.

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") dated as of November ~~10~~<sup>20</sup>, 2015 by and between HBL SNF, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (hereinafter referred to as the "Operator/Tenant") and WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 200, Peabody, MA 01960 ("WPHCP") (hereinafter referred to as the "Developer") (collectively the "Parties");

WHEREAS, the Operator/Tenant has requested the Developer to design and construct a 160 Bed Skilled Nursing Facility at 116-120 Church Street, White Plains, New York; and

WHEREAS, the parties have simultaneously herewith entered into that certain operating lease by and between Developer as Landlord and Tenant/Operator, as Tenant dated as of the date hereof for a 160 bed skilled nursing facility at 116-120 Church Street, White Plains, New York (the "Lease"); and

WHEREAS, the Developer desires to design and construct said facility upon the conditions set forth herein;

NOW, THEREFORE, in consideration of one (\$1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, the Operator/Tenant and the Developer hereby mutually covenant and agree as follows:

**ARTICLE I  
DESCRIPTION OF THE DEVELOPMENT**

The Project to be developed, designed and constructed shall consist of a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Project") at 116-120 Church Street, White Plains, New York (the "Church Street Location") bounded and described and more particularly set forth in Exhibit A annexed hereto (the "Land"). Developer reserves the right to change the site, subject only to the prior approval of the DOH should it become impracticable or commercially unfeasible to construct the Project on the Church Street Location.

A. The Developer has caused The Architectural Team, 50 Commandant's Way, at Admirals Hill, Chelsea, MA 02150 (the "Architect") to prepared outline drawings and specifications for the development of the Project (the "Outline Plans and Specifications 3<sup>rd</sup> Edition") which satisfies the design standards of the New York State Department of Health ("DOH"). The Operator/Tenant has reviewed and approved the Outline Plans and Specifications 3<sup>rd</sup> Edition. The Developer has submitted the Outline Plans and Specifications 3<sup>rd</sup> Edition to DOH for approval.

B. The Parties acknowledge and agree the 1<sup>st</sup> and 2<sup>nd</sup> Editions of the Outline Plans and Specifications have been provided by Developer, approved by Operator/Tenant, and

submitted to DOH as required. The parties acknowledge that all municipal entitlements have been received for the Land, based upon the approved 2<sup>nd</sup> Edition of the Outline Plans and Specifications, except that a building permit and trade permits have yet to be applied for as of the date of this Agreement. The Operator/Tenant acknowledges that Developer has received approvals of the Outline Plans and Specifications 2<sup>nd</sup> Edition for 179 beds from all other federal, state, municipal and other governmental authorities having jurisdiction thereof (collectively, the "Approving Authorities") and requests that Developer resubmit to the Approving Authorities the Outline Plans and Specifications 3<sup>rd</sup> Edition for 160 beds.

C. After the Outline Plans and Specifications 3d Edition have been approved (the "Plans and Specifications"), no material amendments to the Plans and Specifications will be made without the prior written consent of Developer, Operator/Tenant and the Approving Authorities. The Developer will not be required to make proposed changes which do not comply with the provisions of this section. In the event of disputes as to whether changes proposed by Operator/Tenant constitute impermissible deviations from the criteria described above, the matter will be submitted for determination to Developer's Architect, whose decision will be final. Except as provided in Article IV hereof, the Project shall be constructed in accordance with the Plans and Specifications.

## ARTICLE II PERMITS AND APPROVALS

A. The Operator/Tenant is the applicant under that certain Certificate of Need Project No. 092058B, entitled Westchester Health Care Properties, LLC, which was contingently approved by the DOH and The Public Health and Planning Council on October 11, 2012 (the "CON"), to establish and construct a 160 bed skilled nursing care facility at Church Street Location (the "Contingent Approval").

B. Developer shall be responsible for using commercially reasonable efforts to obtain, based on the Outline Plans and Specifications 3<sup>rd</sup> Edition, all permits and approvals without limitation, from all governmental and regulatory agencies other than the DOH, exercising jurisdiction over the development of the Project (collectively the "Approvals"). Operator/Tenant shall cooperate and sign all necessary applications and other documents as may be required from the Operator/Tenant in order to obtain the Approvals. All fees and costs incurred by the Developer in obtaining the Approvals shall be included in the Project Cost (as hereinafter defined).

C. The Operator/Tenant shall be solely responsible for obtaining, at its sole cost, all necessary DOH approvals regarding the Project, including the CON, and any amendments or modifications thereto, (all such approvals collectively the "DOH Approvals"), provided that the Developer shall cooperate with Operator/Tenant, and interface with DOH as necessary, with respect to obtaining the DOH approvals of the Outline Plans and Specifications 3rd Edition.

## ARTICLE III DEVELOPER AND TENANT/OPERATOR RESPONSIBILITIES

A. The Operator/Tenant shall satisfy each and every requirement contained in the Contingent Approval including without limitation:

- (1) Payment of the DOH fees of at least \$309,760,
- (2) Submission and DOH approval of the Outline Plans and Specifications 3rd Edition,
- (3) Evidence of Operator / Tenant's Working Capital Loan (hereinafter defined),
- (4) Signed agreements for the so-called bed rights (requires payment of at least \$345,000.

The payment for items III A. (1) and (4) shall be included in disbursements to be made to Developer from the proceeds of the Waterville/Salem Financing (defined below).

B. The Operator/Tenant shall at its sole expense do all things necessary to assure and confirm its ownership of the so-called bed rights necessary for the CON and the Project.

C. Upon the satisfaction of all contingencies set forth in Article VII (unless otherwise agreed to by Developer, in writing), the requirements contained in the Contingent Approval and in Section 3(c), the Developer shall promptly initiate development of the Project in accordance with the Plans and Specifications. The quality of the materials and workmanship on the Project shall meet or exceed all applicable governmental and building industry standards, including all DOH standards for occupancy.

D. Developer shall use commercially reasonable efforts to cause the Project to be substantially completed and ready for occupancy within 22 months following the receipt of all Approvals and DOH Approvals and financing necessary for the Project Developer shall be responsible to start and finish the Project within the guidelines and the dates set forth by DOH in the final approval letter, as may be adjusted in accordance with DOH regulations.

E. Except for the DOH Approvals, the Developer shall be responsible for all for all development costs including, but not limited to, obtaining the site plan approval, sewer and water hookups and approvals, Department of Transportation, Land Acquisition, Demolition, Cleanup, "Land Carry" (Real estate taxes and insurances prior to C of O), Zoning, Legal, Estimating and Construction Management Fees, Architects, Engineers, Designers and other engineering professionals, Testing, Borings, Hazmat Surveys, Site Surveys, Industrial Hygienists, Reproductions, Signage, printing, fences, Building Permits, and Construction Costs.

F. The Developer will maintain at its onsite office, the outline Plans and Specifications, any amendments thereto and any other drawings relating to the development and make the same available to Operator/Tenant for inspection and will furnish them copies thereof, if requested. Upon written request, the Developer will provide Operator/Tenant with copies of all certificates and requisitions (together with appropriate backup documentation) of Developer and of its architects, engineers and subcontractors pertaining to the Project and will also provide Operator/Tenant with copies of all certificates and requisitions of Developer delivered to the construction lender.

G. The Developer shall (1) enter into a construction contract (the "Construction Contract") acceptable to the Construction Lender with Congress Building Corp. ("Congress") or

an entity controlled by Congress, located at 2 Bourbon Street, Peabody, MA 01960 and (2) require that Congress will provide 100% Performance & Payment bonds from a Surety on the accredited list of the U. S Treasury, (which list is published annually by the Federal Register), to guarantee the undertakings, covenants, terms, conditions and agreements of the Construction Contract, and such bond will include the Developer and the Construction Lender (if required by lender) as obligees. Developer shall provide such guarantees of completion as may be required by the Construction Lender.

H. The Project will be a "turnkey job" as said term is commonly used in the construction trade except that Operator/Tenant shall purchase or lease its own minor movable equipment, expendables, computers, business equipment, maintenance tools and supplies. Operator/Tenant shall purchase the FF&E from Developer for \$1,500,000.00, the payment for which shall be disbursed to Developer from the Waterville/Salem Financing.

I. Except as provided in the Lease, on the Substantial Completion Date the Tenant/Operator shall (i) be deemed to have taken occupancy and accepted possession of the Project, (ii) have agreed that the Project has been completed in accordance with the Plans and Specifications, and (iii) have agreed that the Developer has fulfilled all of its responsibilities hereunder to the satisfaction of Tenant/Operator.

J. Operator/Tenant /Tenant shall grant to Developer a perfected security interest in all assets of Operator/Tenant including the CON, and an executed lease for the Project, personally guaranteed by the principals of the Operator/Tenant. The lease, security and underlying security agreement shall provide that in the event that the Operator/Tenant defaults, Developer may assume control of the CON and/or any licenses owned or controlled by Operator/Tenant ("Licenses"), and or other collateral, and is authorized to proceed with the Project as it deems necessary using the CON and/or Licenses, and/or the other collateral provided.

K. An affiliate of Operator Tenant, owned and controlled by Lizer Jozefovic, is in the process of refinancing a nursing facility located in Westchester County, N.Y. referred to herein as "Waterville/Salem". Operator Tenant and Lizer Jozefovic shall cause Waterville/Salem to deliver the proceeds of the refinancing of Waterville/Salem (the "Waterville/Salem Financing") in the amount of at least \$3,900,000 to Operator/Tenant and Developer.

L. If the Working Capital Loan (defined below) is not already committed by either the Mezzanine Lender or the Construction Lender as a separate loan, at least six months prior to the proposed Substantial Completion Date, the Operator/Tenant shall make diligent, truthful and proper applications to Institutional Lenders as such term is defined in Article 12-D of the NYS Banking Law, for working capital financing for the operation of the project in the amount of not less than reasonably required by Developer and the Construction Lender ("Working Capital Loan") and to furnish, without delay, such verifications of bank accounts and employment, or any other instruments or information as may be required by the Institutional Lenders in the processing of the Operator/Tenant's applications. The Working Capital Loan shall be secured by a lien against Operator/Tenant's accounts receivable and other assets. For the avoidance of

doubt, the Working Capital Loan shall be in addition to, and not in lieu of, the working capital/initial operating deficit/rent payment reserves which shall be required by the Construction Lender.

M. Operator/Tenant shall inform the Institutional Lenders that the Construction Lender and holder of the Permanent Financing has or will have a first lien against all assets of Operator/Tenant (to the extent permitted by applicable law) and that an intercreditor agreement shall be required of the Institutional Lender.

N. Operator/Tenant represents and warrants that its principals understand and agree that a personal guaranty of the Lease shall be required from them.

ARTICLE IV  
TOTAL DEVELOPMENT COST  
CHANGES IN DESIGN OR DEVELOPMENT COST

A. As of the date hereof, the total project cost approved by DOH is \_\_\_\_\_ (the "Approved Project Cost"). The Parties acknowledge and agree that the actual total cost of the Project ("Project Cost") as of the date hereof is approximately \$60.0 million, is not possible to exactly ascertain as of the date of this Agreement due to circumstances beyond the control of all parties to this Agreement, and is projected to be greater than the Approved Project Cost. From time to time, the Developer will advise the Tenant/Operator of Developer's then best estimate of the Project Cost. The Tenant/Operator shall file and diligently pursue with DOH all applications required to increase the Approved Project Cost such that it equals the then best estimate of the Project Costs. The Developer shall provide to the Operator/Tenant prompt notice of, and substantiation for any increases in Project Cost, at the earliest possible date (and if practicable within 90 days of such increase), for submission to DOH pursuant to the applicable Sections of DOH regulations.

B. The Operator/Tenant may desire changes in the Plans and Specifications for the Project consisting of additions, deletions or other revisions for the Project ("Contract Changes"). All requests for Contract Changes for the Project shall be authorized by a change order submitted on standard change order form prepared by Developer (the "Change Order"). Subject to paragraph C. below, any Change Order, requested by Operator/Tenant, shall not be effective, nor shall the Developer be required to proceed with any such Change Order, until the Operator/Tenant obtains the approval of the DOH for an increase in Project Cost resulting from such Change. Developer shall cooperate with the Operator /Tenant to obtain any such DOH approvals.

C. Notwithstanding anything to the contrary, if Operator/Tenant requests that Developer proceed with a Contract Change based on a Change Order that has not been approved by DOH, any increase in the Project Cost resulting from such Change Order requested by



Operator/Tenant ("Operator/Tenant Required Cost") will be the responsibility of Operator/Tenant. At the sole option of Developer, any Operator/Tenant Required Cost will be either (i) paid in full by Operator/Tenant to Developer within 30 days of invoice to Operator/Tenant, or (ii) added to the Fixed Rent (as defined in the Lease) pursuant to Section 3.2(IV) thereof.

**ARTICLE V  
AUTHORIZED REPRESENTATIVES**

A. Operator/Tenant's Representative. Operator/Tenant shall designate an individual to represent it on all matters regarding the Project (the "Operator/Tenant's Representative"). Operator/Tenant's Representative shall be reasonably available at all times during which development activities are taking place. The Operator/Tenant's Representative shall have the authority, on behalf of Operator/Tenant, to approve changes in the scope of this Agreement and the Project, render decisions with respect to the Project and approve all Contract Changes and Change Orders, as provided hereinabove. Any changes in this Agreement and Contract Changes or Change Orders authorized by the Operator/Tenant's Representative shall be binding upon Operator/Tenant. Operator/Tenant hereby designates Lizer Jozefovic as its Operator/Tenant's Representative, and he will remain as such until Operator/Tenant gives Developer forty-eight (48) hours prior written notice that a change in its Developer's Representative.

B. Developer's Representative. Developer hereby designates William Nicholson as its representative on all matters regarding the development of the Project, and he shall remain as such until Developer gives Operator/Tenant forty-eight (48) hours prior written notice of a change in its Developer's representative.

**ARTICLE VI  
DEVELOPER FINANCING**

Developer Financing. The Developer, at its sole cost and expense, shall use commercially reasonable efforts (including providing a sufficient balance sheet and such personal financials as reasonably required by the Construction Lender), and shall be responsible for procuring all development financing for the Project (the "Construction Loan"). The Operator/Tenant shall be responsible for and hereby covenants to cooperate with the Developer in the prompt preparation and delivery of any and all financial projections, business plans, market studies, discharge capture plans, and any other such information, data, or projections concerning the operations, personal financial statements of the Operator/Tenant and its principals, as the Lender or Developer may request from time to time. The Operator/Tenant further covenants and agrees to file and or apply at the request of the Developer and/or its designated Health Care Consultant or attorney any and all applications, modifications or other requests for a change in the approval or its terms (as defined herein) or an increase in the Approved Project Cost.

**ARTICLE VII  
CONTINGENCIES**

A. The Developer shall have obtained all Approvals for the development of the Project based upon the Outline Plans and Specifications, 3d Edition, 160 Beds. The Parties acknowledge that all necessary land use approvals for the development of the Project have been previously obtained based upon the approved Outline Plans and Specifications, 2<sup>nd</sup> Edition, 179 Beds. The Operator/Tenant agrees to assist and fully cooperate with Developer in connection with obtaining the Approvals.

B. The Developer shall have obtained a Construction Loan or other financing acceptable to the Developer and the DOH which upon completion shall convert to permanent mortgage financing (the "Permanent Financing") in an amount which is at least 75% of the Project Cost.

C. The Operator/Tenant shall have obtained all DOH Approvals.

With regard to each of the foregoing contingencies (the "Contingencies") each Party agrees to exert, vigorously and expeditiously, all necessary efforts on its behalf to initiate or assist in the satisfaction of each of the Contingencies. Each Party agrees to do nothing that would be detrimental to the satisfaction of the Contingencies.

**ARTICLE VIII  
SUBSTANTIAL COMPLETION DATE**

The "Substantial Completion Date" shall mean the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Architect, that the Project was substantially completed and in substantial compliance with the Plans and Specifications for the Project, (ii) the date Developer delivers a Temporary Certificate of Occupancy (the "TCO") for the Project, and (iii) the date the DOH approves the Project as constructed (but not necessarily the Operator/Tenant's operations) to accept patients, provided, however, if the Developer is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Operator/Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (i); Developer will give Operator/Tenant thirty (30) days' notice of the date Developer expects to be the Substantial Completion Date.

**ARTICLE IX  
HOLD HARMLESS**

A. Developer agrees to indemnify and hold harmless Operator/Tenant, and its managers, officers and employees from and against any and all claims, including reasonable legal fees, liability costs and expenses to the extent arising out of Developer's breach of this Agreement or in connection with, the work undertaken in the Project by the Developer.

B. Operator/Tenant agrees to indemnify and hold harmless Developer and its managers, officers and employees from and against any and all claims, including reasonable legal fees, liability costs and expenses, to the extent arising out of Operator/Tenant's breach of this Agreement or the negligence or willful acts of the Operator/Tenant or any of its employees or agents.

**ARTICLE XI  
PUNCH LIST PREPARATION**

On or prior to the Substantial Completion Date, the Operator/Tenant, the Developer and the Architect, whose decision will be final with respect to all construction matters, shall jointly prepare a list of the items for the Project that remain to be completed or corrected, assign a dollar value for the cost to complete the work and estimate a reasonable time for its completion or correction (collectively the "Punch List"). The Developer shall cause the Construction Lender to withhold 125% of such value. Upon approval of the Architect, and Construction Lender, as any items are completed on the Punch List, those monies withheld by the Construction Lender on account of such uncompleted Punch List items shall be released to Developer.

**ARTICLE XII  
REPRESENTATIONS AND WARRANTIES OF OPERATOR/TENANT**

Operator/Tenant represents and warrants to Developer that:

- A. It is a New York limited liability company and in good standing under the laws of New York State.
- B. It has obtained all necessary consents to enter into this Agreement and perform its obligations hereunder.
- C. This Agreement will not violate the terms of any other agreement by which the Operator/Tenant may be bound.

**ARTICLE XIII  
REPRESENTATIONS AND WARRANTIES  
OF DEVELOPER**

Developer represents and warrants to Operator/Tenant that:

- A. It is a Massachusetts limited liability company and in good standing under the laws of the Commonwealth of Massachusetts.
- B. It has obtained all necessary Limited Liability Company consents to enter into this

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Agreement and perform its obligations hereunder.

C. It has obtained all necessary limited liability company authorizations to enter into this Agreement.

**ARTICLE XIV  
PAYMENTS BY DEVELOPER**

Developer shall pay in a commercially reasonable manner all labor, materials and all liabilities incurred in the performance of its obligations under this Agreement.

**ARTICLE XV  
WARRANTY**

All Warranties shall be provided and enforceable solely in the Lease.

**ARTICLE XVI  
MISCELLANEOUS**

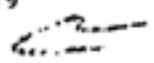
A. Applicable Law. This Agreement has been entered into, and shall be governed by, the laws of the State of New York.

B. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. This Agreement is assignable by Developer to any joint venture, partnership or limited liability company in which William Nicholson, or an entity controlled, directly or indirectly by him, is a principal thereof, and to any lender or lenders of Developer. Upon such assignment and assumption by the assignee of all obligations of Developer under this Agreement, the existing Developer shall be relieved of all obligations hereunder.

C. Survival of Representations and Warranties. All representations and warranties in this Agreement shall survive the Substantial Completion Date.

D. Further Action. The Parties agree to execute and deliver all documents, provide all information and take, or refrain from taking, all such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

E. Notices and Addresses. Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be deemed to have been given, served and delivered if delivered by recognized national overnight carrier, or mailed by United States registered or certified mail, addressed to the party entitled to receive the same at his address set forth below, or sent by fax (with a copy sent by first class mail). Each party hereto may change his mailing address by giving to each other party hereto,



written notice of such new address in the manner provided above. Except wherever specified in this Agreement, any notice shall be deemed to have been served and delivered on the date on which such notice is faxed (provided a copy is sent by first class mail), hand delivered, or two (2) days following the date it is mailed.

If to Developer:  
White Plains Healthcare Properties I, LLC  
c/oThe Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:  
Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Grog Stoller, Esq.

If to Operator/Tenant:  
HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:  
Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

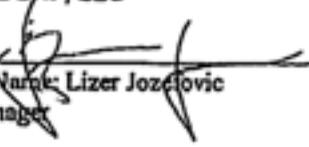
(SIGNATURES APPEAR ON THE FOLLOWING PAGE)



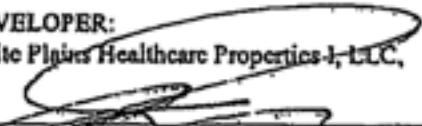
Signature Page for Development Agreement

IN WITNESS WHEREOF, the Parties have hereunto caused this Agreement to be executed the day and year first above written.

OPERATOR/TENANT:  
HBL SNF, LLC

By:   
Name: Lizer Jozelovic  
Manager

DEVELOPER:  
White Plains Healthcare Properties-I, LLC,

By:   
William Nicholson, Manager



**FIRST AMENDMENT DEVELOPMENT AGREEMENT**

This First Amendment Development Agreement (the "Amendment") dated as of July 12, 2017 by and between HBL SNF, LLC ("Operator/Tenant") and WHITE PLAINS HEALTHCARE PROPERTIES I, LLC (the "Developer") amends that certain Development Agreement dated November 19, 2015 (the "Agreement") by and between the Parties.

WHEREAS, the Parties have entered into the Agreement; and

WHEREAS, the Parties wish to amend the Agreement.

NOW, THEREFORE, in consideration of one (\$1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, Operator/Tenant and Developer hereby mutually covenant and agree as follows:

1. Capitalized words not otherwise defined herein shall have the meaning giving them in the Agreement.

2. Section G of Article III is amended by deleting it in its entirety and substituting therefore the following:

G. Developer shall (1) enter into a construction contract (the "Construction Contract") acceptable to the Construction Lender with Congress Building Corp. ("Congress") or an entity controlled by Congress, located at 2 Bourbon Street, Peabody, MA 01960 and (2) require that contractor will provide Subcontractor Default Insurance. Developer shall provide such guarantees of completion as may be required by the Construction Lender.

3. Except as specifically modified and amended herein, all of the terms, provisions and covenants of the Agreement shall remain unmodified and amended and continue in full force and effect. In the event that any terms of this Amendment shall be inconsistent or in conflict with the terms, provisions and covenants of the Agreement, the terms of this Amendment shall control.

*Signatures On Next Page*



Signature Page First Amendment to Development Agreement

IN WITNESS WHEREOF, the Parties have hereunto caused this Amendment to be executed the day and year first above written.

OPERATOR/TENANT:  
HBL SNF, LLC

By:   
Name: Lizer Jozefovic, Manager

DEVELOPER:  
White Plains Healthcare Properties I, LLC,

By: \_\_\_\_\_  
William Nicholson, Manager

Signature Page First Amendment to Development Agreement

IN WITNESS WHEREOF, the Parties have hereunto caused this Amendment to be executed the day and year first above written.

OPERATOR/TENANT:  
HBL SNF, LLC

By: \_\_\_\_\_  
Name: Lizer Jozefovic, Manager

DEVELOPER:  
White Plains Healthcare Properties I, LLC,

By: \_\_\_\_\_  
William Nicholson, Manager

<< Return to [Search Results](#)

**60278/2020 - Westchester County Supreme Court**

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

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Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

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#	Document	Filed By	Status
151	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
152	<a href="#">EXHIBIT(S)</a> - P (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
153	<a href="#">EXHIBIT(S)</a> - Q (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
154	<a href="#">EXHIBIT(S)</a> - R (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
155	<a href="#">EXHIBIT(S)</a> - S (Motion #5) <i>Bankruptcy Court Order</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
156	<a href="#">EXHIBIT(S)</a> - T (Motion #5) <i>Operating Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
157	<a href="#">EXHIBIT(S)</a> - U (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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158 <a href="#">EXHIBIT(S)</a> - V (Motion #5) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
159 <a href="#">EXHIBIT(S)</a> - W (Motion #5) <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
160 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
161 <a href="#">EXHIBIT(S)</a> - X (Motion #5) <i>Notification of Disposition of Collateral</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
162 <a href="#">EXHIBIT(S)</a> - Y (Motion #5) <i>June 10,2021 Letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
163 <a href="#">EXHIBIT(S)</a> - Z (Motion #5) <i>Publication</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
164 <a href="#">EXHIBIT(S)</a> - AA (Motion #5) <i>Terms of Sale</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
165 <a href="#">EXHIBIT(S)</a> - BB (Motion #5) <i>Amended and Restated Operating Agreement of Waterview</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
166 <a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affidavit of Howard Fensterman</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
167 <a href="#">EXHIBIT(S)</a> - CC (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
168 <a href="#">EXHIBIT(S)</a> - DD (Motion #5) <i>Fed Ex Receipt</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
169 <a href="#">MEMORANDUM OF LAW IN OPPOSITION</a> (Motion #5)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
170 <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Supplemental Affidavit of Brett Bandazian in Partial Joinder and Support of Defendants'/Third-Party ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
171 <a href="#">EXHIBIT(S)</a> - 6 (Motion #5) <i>Exhibit 6 Certificate</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
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172	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF CROSS-MOTION</a> (Motion #5) <i>Second Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants'/T ... show more</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
173	<a href="#">EXHIBIT(S)</a> - 7 (Motion #5) <i>Exhibit 7 - Article</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
174	<a href="#">ORDER TO SHOW CAUSE</a> (Motion #5)	Court User Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
175	<a href="#">NOTICE OF ENTRY</a>	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
176	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> *Corrected*	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
177	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> (Motion #5) *Corrected* <i>Notice of Appeal</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
178	<a href="#">COUNTY CLERK CERTIFICATION OF MINUTES</a>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
179	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 1 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
180	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 2 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
181	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/10/2021 Received: 08/10/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
182	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/13/2021 Received: 08/13/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
183	<a href="#">NOTICE OF MOTION</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
184	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affirmation of Alfred E. Donnellan, Esq.</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
185	<a href="#">EXHIBIT(S)</a> - 1 (Motion #6) <i>Summons &amp; Complaint - Westchester County action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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186	<a href="#">EXHIBIT(S)</a> - 2 (Motion #6) <i>Answer with Counterclaims and Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
187	<a href="#">EXHIBIT(S)</a> - 3 (Motion #6) <i>Amended Verified Complaint 2020.11.30</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
188	<a href="#">EXHIBIT(S)</a> - 4 (Motion #6) <i>Reply to Counterclaims and Answer to Third-Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
189	<a href="#">EXHIBIT(S)</a> - 5 (Motion #6) <i>First Amended Verified Complaint 2021.03.22</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
190	<a href="#">EXHIBIT(S)</a> - 6 (Motion #6) <i>Summons &amp; Complaint - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
191	<a href="#">EXHIBIT(S)</a> - 7 (Motion #6) <i>Answer - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
192	<a href="#">EXHIBIT(S)</a> - 8 (Motion #6) <i>Answer of MCB - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
193	<a href="#">EXHIBIT(S)</a> - 9 (Motion #6) <i>Decision and Order 2021.04.08</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
194	<a href="#">EXHIBIT(S)</a> - 10 (Motion #6) <i>First Amended Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
195	<a href="#">EXHIBIT(S)</a> - 11 (Motion #6) <i>Notice to Admit with exhibits</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
196	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of William Nicholson</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
197	<a href="#">EXHIBIT(S)</a> - 12 (Motion #6) <i>Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
198	<a href="#">EXHIBIT(S)</a> - 13 (Motion #6) <i>Development Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
199	<a href="#">EXHIBIT(S)</a> - 14 (Motion #6) <i>Jozefovic Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
200	<a href="#">EXHIBIT(S)</a> - 15 (Motion #6) <i>Neuman Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>

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201	<a href="#">EXHIBIT(S)</a> - 16 (Motion #6) <i>Pledge Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
202	<a href="#">EXHIBIT(S)</a> - 17 (Motion #6) <i>Letter of Intent</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
203	<a href="#">EXHIBIT(S)</a> - 18 (Motion #6) <i>White Plains TCO</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
204	<a href="#">EXHIBIT(S)</a> - 19 (Motion #6) <i>AIA form G704</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
205	<a href="#">EXHIBIT(S)</a> - 20 (Motion #6) <i>NYSDOH letter 2019.12.02</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
206	<a href="#">EXHIBIT(S)</a> - 21 (Motion #6) <i>NYSDOH email 2019.10.01</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
207	<a href="#">EXHIBIT(S)</a> - 22 (Motion #6) <i>Term Sheet 2015.11.20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
208	<a href="#">EXHIBIT(S)</a> - 23 (Motion #6) <i>Jozefovic Affidavit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
209	<a href="#">EXHIBIT(S)</a> - 35 (Motion #6) <i>Operating Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
210	<a href="#">EXHIBIT(S)</a> - 36 (Motion #6) <i>Zafrin e-mail dated 4-11-17</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
211	<a href="#">EXHIBIT(S)</a> - 37 (Motion #6) <i>Estoppel Certificate to Security Benefit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
212	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Edward Tabor</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
213	<a href="#">EXHIBIT(S)</a> - 24 (Motion #6) <i>Itemization of amounts due under lease and LOI</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
214	<a href="#">EXHIBIT(S)</a> - 25 (Motion #6) <i>List of Rents &amp; Late Charges</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
215	<a href="#">EXHIBIT(S)</a> - 26 (Motion #6) <i>Notice of Default</i> # <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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216	<a href="#">EXHIBIT(S)</a> - 27 (Motion #6) <i>Accelerated Rent (NPV)</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
217	<a href="#">EXHIBIT(S)</a> - 28 (Motion #6) <i>Professional Fees</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
218	<a href="#">EXHIBIT(S)</a> - 29 (Motion #6) <i>Security Benefit Notice of Default dated 4-16-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
219	<a href="#">EXHIBIT(S)</a> - 30 (Motion #6) <i>Notice of Default 5-22-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
220	<a href="#">EXHIBIT(S)</a> - 31 (Motion #6) <i>Complaint in Security Benefit Foreclosure Action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
221	<a href="#">EXHIBIT(S)</a> - 32 (Motion #6) <i>Itemization of Amounts Due</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
222	<a href="#">EXHIBIT(S)</a> - 33 (Motion #6) <i>Unreimbursed Deposits and Payments</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
223	<a href="#">EXHIBIT(S)</a> - 38 (Motion #6) <i>Payment of Real Estate Taxes</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
224	<a href="#">EXHIBIT(S)</a> - 39 (Motion #6) <i>Certificates of Insurance</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
225	<a href="#">EXHIBIT(S)</a> - 40 (Motion #6) <i>Tenant Insurance Analysis</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Exhibit W

## To Nicholson Aff.

**HBL-SNF, LLC**  
**1280 Albany Post Road**  
**Croton-on-Hudson, NY 10520**

November 20, 2019

White Plains Healthcare Properties, I, LL  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William Nicholson

**Re: Letter of Intent**  
**Premises: 116-120 Church Street**  
**White Plains, New York**

Dear Mr. Nicholson

This Letter of Intent ("LOI") outlines our proposal for White Plains Health Care Properties, I, LLC (the "Contributor") to transfer the premises known as 116-120 Church Street, White Plains New York (the "Premises") to a Delaware Statutory Trust where we would jointly hold the beneficial interests in the Trust on the terms and conditions set forth below. The Building a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Facility") had been constructed pursuant to a Development Agreement dated November 19<sup>th</sup>, 2015 and for which we had simultaneously entered into that certain operating lease by and between you as Landlord and us as Tenant/Operator, (the "Lease").

- 1) **Basic Transaction:** (the "Transaction"): Contributor shall contribute premises 116-120 Church Street White Plains, New York to a newly formed Delaware Statutory Trust (the "Trust") formed by the parties. This transaction shall be memorialized by a contribution agreement in substantially the form annexed hereto as Exhibit A. The Contribution shall be governed by IRC Sec. 721. The agreed upon cost and fair market basis shall be \$67,345,348.00
  - a) Lizer Jozefovic and Mark Neuman will acquire from the Trust by a Purchase Agreement 77.50 Percent of the Beneficial Interests in the Trust and redemption of a portion of the B Beneficiaries' interest for a purchase price of \$52,200,000.00 paid as follows;
    - i) By a down payment (the "Down Payment") not to be held in escrow, but to be made upon the execution and delivery of this LOI of \$2,200,000.00 by wire transfer to the account of White Plains Healthcare Properties I, LLC according to the wire instructions annexed hereto.
    - ii) By the Trust obtaining a new first mortgage of \$51,000,000.00 to pay the balance of the Purchase Price and cover closing costs to be used as follows;

- (1) To pay the first Mortgage held by Security Benefit Life Insurance in the approximate amount of \$39,226,253 plus accrued interest and fees.
  - (2) To pay the loan encumbering the membership interests of the Contributors by Bradford Allen in the approximate amount of \$9,770,963 plus accrued interest and fees;
  - (3) By the Trust making a non-refundable down payment of \$2,200,000.00
  - (4) To pay the costs of the financing.
- b) Lizer Jozefovic and Mark Neuman shall be the A Beneficiaries of the trust holding a 77.50% Beneficial interest, and the present members of the Contributor or their designees shall be the B Beneficiary with a 22.5% equity position.
  - c) The A Beneficiaries shall be the personal guarantors of the new financing in the amount of Fifty-One Million (\$51,000,000.00) Dollars. The Transaction is to close thirty (30) days after Buyer has received approval for the Financing set forth in paragraph 1)a) ii)). The Contribution Agreement shall call for a purchase price equal to Transferors cash basis in the property and shall not result in a taxable event for Contributor;
  - d) The Financing shall be an obligation of the Trust secured by a first mortgage loan on the Facility and the Premises.
  - e) Lizer Jozefovic and Mark Neuman shall act as the Personal Guarantors and shall be obligated if necessary, to secure additional personal guarantors to ensure that none of the B beneficiaries shall have any obligation to guarantee the Financing. Any additional guarantors on the Financing shall also execute and deliver a personal guaranty of Tenant's obligations to Landlord on the Lease. All guaranties on the Lease shall be full unlimited personal guarantees.
  - f) The Financing shall bear interest at a constant rate of no more than 7% per annum with Principal and Interest paid on an amortization schedule of 35 years and shall be subject to the reasonable approval of the Contributor, which consent shall not be unreasonably withheld or delivered without cost to the Tenant Borrower.
  - g) Formal Contracts: The Parties intend that additional agreements including the Contribution Agreement, Redemption Agreement and Trust Agreement (the Formal Contracts") shall be complete as of November 22nd, 2019, and absent execution of Formal Contracts this LOI shall govern provided the Down Payment is received in good funds by Contributor upon execution of this LOI, and in no event later than the end of business November 22, 2019. In the event Tenant defaults in the payment of rent on the Lease and such default continues for five (5) days, Contributor shall have the right to terminate this LOI and all Formal Contracts.
  - h) Closing: The Closing of the Transaction ("Closing") will occur at the offices of the First Mortgagee Bank's counsel or such other location within the State of New York as may be agreed upon by the Parties thirty (30) days after receipt by the Trust of approval for

the Financing but no later than April 1st, 2020. If the Tenant has a commitment letter on April 1<sup>st</sup>, 2020 that is in the process of closing or if the closing is delayed by a title issue, the closing date shall be automatically extended for another Ninety-Days. If the closing does not occur by such date, time being of the essence, this LOI and the Formal Contracts shall be terminated and no party shall have any rights with respect thereto. The parties shall remain as Landlord and Tenant pursuant to the existing Lease until such time as the Transaction closes. The Lease may be amended as provided herein but only if and when such amendments are approved by Contributor's existing Lender.

- 2) **Structure of the Trust:** The Contributor and Tenant have agreed to create a Trust as a "statutory trust" in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. 3801 and enter into a Trust Agreement which shall constitute the "governing instrument" of the Trust. Each party will become a Beneficiary and will transfer certain sums of money and/or property to the Trust in exchange for a beneficial interest in the Trust as set forth above;
  - a) The Trust shall be a special purpose entity which is being formed solely for the purpose of acquiring the Trust Property from the Contributor and maintaining, improving, building upon, and leasing the Trust Property for use as a skilled nursing facility and all and such other activities incident or appropriate to the preceding
  - b) Simultaneously upon the closing of the transaction, the existing lease shall be modified only as set forth herein.
  - c) The trust shall be permitted to have only the following liens on the Trust Property and no other:
    - i) A Mortgage in the amount of Fifty-One Million (\$51,000,000.00) Dollars (the "First Mortgage") the terms of which shall be acceptable to the Department of Health and the Contributor.
    - ii) The Trust will designate Howard Fensterman and William Nicholson as the Administrative Trustees of the B interests.
      - (1) The Trust Agreement shall provide that Howard Fensterman and William Nicholson as the B beneficiaries Administrative Trustees shall have the sole authority to all issues governing administering and enforcing the terms of the Lease including the collection and distribution of rent.
      - (2) Lizer Jozefovic shall be responsible as the overall Administrative Trustee for all other matters concerning the building including but not limited to repairs, maintenance, and operation of the building. Any Trustee may be removed for cause including misconduct, bad faith, fraud or gross negligence.
      - (3) Except as otherwise provided in a Trust Agreement to be executed and notwithstanding any provision of the Act that otherwise so empowers the Trust, neither the Beneficiaries nor any Trustees nor any other Person shall be authorized or empowered, nor shall they permit the Trust, to take any of the following actions

without the prior unanimous written consent of all of the Beneficiaries:

- (a) Make any arrangements to reduce, modify, or forebear on the payment of rent by the Tenant.
- (b) Guarantee any obligation of any Person, including any Affiliate;
- (c) engage, directly or indirectly, in any business other than the actions required or permitted to be performed hereunder;
- (d) incur, create or assume any indebtedness;
- (e) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person;
- (f) To the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of their Interests subject to obtaining any approvals required under this Trust Agreement other than a sale of the interests to qualified purchasers under a syndicated offering of the B interests. The cost of such syndication shall not be charged to the B Beneficiaries and all monies derived therefrom and due hereunder shall be net of the costs of the syndication.
- (g) allow any business to be conducted on the Property other than the operation of a skilled nursing facility and ancillary uses;
- (h) own any other property or engage in any business other than owning and leasing the Trust Property for use as a skilled nursing facility;
- (i) take any action to consolidate or merge the Trust with or into any Person;
- (j) sell all or any portion of or any interest in the Trust Property;
- (k) grant an option to lease all or any portion of the Trust Property for a term (with all extension periods) ending on or after the 45th Anniversary Date;
- (l) amend, terminate or waive any material provisions of any lease for all or any portion of the Trust Property;
- (m) enter into any agreement with any Person giving any Person any rights with respect to the Trust Property that extend beyond the 45th Anniversary Date or which are not terminable without penalty on less than 90 days' notice;
- (n) encumber the Trust Property with any mortgages or another lien, easement, covenant or restriction other than the First Mortgage, or a HUD Mortgage to refinance the debt contemplated by this Agreement, at such time as HUD regulations shall allow;
- (o) modify the Trust Agreement or the Trust's certificate of trust in any manner, issue additional Interests in the Trust to any Person, or modify the rights and privileges of the Interest owners;
- (p) institute proceedings to have the Trust be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Trust or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequester (or other similar official) of the Trust or a substantial part of its property;
- (q) make any assignment for the benefit of creditors of the Trust;

- (r) admit in writing the Trust's inability to pay its debts generally as they become due;
  - (s) take action in furtherance of any of the foregoing actions; or dissolve or liquidate the Trust.
- iii) The 22.5% of the Trust Owned by the B Beneficiaries interest shall be subject to a Redemption Agreement where the B interests shall be sold to the A interests or their designees, assigns or transferees, over five years for a total price of \$19,800,000.00 in four tranches each representing interests of 5.625% each
- (1) Tranche one on or before August 1, 2020 in the amount of \$3,786,250.00
  - (2) Tranche two on or before August 1, 2021 in the amount of \$3,786,250.00
  - (3) Tranche three on or before August 1, 2022 in the amount of \$3,786,250.00
  - (4) Final Tranche by August 1, 2023 in the amount of \$8,441,250
- iv) Any purchase of the membership interests shall be a purchase of Beneficial Interests from the B Beneficiaries and shall reduce the Priority Return proportionate to the payments as a percentage of the total remaining price of \$19,800,000, which is the balance after payment of the non-refundable Down Payment.
- v) The A Beneficiaries shall prepare at their sole cost and expense of the A Beneficiaries a Private Placement Memorandum for the Sale of Membership interests in the Trust by a Broker Dealer who specializes in sales of marginal interests in Delaware Statutory Trusts to individuals and other entities who have to designate property as target property in connection with 1031 Exchanges of Property. The A Beneficiaries shall have the right to designate a portion of their membership interests as C interests for the purpose of selling them as part of the same syndication, provided that (1) there is no change in control of the A Beneficiaries or the Tenant entity.
- vi) The B Beneficiaries will be entitled to a priority return ( the "Priority Return") equal to all available rental and other income over and above the payment of the P&I on the New First Mortgage which shall in no event be less than \$2,000,000 per year (as adjusted by periodic redemptions) and shall be paid to the B Beneficiaries as a Priority Return until such time as they have been fully redeemed pursuant to the Redemption Agreement.
- vii) The Trustee shall deposit all rents and other funds collected from the operation of the Real Estate in the bank designated by the first mortgagee (the "Operating Account") which shall be subject to both a Deposit Account Control Agreement and Deposit Account Instruction Agreement. The Trust shall maintain books and records of the funds from the Real Estate deposited in such account, interest earned thereon, and withdrawals therefrom. The Trustee shall pay from the Operating Account the operating expenses of the Real Estate (other than those paid by a tenant of the Real Estate as set forth in its lease) and any other payments relative to the Real Estate as required by this the Trust Agreement.

viii) The Trustee shall be responsible for receiving all cash from the Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust Agreement. The Trustees shall furnish quarterly and annual reports to each of the Beneficiaries as to the amounts of rent received from the Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficiaries.

ix) To the extent permitted by the Internal Revenue Code depreciation, which shall be calculated on a straight-line depreciation method shall be allocated as follows: a) first to the B Beneficiary to the extent necessary to shelter the Priority return from taxes and b) second to the beneficiaries, pro rata, in accordance with the ownership interests.

3) **Condition of Property and Title:** Contributor shall give, and the Trust and the Trust shall accept, a good and marketable title which any National Title Insurance Company (the "Title Company"), will approve and insure at standard rates, free and clear of all liens, hypothecations, mortgages, easements, and encumbrances, except for the Permitted Exceptions.

i) The Premises is being contributed subject to the following exceptions to the title (the "Permitted Exceptions"):

- (1) Zoning and building regulations, restrictions and ordinances now or hereafter adopted or imposed by any governmental or quasi-governmental body having or asserting jurisdiction over the Premises or any part thereof;
- (2) Future Real Estate taxes, assessments, water charges, sewer rents or other charges not yet due and payable (subject to apportionment as provided herein) and certified, confirmed or ratified assessment liens and pending assessments, if any;
- (3) The state of facts shown on an updated as built survey prepared originally prepared and revised to be an as built survey, (the "Survey") and such additional state of facts which said survey would show or reveal provided such additional state of facts do not render title unmarketable;
- (4) Any state of facts a physical inspection of the Premises would reveal;
- (5) Exceptions permitted by the Title Company (as defined herein) (the "Title Exceptions");

4) All payments made to purchase any portion of the B Beneficiaries 22.5% interest shall also act to proportionally reduce the amount of Priority Return paid to the B beneficiaries under the Trust and the proportionate difference shall be paid to the A Beneficiaries or whoever purchases the B Beneficiaries interests as the case may be.,

a) Distributions: Provided that all required payments set forth herein have been made by the Tenant, During the interim period prior to the purchase of the premises Tenant may pay Management Fees so long as (i) the amount of such Management Fees paid in any twelve-month period shall not exceed five percent (5%) of Tenants' gross revenues for such period

and (ii) there shall not then exist, and/or the paying of such Management Fees shall not cause there to exist, a Default or Event of Default under the Lease the first mortgage on the property or the Tenant's Working Capital Loans, (iii) the Initial Payment, the payment of Rent, and all other payments set forth herein have been made by the Buyer/Tenant.. Upon the occurrence of an Event of Default, Tenant shall not pay Management Fees. The Tenant will make no distributions to its shareholders, officers, affiliates, or any related party unless the Down Payment, the payment of Rent is current, and.

- 5) **Confidentiality and Disclosure:** Tenant and Contributor shall each maintain the confidentiality of all confidential and non-public information supplied by the other. If this Transaction is not consummated, each party shall return all documents obtained to the other. Except as required by law, without the prior written consent of the other party, neither Tenant nor Contributor will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this Letter of Intent. If a party is required by law to make any such disclosure, the parties shall consult with each other and seek to agree upon appropriate language for such disclosure. The Tenant acknowledges that Contributor will be unable to furnish any patient health information unless such disclosure complies specifically and completely with all terms, conditions, regulations, and guidelines in HIPAA.
- 6) **Interim Operation:** Subject to the approval in writing of Contributor's existing Lender, the parties will enter into an amendment of the Lease as follows to allow for the operation of the facility before the closing.
- a) **Commencement Date:**The Commencement Date according to the Lease shall be September 30, 2019.
  - b) **Rent:** An initial rent payment of \$509,000.00 has been paid receipt of which is on account toward the rental period from September 30, 2019 to October 31, 2019 (the "October 2019 Rent") leaving a balance of \$13,735 for October 2019 Rent. November 1, 2019, to November 30, 2019 (the "November 2019 Rent") shall be postponed until November 18, 2019 and shall be paid by Tenant on that date. The next rental payment shall be the December monthly rent amount outlined in the Lease - \$506,097 which shall be paid on December 5, 2019. Also, the Tenant will reimburse the Landlord for their municipal maintenance escrow and utility deposits of \$5,500 and \$60,356, respectively. Such reimbursement payment shall be made on or before December 5<sup>th</sup>, 2019. Upon receipt of the \$60,356 for the utility deposits from the Tenant, Landlord will direct any refund from the Utility companies to the Tenant, or otherwise pay such refund over to the Tenant forthwith provided Landlord has previously received those funds from the Tenant.
  - i) The following amounts are in dispute, and neither party will be obligated to waive their rights and positions by the signing of this agreement. The landlord has demanded the following sums due to their Lender.

- (1) Late and Default Interest costs of \$201,997.34 for September 2019 and October 2019,
- (2) \$19,000 of Late Fees for November 2019,
- (3) \$5,061 per day for Default Interest premium during November 2019.
- ii) The A Beneficiaries and the B Beneficiaries shall jointly negotiate with the Contributor's current Lenders to effectuate the best possible settlement of these late costs (the "Late Costs"). The amounts if any remaining after such joint negotiation will be paid by the 77.5% by the Buyer and 22.5% by the Contributor (provided the Initial Payment, the payment of Rent and all other payments set forth herein are made timely) from Financing proceeds. If not available from the Financing proceeds the Tenant shall pay all Late Costs. .
- c) Security Deposit/ Guaranty: Section 7.1(a)(i) the Lease shall be amended to provide that Tenant shall enter into a Deposit Account Control Agreement with Metropolitan National Bank which can only be revoked with the consent of both parties, which shall provide that each month, the Tenant's Lender shall draw on the loan amount first to pay rent to the Landlord, notwithstanding the adequacy of any accounts receivable borrowing base calculations. This Document shall be part of the Closing Documents on the Tenant's first initial Term Loan and shall be delivered in full effect by December 1, 2019.
- d) Section 7.1(a)(ii) of the Lease shall be amended to provide that the obligation for the Security Deposit shall initially be reduced to 2,000,000 dollars.
  - i) The sum shall be paid by Tenant as follows: (a) Provided that the Contributor has obtained a permanent Certificate of Occupancy the Tenant shall draw the initial \$1,000,00.00 from its credit line on or no later than December 1, 2019. (b) Landlord shall obtain a release of the lien of its Lender on the FF&E, upon delivery of free and clear title to the FF&E the Tenant will enter into a reverse lease and obtain at least \$1,000,000.00 which shall be paid on account of the Security Deposit no later than April 1, 2020.
  - ii) Also, Tenant shall pay the sum of \$40,000 per month commencing January 1, 2020 to be treated as additional rent until there is a total \$3,700,000 posted as Security Deposit under 7.1(a)(i).
- e) Section 7.1(a)(iii) of the Lease shall be amended to provide that instead of delivering the sum of \$1,600,000 in cash, the parties shall enter into a blocked account agreement wherein and whereby account number [REDACTED] 7272 in JP Morgan Chase Bank NA prohibiting any liquidation of that account until the Second Payment is paid. Such account shall be not be posted as collateral security to Landlord's Lender provided the Initial Payment has been made in full, and all payments of Rent are current and the Tenant is not otherwise in Default, except that the Landlord shall have a security interest in such account under a DAISA, which allows the Landlord to demand the liquidation of such account to pay any defaults under the lease.

- f) Working Capital: Section 7.7 of the Lease shall be amended to suspend the requirement for providing the working capital account. The Tenant shall be obtaining a single working capital line for \$8,000,000.00 no later than December 1, 2019.
- g) Right of First Refusal and Option to Purchase: The Tenant's rights with respect to the right of first refusal and option to purchase under Sections 3.7 and 3.7 of the Lease will be suspended pending payment in full of the Security Deposits required by Section 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) of the Lease as amended, the payment of the Initial Payment, the working capital required by Section 7.7 of the Lease and Tenant being in full compliance with the Lease.
- h) Insurance: Tenant shall obtain property insurance, effective as of September 30, 2019, and (2) provide the property insurance, and all other insurances required by the Lease by November 19, 2019, effective retroactively back to September 30, 2019.
- i) Real Estate Taxes: Real estate taxes shall be prorated as of September 30, 2019 and the Tenant's portion shall be paid to the Landlord no later than December 1, 2019, plus any late charges which the City of White Plains may impose.
- j) Utilities: Tenant shall pay actual costs of utilities incurred at the property covering the rental period from September 30, 2019 (pro-rated as the utility company billing periods may require) forthwith upon presentation of invoices for the same from the Landlord, no later than December 1, 2019.
- k) Punchlist: The punch list and all other developer obligations are deemed complete except for.
  - i) The White Plains Outstanding Punchlist November 5, 2019 (the Remaining Punchlist), the value of which is has been determined by the Architect and agreed herein to be \$3,800.
  - ii) The Electric Blinds in rooms (the "Suspended Work") the value of which is agreed herein to be \$35,000.
  - iii) Provided the Initial Payment is made by November 15, 2019 and provided there are no other Defaults by the Tenant, Landlord shall complete the Remaining Punchlist and the Suspended Work to the approval of the Architect, within 45 days from the date of the Contributor's receipt of the Initial Payment. Should Landlord not do so, then the Tenant may credit the agreed values of any uncompleted Punchlist or Suspended Work from the February, 2020 Rent payment, and the Landlord's Work under the Lease and Development Agreement shall be deemed complete.

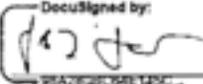
Security: Tenant shall assume all property security obligations as of November 11, 2019.

Upon the closing of the purchase of the premises by the Trust, the Trust shall take an assignment of the lease as amended above.

- 7) **Exclusivity:** In consideration of (1) the Initial Payment, (2) the payment of Rent as set forth herein, and (3) Tenant's efforts in pursuing the Transaction, Contributor agrees that (1) until the termination of this Letter of Intent, or execution of the Formal Contracts and (2) provided the payment of the Initial Payment and the payment of Rent as set forth herein is made, and (3) all other obligations of the Tenant set forth herein,, Contributor will not permit any of its affiliates to, and will not authorize or permit any officer, director, employee, counsel, agent, investment banker, accountant, or other representative of any of them, directly or indirectly, to: (a) initiate contact with any person in an effort to solicit any proposal (other than that contemplated by this Letter of Intent for the acquisition (directly or indirectly , by sale of stock or assets, or by merger or consolidation or otherwise) of the operation of the Real Estate, or any of the Assets, or any other business combination or financing transaction involving such business (a "Proposal"); (b) cooperate with, or furnish or cause to be furnished any non-public information concerning the operation of the Real Estate, to, any person in connection with any Proposal; (c) negotiate or enter into discussions with any person with respect to any Proposal; or (d) enter into any agreements or understanding with the intent to effect a Proposal, Contributor will immediately give written notice to Tenant of the details of any Proposal of which Contributor becomes aware. Contributor will, and will cause its officers, directors, affiliates, agents, and representative to, terminate all discussions regarding a Proposal, other than those with Tenant and its representatives concerning the Transaction, and represents that neither it nor any of its officers, directors, affiliates, agents, or representatives have entered into any executory agreements or accepted any commitments concerning any Proposal other than the Transaction provided that (1) this LOI or successor Formal Contracts has not terminated, and (2) the payment of the Initial Payment, the payment of Rent as set forth herein have all been paid and are current, and (3) all other obligations of the Tenant set forth herein are not in Default and are current.
  
- 8) **Waiver of Claims:** Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the Lease, (3) any claims related to the Cost Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.
  
- 9) **Expenses:** Tenant and Contributor shall each be responsible for their respective accounting, legal, advisory, and other costs and expenses in connection with the Transaction. Tenant shall reimburse Contributor for its legal, advisory and other costs and expenses in connection with the Transaction and the Termination of the Lease. Reimbursement for such legal and transaction fees shall not to exceed \$125,000 and may be made from the proceeds of the Closing, provided the Closing occurs and the Contributor's existing 1<sup>st</sup> Mortgage Loan and Mezzanine Loan are paid off from the proceeds of the Financing by March 31, 2020, and (2) the Initial Payment is made as set forth herein above, and (3) the Tenant is not in default under this LOI or the successor Formal Contracts. Otherwise the \$125,000 cap shall expire and the Tenant shall pay the Contributor all such costs incurred after September 30, 2019.

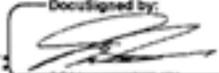
- 10) **Letter of Intent:** This LOI represents a statement of all of the terms, conditions, representations, warranties, indemnities, covenants, and other provisions that would be contained in the definitive documentation for the proposed transactions. This LOI shall constitute a binding agreement upon payment of the or any of their respective affiliates will have any legal obligation under this LOI unless and until one or more subsequent definitive written agreements are mutually executed and delivered by each of Contributor and Buyer. No past, present, or future action, course of conduct, or failure to act relating to the transactions referenced in this LOI or relating to the negotiation of the terms of such transactions will give rise to or serve as the basis for any obligation or other liability on the part of Contributor or Buyer or any of their respective affiliates.[ These changes should be rejected]
  
- 11) **Governing Law:** This Agreement shall be governed by and construed by the internal laws of the State of New York, Venue shall be in Westchester County without application of its conflicts of law rules. If you agree with the preceding, please sign and return one copy of this Letter of Intent.

HBL-SNF, LLC

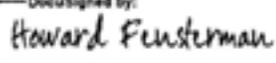
DocuSigned by:  
  
 Lizer Jozefovic

**ACKNOWLEDGED AND AGREED**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Name: William A. Nicholson  
 Title: Manager

**Accepted and Agreed**

DocuSigned by:  
  
 Howard Fensterman

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
– against –  
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants and Third-Party Plaintiff,  
– against –  
CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,  
Third-Party Defendants.

Index No. 60278/2020

**AFFIRMATION OF  
ALFRED E. DONNELLAN**

LIZER JOZEFOVIC,  
Plaintiff,  
– against –  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,  
Defendants.

New York County Index No.  
655549/2020

Consolidated under Westchester  
County Index No. as per April 8,  
2021 Decision and Order.

Alfred E. Donnellan, an attorney duly admitted to practice in the courts of the State of New York, affirms the following to be true under the penalty of perjury:

1. I am a member of the law firm of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, lead counsel for White Plains Healthcare Properties I, LLC (“WPH Properties”), CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson in the above referenced consolidated actions.

2. I submit this affirmation in opposition to the motion of Lizer Jozefovic (“Jozefovic”), joined by Metropolitan Commercial Bank, (“MCB”), seeking to enjoin WPH Properties from

proceeding under Article 9 of the Uniform Commercial Code (the "UCC") to dispose of and/or sell Jozefovic's 71% membership interest (the "Waterview Membership Interest") in Waterview Acquisition I, LLC.

3. For the reasons set forth in the affidavit of William A. Nicholson, sworn to on June 29, 2021, and the accompanying memorandum of law submitted in opposition to the motion, I submit that the motion must be denied and the sale of the Waterview Membership Interest must be allowed to proceed.

4. To begin with, after pledging Waterview Membership Interest to WPH Properties, Jozefovic pledged the same interest to MCB. That violated his covenant in the Pledge Agreement that he would "not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in" Waterview Hills. Nicholson aff., ex. D, at 2, § 3. He did that by amending the Waterview Hills operating agreement to create membership certificates. That also violated his agreement "not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee." Nicholson aff., ex. D, at 2, § 4. WPH Properties did not consent to the amendment that allowed for the assignment of the membership certificate to MCB. WPH Properties acknowledges that MCB's lien is prior to WPH Properties' lien because MCB perfected first. But the UCC nevertheless allows a junior creditor to sell the collateral subject to the senior creditor's lien. And there is no reason that Jozefovic should be allowed to defeat WPH Properties' right to sell the Waterview Membership Interest by subsequently pledging it to MCB in violation of the Pledge Agreement.

5. Beyond that, for the reasons set forth in the accompanying memorandum of law, the

pledge to MCB does not preclude a sale of the Waterview Membership Interest by WPH Properties. MCB's Pledge Agreement (Exhibit B to Bandazian Aff.) only contains a pledge for Jozefovic's uncertificated membership interest in Waterview Acquisition, not a pledge on a certificate. MCB's UCC filing ((Exhibit D to Bandazian Aff.) also describes a pledge on an uncertificated membership interest, not a membership certificate. And while the Amended and Restated Operating Agreement of Waterview Acquisition (Exhibit C to Bandazian Aff.) states in Section 2.8 that membership interests "shall be evidenced by a certificate or certificates the form of which is attached to this Agreement as Schedule 2.8," no such form is attached to the Operating Agreement submitted by MCB to the Court. Finally, MCB did not submit a copy of its purported certificate of membership interest in its opposition papers. There is no evidence that MCB's pledge for the uncertificated membership interest was actually converted to a pledge for a certificated interest. While MCB claims to be in possession of a certificate, no copy has ever been provided and there is no evidence of that documents' existence except for Bandazian's statements to that effect.

6. Nothing in MCB's supplemental submission to this Court shows that the WPH Properties' Pledge Agreement is in any way invalid or that its uncertificated security interest cannot be sold. All MCB provides are arguments relating to the validity of its own pledge and the priority of its interest. But none of those points preclude WPH Properties from exercising their right to sell Jozefovic's membership interest subject to MCB's alleged senior interest. *See supra CMII, LLC, 13Misc3d 1214(A), 2006 WL 2770095*. So far, however, the only evidence MCB has provided is of a UCC filing and an agreement pledging Jozefovic's membership interest, not a membership certificate.

7. N.Y.U.C.C. § 9-625(a) provides that relief from a sale authorized under the UCC may

be obtained only where the secured party is proceeding in a manner not in accordance with Article 9. See *Rapillo v CitiMortgage, Inc.*, 95 UCC Rep. Serv.2d 267 (E.D.N.Y. Mar. 5, 2018) (“[I]n order for an aggrieved party to obtain injunctive relief, section 9-625(a) requires that the secured party presently be proceeding in a manner that is not in accordance with article 9.”); see also *Atlas MF Mezzanine Borrower, LLC v Macquarie Texas Loan Holder LLC*, 174 A.D.3d 150, 162 (1st Dep’t 2019). Because WPH Properties has complied with all of the requirements necessary to sell or dispose of the collateral by public sale pursuant to UCC Article 9, including the notice requirements, the required method, manner, time, place, of the sale and the UCC’s commercial reasonableness requirements, Jozefovic and MCB are not entitled to the injunctive relief they seek.

8. N.Y.U.C.C. § 9-613 sets forth the requirements for notice of a sale under Article 9. On June 9, 2021, WPH Properties sent a Notification of Disposition of Collateral with respect to the Waterview Membership Interest to Jozefovic and Metropolitan Commercial Bank (which also claims to have a security interest in the Waterview Membership Interest), notifying them of a public sale of the Waterview Membership Interest to be conducted on July 1, 2021 at the time and place specified. The Notice describes the debtor (Lizer Jozefovic) and the secured party (WPH Properties). N.Y.U.C.C. § 9-613(a)(1); describes “the collateral that is the subject of the intended disposition,” Jozefovic’s 71% membership interest in Waterview. N.Y.U.C.C. § 9-613(a)(2); states the method of intended disposition, a public sale. N.Y.U.C.C. § 9-613(a)(3); states that Lizer Jozefovic is entitled to an accounting of the unpaid indebtedness at no charge. N.Y.U.C.C. § 9-613(a)(3); and states the time and place of a public disposition, July 1, 2021 at 10:00 am at the offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP One North Lexington Ave. White Plains, NY 10601, Phone: 914-681-0200. N.Y.U.C.C. § 9-613(a)(4). Further, the Notice is sufficient as a matter of law because it is in the form set forth in N.Y.U.C.C. § 9-613(e), which

states that that form “provides sufficient information.”

9. The Notification of Disposition of Collateral was sent by certified mail, return receipt requested and overnight mail. A copy of the Notification of Disposition of Collateral and the certified mail and overnight mail receipts are attached as exhibit X. The Notice was sent on June 9, 2021 by certified mail, return receipt requested, as required by the Pledge Agreement, Nicholson aff., ex. D, at 3, § 13, and by overnight mail as well. The notice scheduled the public sale for July 1, 2021, 22 days later. Accordingly, the notice was fully compliant with the provisions of the Pledge Agreement requiring that WPH Properties give Jozefovic 21 days written notice of the sale. Nicholson aff., ex. D, § 13. And the notice also more than complied with N.Y.U.C.C. § 9-612(b), which specifies that “a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.”

10. Finally, N.Y.U.C.C. § 9-611(c) requires that the secured party provide notification of the disposition to the debtor and to any other secured party which perfected its interest by filing a financing statement be notified of the sale. N.Y.U.C.C. §§ 9-611(c)(1), (c)(3)(C). The Notification of Disposition of Collateral was sent to Jozefovic (the debtor) as well as to MCB, which filed a UCC-1 on December 23, 2019. Nicholson aff. ex. E.

11. On June 11, 2021, WPH Properties sent a letter to 622 targeted recipients, including every nursing home listed on the New York State Department of Health’s website and known investors in the nursing home industry, notifying them of the sale and inviting interested parties to request the Terms of Sale from WPH Properties’ counsel. A copy of a sample of the letter and an affidavit of service of the letters is attached as exhibit Y. Several the recipients of that letter requested copies of the Terms of Sale, and my office forwarded the Terms of Sale to those who

requested them.

12. WPH Properties also published a Notice of Secured Party Public Auction concerning the sale in the Westchester Business Journal in the weekly issue which circulated from June 21, 2021 through June 28, 2021. Copies of the notice and proof of publication is attached as exhibit Z.

13. The June 11, 2021 letter and the Notice of Secured Party Public Auction published in the Westchester Business Journal stated that the terms of the public sale (the "Terms of Sale") were available upon request. A copy of the Terms of Sale is attached as exhibit AA.

14. The Terms of Sale, among other things, provide a description of the Waterview Membership Interest, the time and location of the public sale, state that the sale will be conducted virtually, advises that the collateral will be sold subject to the security interest of Metropolitan Commercial Bank, describe the procedure for becoming a qualified bidder and describe in detail the process for sale of the collateral.

15. A copy of the Amended and Restated Operating Agreement of Waterview dated 2005 is attached as exhibit BB.

16. N.Y.U.C.C. § 9-610(b) provides that "[e]very aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable." The term "commercially reasonable" is not specifically defined by the N.Y.U.C.C. New York courts have held that commercial reasonableness "hing[es] on the totality of the circumstances, including the good faith efforts of the creditor," *F.D.I.C. v Wrapwell Corp.*, 46 U.C.C. Rep. Serv. 2d 885 (S.D.N.Y. Jan. 3, 2002), and have construed the term "to mean that a qualifying disposition must be made in the good faith attempt to dispose of the collateral to the parties' mutual best advantage." *Central Budget Corp. v. Garrett*, 48 A.D.2d 825, 825 (2d Dep't 1975).

17. Rather than adopt an explicit test to assess commercial reasonableness, New York

courts consider “accepted business practice” as a guide and emphasize “the aggregate of the circumstances” when reviewing a UCC sale. *Bankers Trust v. Dowler & Co.*, 47 N.Y.2d 128 (1979); *Dougherty v 425 Dev. Assoc.*, 93 A.D.2d 438, 446-47 (1st Dep’t 1983); *In re Zsa Zsa Ltd.*, 352 F. Supp. 665, 670 (S.D.N.Y. 1972), *aff’d*, 475 F.2d 1393 (2d Cir 1973) (“It is the aggregate of circumstances in each case-rather than specific details of the sale taken in isolation-that should be emphasized in a review of the sale”). As the federal Seventh Circuit Court of Appeals aptly stated, applying New York law, “[i]n the end, the [factfinder] must decide what a reasonable business would have done to maximize the return on the collateral.” *Matter of Excello Press, Inc.*, 890 F.2d 896, 906 (7th Cir. 1989).

18. Here, the totality of the circumstances shows that WPH Properties have taken every possible step to ensure that the sale of the Waterview Membership Interest will be commercially reasonable. WPH Properties has fully complied with Article 9’s notice requirements and scheduled the sale on 21 days’ notice as required under Pledge Agreement. That more than satisfies the requirements of N.Y.U.C.C. § 9-612. As stated above, WPH Properties advertised the sale the Westchester Business Journal in the weekly issue which circulated from June 21, 2021 through June 28, 2021.

19. New York law “does not require that a seller advertise a [disposition] sale in any specific type of media or for any particular amount of time.” *Adobe Oil Field Services, Ltd. v. PNC Bank, N.A. (In re Adobe Trucking, Inc.)*, No. 11-7005-RBK, 2011 WL 6258233, at \*12 (W.D. Tex. Dec. 15, 2011), *aff’d*, 551 Fed. Appx. 167 (2014). The extent of WPH Properties’ advertising of the sale here far surpasses that of other court-approved public sales. *Adobe Trucking, Inc.*, 2011 WL 6258233, at \*12 (advertisement of public sale in three local newspapers for one day each was commercially reasonable under NY UCC); *see also Credit Alliance Corp. v. David O. Crump Sand*

& Fill Co., 470 F. Supp. 489, 494-95 (S.D.N.Y. 1979) (advertisement was commercially reasonable where the notices appeared in three local newspapers on November 25-28 and the sale was held on November 30); *Sackman Mortg. Corp.*, 158 B.R. at 936 (notice of a sale was commercially reasonable under N.Y.U.C.C. § 9-504 where the secured party advertised the sale for five days in three widely read local newspapers, several parties responded and inquired about the collateral, although none appeared at the sale.)

20. In addition, on June 11, 2021, WPH Properties sent a letter to 622 targeted recipients including every nursing home listed on the New York State Department of Health's website and known investors in the nursing home industry notifying them of the sale. *Nicholson* aff., ¶ 25 & ex. H. The number of potential purchasers contacted by WPH Properties far exceeds those contacted in other court-approved public sales. *See e.g., Leasing Serv. Corp. v Carbonex, Inc.*, 512 F. Supp. 235, 256 (S.D.N.Y. 1981) (notice of a sale was commercially reasonable where sale was advertised and twenty-six potential purchasers were sent copies of the notice).

21. The sale also satisfies Article 9's requirements for a "public disposition." The Official Comment to N.Y.U.C.C. § 9-610 states that:

[a]lthough the term is not defined, as used in this Article, a "public disposition" is one at which the price is determined after the public has had a meaningful opportunity for competitive bidding. "Meaningful opportunity" is meant to imply that some form of advertisement or public notice must precede the sale (or other disposition) and that the public must have access to the sale (disposition).

22. These requirements are clearly met. N.Y.U.C.C. § 9-610, Official Comment 7 (Public vs. Private Dispositions) (2019). As previously discussed, the sale was publicly advertised and notice was sent to 622 potential purchasers. And the sale is fully accessible to the public. As the advertisement states, the sale is a "public auction" and "[a]ll interested prospective purchasers are invited to become Qualified Bidders."

23. WPH Properties has therefore complied with all of Article 9's prerequisites relating

to the disposition of the Waterview Membership Interests, including those relating to notice, commercial reasonableness and public disposition. Because under N.Y.U.C.C. § 9-625(a) Jozefovic may obtain injunctive relief only if he demonstrates that WPH Properties is in violation of Article 9's requirements the sale, Jozefovic cannot possibly succeed on the merits and his motion for a temporary restraining order and a preliminary injunction should be denied.

24. I further respectfully submit that, if the court grants a preliminary injunction, Jozefovic is required to post a bond in the amount of \$1.6 million.

25. Pursuant to CPLR 6312(b), before the granting of a preliminary injunction, the movant is required to provide an undertaking in an amount to be fixed by the Court, that the movant, if it is finally determined that he or she was not entitled to an injunction, will pay to the other party all damages and costs which may be sustained by reason of the injunction. CPLR 6312(b); *Putter v. Singer*, 73 A.D.3d 1147, 1148 (2d Dep't 2010) ("While fixing the amount of an undertaking when granting a motion for a preliminary injunction is a matter within the sound discretion of the court, CPLR 6312(b) requires that the party seeking an injunction give an undertaking."); *Livas v. Mitzner*, 303 A.D.2d 381, 383 (2d Dep't 2003) (same).

26. "The amount of the undertaking . . . must not be based upon speculation and must be rationally related to the damages the nonmoving party might suffer if the court later determines that the relief to which the undertaking relates should not have been granted." *Olympic Ice Cream Co., Inc. v. Sussman*, 151 A.D.3d 872, 874 (2d Dep't 2017) (quoting *Access Medical Group, P.C. v. Straus Family Capital Group, Inc.*, 44 A.D.3d 975, 975 (2d Dep't 2007)).

27. Here, HBL SNF, LLC and Jozefovic have defaulted under the Pledge Agreement by, among other defaults, failing to post \$3.7 million in security by cash or letter of credit and additional security in the amount of \$1.6 million in cash as required by the Lease. In order for the

amount of the bond to be rationally related to the damage suffered by WPH Properties if the Court grants a preliminary injunction, the amount of the bond posted by Jozefovic must be equal to the portion of the security deposit HBL and Jozefovic were required to make. Otherwise, the Court's order leaves WPH Properties exposed for HBL's further defaults under the Lease. Jozefovic has also failed to deposit the remaining amount of the security deposit in the amount of \$3.7 million.

28. The bond must also be sufficient to protect WPH Properties against the risk that the Waterview Membership Interest becomes worthless or unavailable for UCC disposition. WPH Properties currently has no financial information whatever concerning Waterview or the value of Jozefovic's Waterview Membership Interest upon which to base the amount of an undertaking and therefore currently has no basis upon which to determine the amount of an appropriate undertaking.

29. The undertaking must also be sufficient to cover all WPH Properties' anticipated attorneys' fees and costs, which are recoverable as damages for a successful effort to vacate a preliminary injunction. *Shu Yiu Louie v. David & Chiu Place Rest., Inc.*, 261 A.D.2d 150, 152 (1st Dep't 1999).

30. WPH Properties requests, therefore that if the Court grants injunctive relief, it set the amount of the bond at \$5.3 million and that if the Court were to consider a bond in a different amount the Court require Jozefovic provide to the Court and WPH Properties, before granting the preliminary injunction, documents and information upon which the value of the Waterview Membership Interest can be determined and that the Court allow WPH Properties to make a subsequent submission to the Court concerning the appropriate amount of an undertaking, including an estimate of legal fees WPH Properties will incur as part of a successful effort to vacate the injunction.

WHEREFORE, I respectfully request that this Court deny the motion of Jozefovic in its

entirety and require Jozefovic to post a bond if the court grants a preliminary injunction.

Dated: White Plains, New York  
June 29, 2021

  
\_\_\_\_\_  
Alfred E. Donnellan

**CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, ALFRED E. DONNELLAN, ESQ., an attorney at law licensed to practice in the State of New York, and counsel of record herein, certify that this document contains 3,099 words, exclusive of the caption page, table of contents and table of authorities and signature block, as counted by the word count of the word-processing system used to prepare this document.

Dated: White Plains, New York  
June 29, 2021

  
\_\_\_\_\_  
ALFRED E. DONNELLAN

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

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186	<a href="#">EXHIBIT(S)</a> - 2 (Motion #6) <i>Answer with Counterclaims and Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
187	<a href="#">EXHIBIT(S)</a> - 3 (Motion #6) <i>Amended Verified Complaint 2020.11.30</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
188	<a href="#">EXHIBIT(S)</a> - 4 (Motion #6) <i>Reply to Counterclaims and Answer to Third-Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
189	<a href="#">EXHIBIT(S)</a> - 5 (Motion #6) <i>First Amended Verified Complaint 2021.03.22</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
190	<a href="#">EXHIBIT(S)</a> - 6 (Motion #6) <i>Summons &amp; Complaint - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
191	<a href="#">EXHIBIT(S)</a> - 7 (Motion #6) <i>Answer - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
192	<a href="#">EXHIBIT(S)</a> - 8 (Motion #6) <i>Answer of MCB - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
193	<a href="#">EXHIBIT(S)</a> - 9 (Motion #6) <i>Decision and Order 2021.04.08</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
194	<a href="#">EXHIBIT(S)</a> - 10 (Motion #6) <i>First Amended Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
195	<a href="#">EXHIBIT(S)</a> - 11 (Motion #6) <i>Notice to Admit with exhibits</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
196	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of William Nicholson</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
197	<a href="#">EXHIBIT(S)</a> - 12 (Motion #6) <i>Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
198	<a href="#">EXHIBIT(S)</a> - 13 (Motion #6) <i>Development Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
199	<a href="#">EXHIBIT(S)</a> - 14 (Motion #6) <i>Jozefovic Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
200	<a href="#">EXHIBIT(S)</a> - 15 (Motion #6) <i>Neuman Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>

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201	<a href="#">EXHIBIT(S)</a> - 16 (Motion #6) <i>Pledge Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
202	<a href="#">EXHIBIT(S)</a> - 17 (Motion #6) <i>Letter of Intent</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
203	<a href="#">EXHIBIT(S)</a> - 18 (Motion #6) <i>White Plains TCO</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
204	<a href="#">EXHIBIT(S)</a> - 19 (Motion #6) <i>AIA form G704</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
205	<a href="#">EXHIBIT(S)</a> - 20 (Motion #6) <i>NYSDOH letter 2019.12.02</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
206	<a href="#">EXHIBIT(S)</a> - 21 (Motion #6) <i>NYSDOH email 2019.10.01</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
207	<a href="#">EXHIBIT(S)</a> - 22 (Motion #6) <i>Term Sheet 2015.11.20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
208	<a href="#">EXHIBIT(S)</a> - 23 (Motion #6) <i>Jozefovic Affidavit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
209	<a href="#">EXHIBIT(S)</a> - 35 (Motion #6) <i>Operating Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
210	<a href="#">EXHIBIT(S)</a> - 36 (Motion #6) <i>Zafrin e-mail dated 4-11-17</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
211	<a href="#">EXHIBIT(S)</a> - 37 (Motion #6) <i>Estoppel Certificate to Security Benefit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
212	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Edward Tabor</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
213	<a href="#">EXHIBIT(S)</a> - 24 (Motion #6) <i>Itemization of amounts due under lease and LOI</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
214	<a href="#">EXHIBIT(S)</a> - 25 (Motion #6) <i>List of Rents &amp; Late Charges</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
215	<a href="#">EXHIBIT(S)</a> - 26 (Motion #6) <i>Notice of Default</i> # <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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216	<a href="#">EXHIBIT(S)</a> - 27 (Motion #6) <i>Accelerated Rent (NPV)</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
217	<a href="#">EXHIBIT(S)</a> - 28 (Motion #6) <i>Professional Fees</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
218	<a href="#">EXHIBIT(S)</a> - 29 (Motion #6) <i>Security Benefit Notice of Default dated 4-16-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
219	<a href="#">EXHIBIT(S)</a> - 30 (Motion #6) <i>Notice of Default 5-22-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
220	<a href="#">EXHIBIT(S)</a> - 31 (Motion #6) <i>Complaint in Security Benefit Foreclosure Action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
221	<a href="#">EXHIBIT(S)</a> - 32 (Motion #6) <i>Itemization of Amounts Due</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
222	<a href="#">EXHIBIT(S)</a> - 33 (Motion #6) <i>Unreimbursed Deposits and Payments</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
223	<a href="#">EXHIBIT(S)</a> - 38 (Motion #6) <i>Payment of Real Estate Taxes</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
224	<a href="#">EXHIBIT(S)</a> - 39 (Motion #6) <i>Certificates of Insurance</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
225	<a href="#">EXHIBIT(S)</a> - 40 (Motion #6) <i>Tenant Insurance Analysis</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Exhibit X

## To Donnellan Aff.

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

June 9, 2021

**To:**

Lizer Josefovich  
53 Mariner Way  
Monsey, New York 10952-1248

Metropolitan Commercial Bank  
99 Park Avenue, 4th floor  
New York, New York 10016

Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Attn: Michele Arbeeny, Esq.  
Robert Malatak, Esq.

Michelman & Robinson, LLP  
800 Third Ave., 24<sup>th</sup> Fl  
New York, NY 10022  
Attn: John Giardino, Esq.  
Alex Barnett-Howell, Esq.

**From:** Howard Fensterman as nominee for White Plains Healthcare Properties, LLC,  
2 Bourbon Street, Peabody, Massachusetts 01960 (Secured Party)

**Re:** Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Pledge"), dated August 11, 2017, made by and between Lizer Josefovich ("Assignor") and Howard Fensterman, as nominee for White Plains Health Care Properties, LLC ("Assignee") as such agreement may have been further amended or modified from time to time.

We will sell the Collateral described in Exhibit A hereto and made a part hereof to the highest qualified bidder in public as follows:

**Day and Date:** Thursday, July 1, 2021  
**Time:** 10:00 a.m.  
**Place:** DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, phone: 914-681-0200.

You are entitled to, at no charge, an accounting of the unpaid indebtedness secured by the collateral that we intend to sell. You may request an accounting by contacting Alfred E. Donnellan DelBello Donnellan Weingarten Wise & Wiederkehr, LLP One North Lexington Ave. White Plains, NY 10601, Phone: 914-681-0200.

Very truly yours,

/s/ Howard Fensterman

Howard Fensterman as nominee for  
White Plains Health Care Properties, LLC

**EXHIBIT A**

The Collateral to be sold consists of:

All rights, title and interest of Lizer Josefovic as a member in Waterview Acquisition 1, LLC.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
 )ss:  
COUNTY OF WESTCHESTER )

MARISA WARSHAW, being sworn says:

I am not a party to the action, am over 18 years of age and reside at White Plains, New York (office).

On June 9, 2021 I served a true copy of the annexed Notification of Disposition of Collateral in the following manner:

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

**Certified Mail, Return Receipt  
Requested Tracking No.  
7019 1120 0000 5118 3636  
Lizer Josefovic  
53 Mariner Way  
Monsey, New York 10952-1248**

**Certified Mail, Return Receipt  
Requested Tracking No.  
7019 1120 0000 5118 3643  
Metropolitan Commercial Bank  
99 Park Avenue, 4th floor  
New York, New York 10016**

**Certified Mail, Return Receipt  
Requested Tracking No.  
7019 1120 0000 5118 3650  
Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Attn: Michele Arbeeny, Esq.  
Robert Malatak, Esq.**

**Certified Mail, Return Receipt  
Requested Tracking No.  
7019 1120 0000 5118 3667  
Michelman & Robinson, LLP  
800 Third Ave., 24<sup>th</sup> Fl  
New York, NY 10022  
Attn: John Giardino, Esq.  
Alex Barnett-Howell, Esq.**

and

by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time designated by the overnight

delivery service for overnight delivery. The address and delivery service are indicated

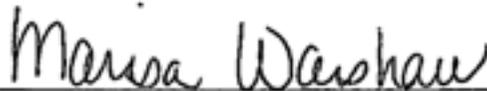
below:

**Federal Express Tracking No.**  
**2802 0945 3673**  
Lizer Josefovic  
53 Mariner Way  
Monsey, New York 10952-1248

**Federal Express Tracking No.**  
**3802 0967 4508**  
Metropolitan Commercial Bank  
99 Park Avenue, 4th floor  
New York, New York 10016

**Federal Express Tracking No.**  
**2808 0981 8363**  
Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Attn: Michele Arbeeny, Esq.  
Robert Malatak, Esq.

**Federal Express Tracking No.**  
**2802 1009 1931**  
Michelman & Robinson, LLP  
800 Third Ave., 24<sup>th</sup> Fl  
New York, NY 10022  
Attn: John Giardino, Esq.  
Alex Barnett-Howell, Esq.

---

MARISA WARSHAW

Sworn to before me this  
9<sup>th</sup> day of June, 2021

---

NOTARY PUBLIC

TERESA L. PICCILLO  
Notary Public, State of New York  
No. 4848926  
Qualified in Westchester County  
Commission Expires February 18, 2022

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**53 Mariner Way**  
**Monsey, New York 10952-1248**

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<p>1. Article Addressed to:</p> <p><b>Lizer Josefovic</b>  <b>53 Mariner Way</b>  <b>Monsey, New York 10952-1248</b></p>	<p>3. Service Type</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail® <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
<p>2. Article Number (Transfer from service label)</p> <p><b>7019 1120 0000 5118 3636</b></p>	

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Michelman & Robinson, LLP  
 800 Third Ave., 24<sup>th</sup> Fl  
 New York, NY 10022  
 Attn: John Giardino, Esq.  
 Alex Barnett-Howell, Esq.

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<p>1. Article Addressed to:</p> <p>Michelman &amp; Robinson, LLP                      800 Third Ave., 24<sup>th</sup> Fl                      New York, NY 10022                      Attn: John Giardino, Esq.                      Alex Barnett-Howell, Esq.</p>	<p>3. Service Type <span style="float: right;"><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™</span></p> <p><input type="checkbox"/> Adult Signature <span style="float: right;"><input type="checkbox"/> Registered Mail Restricted Delivery</span></p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <span style="float: right;"><input type="checkbox"/> Registered Mail Restricted Delivery</span></p> <p><input checked="" type="checkbox"/> Certified Mail <span style="float: right;"><input checked="" type="checkbox"/> Return Receipt for Merchandise</span></p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <span style="float: right;"><input type="checkbox"/> Signature Confirmation™</span></p> <p><input type="checkbox"/> Collect on Delivery <span style="float: right;"><input type="checkbox"/> Signature Confirmation Restricted Delivery</span></p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <span style="float: right;"><input type="checkbox"/> Signature Confirmation Restricted Delivery</span></p> <p><input type="checkbox"/> Insured Mail <span style="float: right;"><input type="checkbox"/> Signature Confirmation Restricted Delivery</span></p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
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<p>1. Article Addressed to:  <b>Michelman &amp; Robinson, LLP</b>        800 Third Ave., 24<sup>th</sup> Fl        New York, NY 10022        Attn: John Giardino, Esq.        Alex Barnett-Howell, Esq.</p>  9590 9402 4956 9063 6209 78	<p>B. Received by (Printed Name) </p> <p>C. Date of Delivery </p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes        If YES, enter delivery address below <input checked="" type="checkbox"/> No</p>																
<p>2. Article Number (Transfer from service label)  <b>7019 1120 0000 5118 3667</b></p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input checked="" type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input checked="" type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																
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 \$ \_\_\_\_\_

Sent to  
 Street or  
 Apt. #

Windels Marx Lane & Mittendorf, LLP  
 156 West 56<sup>th</sup> Street  
 New York, New York 10019  
 Attn: Michele Arbeny, Esq.  
 Robert Malatak, Esq.

7019 1120 0000 5116 3650  
 7019 1120 0000 5116 3650

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

**CERTIFIED MAIL®**

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> <p>1. Article Addressed to:</p> <p>Windels Marx Lane &amp; Mittendorf, LLP              156 West 56<sup>th</sup> Street              New York, New York 10019              Attn: Michele Arbeny, Esq.              Robert Malatak, Esq.</p> <p>9590 9402 4956 9063 6209 61</p>	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes              If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input checked="" type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input checked="" type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™																
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																
<input type="checkbox"/> Certified Mail Restricted Delivery	<input checked="" type="checkbox"/> Return Receipt for Merchandise																
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™																
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																
<input type="checkbox"/> Insured Mail																	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																	
<p>2. Article Number (Transfer from service label)</p> <p>7019 1120 0000 5116 3650</p>																	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9063</p>	<p>Domestic Return Receipt</p>																

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®

**OFFICIAL USE**

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$

Total Postage and Fees \$

Postmark Here

Send To: Metropolitan Commercial Bank  
 Street or 99 Park Avenue, 4th floor  
 City, State New York, New York 10016

PS Form 3800, April 2015 PSN 7530-02-000-9063 See Reverse for Instructions

7019 1120 0000 5118 3643  
 7019 1120 0000 5118 3643

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Metropolitan Commercial Bank  
 99 Park Avenue, 4th floor  
 New York, New York 10016

9590 9402 4956 9063 6209 85

2. Article Number (transfer from service label)  
 7019 1120 0000 5118 3643

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  Priority Mail Express®  
 Adult Signature  Registered Mail™  
 Adult Signature Restricted Delivery  Registered Mail Restricted Delivery  
 Certified Mail®  Return Receipt for Merchandise  
 Certified Mail Restricted Delivery  Signature Confirmation™  
 Collect on Delivery  Signature Confirmation Restricted Delivery  
 Collect on Delivery Restricted Delivery  Insured Mail  
 Insured Mail Restricted Delivery (over \$500)

PS Form 3811, July 2015 PSN 7530-02-000-9063 Domestic Return Receipt

ORIGIN ID: NESA (914) 681-0200  
MARISA WARSHAW  
DELBELLO DONNELLAN WEINGARTEN WISE  
1 N LEXINGTON AVE

SHIP DATE: 09JUN21  
ACTWGT: 0.12 LB  
CAD: 114675706WSX03600

WHITE PLAINS, NY 10601  
UNITED STATES US

BILL SENDER

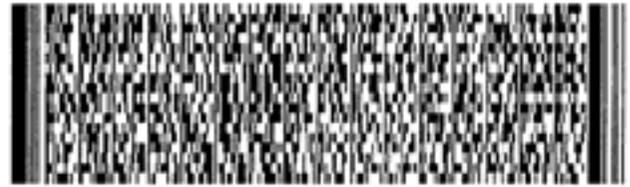
TO LIZER JOSEFOVIC

53 MARINER WAY

MONSEY NY 10952

(914) 681-0200 REF 0181900-001  
PO DEPT

500JUN21#EAA



THU - 10 JUN 12:00P

TRK# 2802 0945 3673  
0201

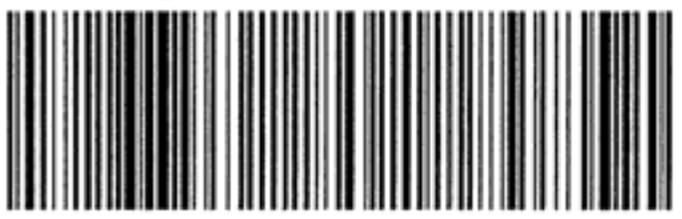
PRIORITY OVERNIGHT

RES

10952

EH PSBA

NY-US SWF



**Marisa Warshaw**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Thursday, June 10, 2021 11:53 AM  
**To:** Marisa Warshaw  
**Subject:** [EXTERNAL] FedEx Shipment 280209453673: Your package has been delivered



Hi. Your package was delivered Thu, 06/10/2021 at 11:51am.



Delivered to 53 MARINER WAY, Monsey, NY 10952

**OBTAIN PROOF OF DELIVERY**

**TRACKING NUMBER**      280209453673

**FROM**                      DelBallo Connellan Weingarten Wise  
                                    1 N Lexington Ave  
                                    White Plains, NY, US, 10601

**TO**                              Lizer Josefovic  
                                    53 Mariner Way  
                                    Monsey, NY, US 10952

:

**REFERENCE** 0181960-001

**SHIPPER REFERENCE** 0181960-001

**SHIP DATE** Wed 6/09/2021 06:19 PM

**DELIVERED TO** Residence

**PACKAGING TYPE** FedEx Envelope

**ORIGIN** White Plains, NY, US, 10601

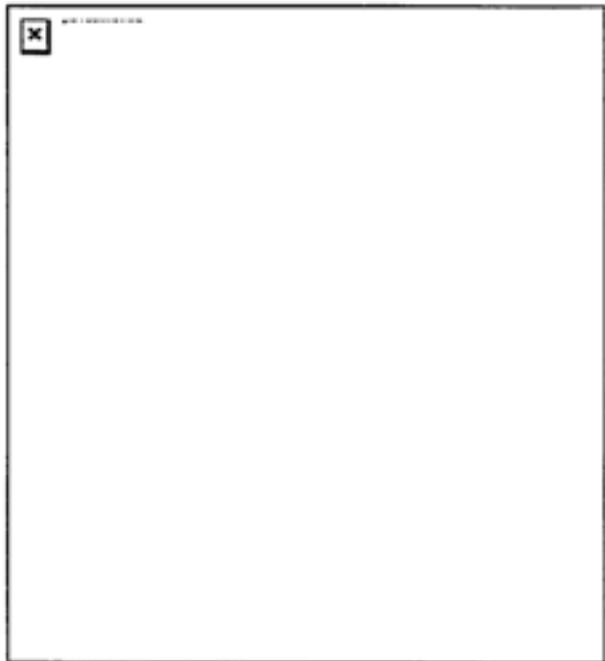
**DESTINATION** Monsey, NY, US, 10952

**SPECIAL HANDLING** Deliver Weekday  
Residential Delivery

**NUMBER OF PIECES** 1

**TOTAL SHIPMENT WEIGHT** 0.50 LB

**SERVICE TYPE** FedEx Priority Overnight



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All weights are estimated.

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To: [marisa@ddw-law.com](mailto:marisa@ddw-law.com)

Message Score: 1

High (60): Pass

From:

My Spam Blocking Level: High

Medium (75): Pass

prvs=1795a8b798=bounce@nds.fedex.com

Low (90): Pass

[Block](#) this sender

[Block](#) nds.fedex.com

*This message was delivered because the content filter score did not exceed your filter level.*

ORIGIN ID: NESA (914) 681-0200  
MARISA WARSHAW  
DELBELLO DONNELLAN WEINGARTEN WISE  
1 N LEXINGTON AVE  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 09JUN21  
ACTWGT: 0.12 LB  
CAD: 1144675706/WVSX03600  
BILL SENDER

TO

METROPOLITAN COMMERCIAL BANK  
99 PARK AVENUE  
4TH FLOOR  
NEW YORK NY 10016

500.036007FEA4

(914) 681-0200 REF 01@1960-001  
PO DEPT

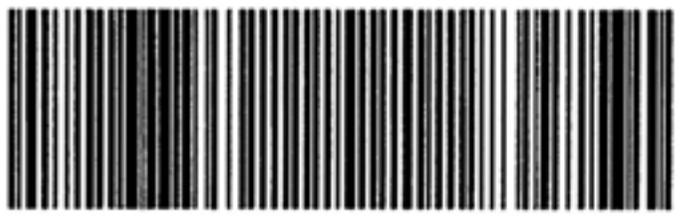


THU - 10 JUN 10:30A  
PRIORITY OVERNIGHT

TRK# 2802 0967 4508  
0201

E3 JRAA

10016  
NY-US EWR



**Marisa Warshaw**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Thursday, June 10, 2021 10:00 AM  
**To:** Marisa Warshaw  
**Subject:** [EXTERNAL] FedEx Shipment 280209674508. Your package has been delivered



Hi. Your package was  
delivered Thu, 06/10/2021 at  
9:58am.



Delivered to 99 PARK, New York, NY 10018  
Received by L.RIVERA

**OBTAIN PROOF OF DELIVERY**

**TRACKING NUMBER**      280209674508

**FROM**                      DelBallo Donnellan Weingarten Wise  
   1 N Lexington Ave  
   White Plains, NY, US, 10601

**TO**                              Metropolitan Commercial Bank  
   99 Park Avenue

4th Floor  
New York, NY, US, 10016

**REFERENCE** 0181960-001

**SHIPPER REFERENCE** 0181960-001

**SHIP DATE** Wed 6/09/2021 06:19 PM

**DELIVERED TO** Receptionist/Front Desk

**PACKAGING TYPE** FedEx Envelope

**ORIGIN** White Plains, NY, US, 10601

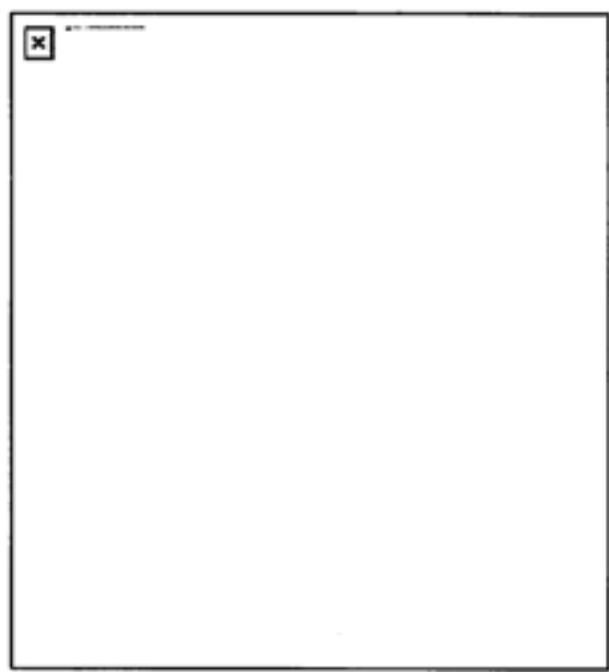
**DESTINATION** New York, NY, US, 10016

**SPECIAL HANDLING** Deliver Weekday

**NUMBER OF PIECES** 1

**TOTAL SHIPMENT WEIGHT** 0.50 LB

**SERVICE TYPE** FedEx Priority Overnight



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To: [marisa@ddw-law.com](mailto:marisa@ddw-law.com)

Message Score: 1

High (60): Pass

From:

My Spam Blocking Level: High

Medium (75): Pass

[prvs=67955bbca7=bounce@nds.fedex.com](mailto:prvs=67955bbca7=bounce@nds.fedex.com)

Low (90): Pass

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[Block](#) [nds.fedex.com](mailto:nds.fedex.com)

*This message was delivered because the content filter score did not exceed your filter level.*

ORIGIN ID: NESA (914) 681-0200  
MARISA WARSHAW  
DELBELLO DONNELLAN WEINGARTEN WISE  
1 N LEXINGTON AVE  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 09JUN21  
ACTWTGT: 0.12 LB  
CAD: 114675706/WSX03600  
BILL SENDER

TO ROBERT MALATAK, ESQ.  
WINDELS MARX LANE & MITTENDORF LLP  
156 W 56TH ST  
NEW YORK NY 10019

500J063607FE4A

(914) 681-0200 REF 0181960-001  
NY PO DEPT



THU - 10 JUN 10:30A  
PRIORITY OVERNIGHT

TRK# 2802 0981 8363  
0201

E3 QNYA

10019  
NY-US EWR



**Marisa Warshaw**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Thursday, June 10, 2021 10:08 AM  
**To:** Marisa Warshaw  
**Subject:** [EXTERNAL] FedEx Shipment 280209818363: Your package has been delivered



Hi. Your package was delivered Thu, 06/10/2021 at 10:05am.



Delivered to 156 W 56TH ST, NEW YORK, NY 10019  
Received by S.KENNY

**OBTAIN PROOF OF DELIVERY**

**TRACKING NUMBER**      280209818363

**FROM**                      DelBello Donnellan Weingarten Wise  
   1 N Lexington Ave  
   White Plains, NY, US, 10601

**TO**                              Windels Marx Lane & Mittendorf LLP  
   Robert Malatak, Esq.

Notice Pg 27 of 60

156 W 56TH ST  
NEW YORK, NY, US, 10019

**REFERENCE** 0181960-001

**SHIPPER REFERENCE** 0181960-001

**SHIP DATE** Wed 6/09/2021 06:19 PM

**DELIVERED TO** Shipping/Receiving

**PACKAGING TYPE** FedEx Envelope

**ORIGIN** White Plains, NY, US, 10601

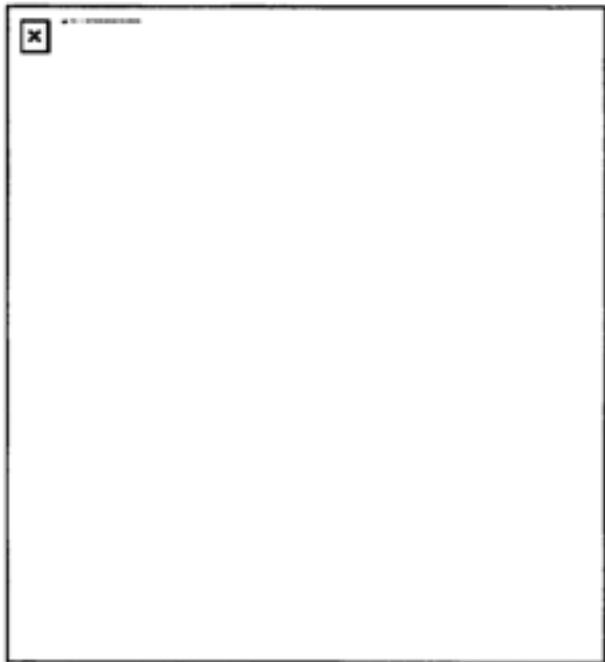
**DESTINATION** NEW YORK, NY, US, 10019

**SPECIAL HANDLING** Deliver Weekday

**NUMBER OF PIECES** 1

**TOTAL SHIPMENT WEIGHT** 0.50 LB

**SERVICE TYPE** FedEx Priority Overnight



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[Login](#)

To: [marisa@ddw-law.com](mailto:marisa@ddw-law.com)

Message Score: 1

High (60): Pass

From:

My Spam Blocking Level: High

Medium (75): Pass

[prvs=7795f31233=bounce@nds.fedex.com](mailto:prvs=7795f31233=bounce@nds.fedex.com)

Low (90): Pass

[Block](#) this sender

[Block](#) [nds.fedex.com](mailto:nds.fedex.com)

*This message was delivered because the content filter score did not exceed your filter level.*

ORIGIN ID: NESA (914) 681-0200  
MARISA WARSHAW  
DELBELLO DONNELLAN WEINGARTEN WISE  
1 N LEXINGTON AVE  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 06JUN21  
ACTWGT: 0.12 LB  
CAD: 114875706WSX03600  
BILL SENDER

TO JOHN GIARDINO, ESQ.  
MICHELMAN & ROBINSON LLP  
800 THIRD AVENUE  
24TH FLOOR  
NEW YORK NY 10022

5601365667F5A4

(914) 681-0200 REF 0181900-001  
FC DEPT

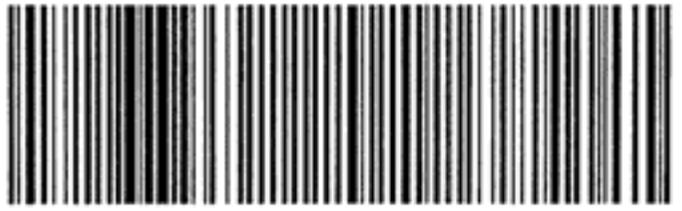


THU - 10 JUN 10:30A  
PRIORITY OVERNIGHT

TRK# 2802 1009 1931  
0201

E3 JRBA

10022  
NY-US EWR



**Marisa Warsaw**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Thursday, June 10, 2021 9:16 AM  
**To:** Marisa Warsaw  
**Subject:** [EXTERNAL] FedEx Shipment 280210091931. Your package has been delivered



x

Hi. Your package was delivered Thu, 06/10/2021 at 9:12am.



Delivered to 800 3RD AVE, New York, NY 10022

**OBTAIN PROOF OF DELIVERY**

**TRACKING NUMBER** 280210091931

**FROM** DelBello Donnellan Weingarten Wise  
1 N Lexington Ave  
White Plains, NY, US, 10601

**TO** Michelman & Robinson LLP  
John Giardino, Esq.  
800 Third Avenue

24th Floor  
New York, NY, US, 10022

**REFERENCE** 0181960-001

**SHIPPER REFERENCE** 0181960-001

**SHIP DATE** Wed 6/09/2021 06:19 PM

**PACKAGING TYPE** FedEx Envelope

**ORIGIN** White Plains, NY, US, 10601

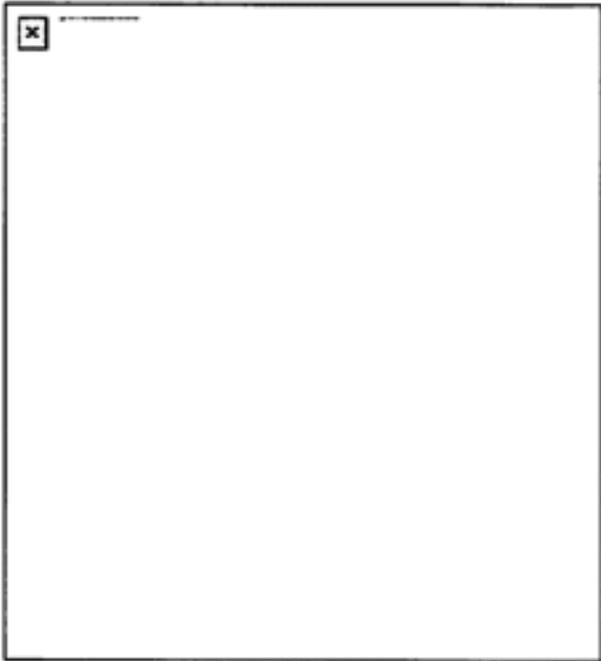
**DESTINATION** New York, NY, US, 10022

**SPECIAL HANDLING** Deliver Weekday

**NUMBER OF PIECES** 1

**TOTAL SHIPMENT WEIGHT** 0.50 LB

**SERVICE TYPE** FedEx Priority Overnight



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To: [marisa@ddw-law.com](mailto:marisa@ddw-law.com)

Message Score: 1

High (60): Pass

From: [prvs=57954c79dc=bounce@nds.fedex.com](mailto:prvs=57954c79dc=bounce@nds.fedex.com)

My Spam Blocking Level: High

Medium (75): Pass

Low (90): Pass

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[Block](#) nds.fedex.com

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# Exhibit Y

## To Donnellan Aff.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I L.L.C.

Index No. 60278/2020

Plaintiff(s).

-against-

HBL SNF, LLC, et al.,

Defendant(s).

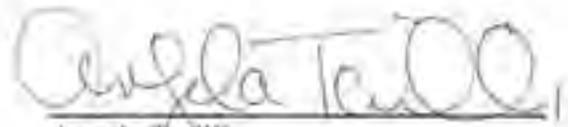
**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK                    )  
  )ss.:  
COUNTY OF WESTCHESTER         )

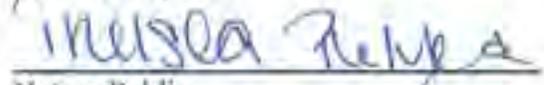
I, Angela Terilli, being duly sworn, depose and say that:

I am a paralegal at the firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, located at 81 Main Street, White Plains, New York 10601; I am over the age of 18 years; I am not a party to this action; and

That on June 11, 2021, I served the within Letter regarding PUBLIC AUCTION OF MAJORITY MEMBERSHIP IN OPERATOR OF WATERVIEW HILLS REHABILITATION AND NURSING CENTER LOCATED AT PURDYS, NEW YORK and NOTICE OF SECURED PARTY PUBLIC AUCTION, by depositing a true copy thereof enclosed in a first class, post-paid wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York to each of the following persons at the last known address set forth after each name, as seen on Exhibit 1.

  
Angela Terilli

Sworn to me this  
11<sup>th</sup> of June, 2021

  
Notary Public

Chelsea Relyea  
Notary Public, State of New York  
No. 01RE6301805  
Qualified in Dutchess County  
My Commission Expires October 19, 2023

# Exhibit 1

Notice Pg 36 of 60  
**WISE & WIEDERKEHR, LLP**

**Alfred E. Donnellan**  
Partner  
(914) 681-0200  
aed@ddw-law.com

COUNSELLORS AT LAW  
THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601  
(914) 681-0200  
FACSIMILE (914) 684-0288

Connecticut Office  
1111 SUMMER STREET  
STAMFORD, CT 06905  
(203) 298-0000

June 10, 2021

**RE: PUBLIC AUCTION OF MAJORITY MEMBERSHIP IN OPERATOR OF  
WATERVIEW HILLS REHABILITATION AND NURSING CENTER  
LOCATED AT PURDYS, NEW YORK**

Dear Nursing Home Operator:

We write to notify you of the public auction that will take place on July 1, 2021, at 10:00 a.m. EST, of all right, title and interest of Lizer Josefovich ("Josefovich") who is believed to have a majority membership interest equal to seventy-one percent (71%) of the total membership interests in WATERVIEW ACQUISITION I, LLC, a limited liability company that in turn is believed to operate a 130-bed skilled nursing home facility known as "Waterview Hills Rehabilitation and Nursing Center" located at Box 257, Old Route 22, Purdys, New York 10578.

The auction will take place as further described in the Notice of Secured Party Public Auction, a copy of which is attached hereto as Exhibit A. For interested parties, a Terms of Sale sheet with details of the auction process and the requirements to qualify as bidder is available upon request to the undersigned: Alfred E. Donnellan, Esq., DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Ave., White Plains, New York 10601, phone: 914-681-0200, e-mail: [aed@ddw-law.com](mailto:aed@ddw-law.com).

Sincerely,

/s/ Alfred E. Donnellan  
ALFRED E. DONNELLAN

EXHIBIT A

**NOTICE OF SECURED  
PARTY PUBLIC AUCTION  
OF 71% OF THE  
MEMBERSHIP INTERESTS  
IN  
WATERVIEW ACQUISITION I, LLC**

NOTICE IS HEREBY GIVEN that White Plains Health Care Properties, LLC (“Secured Party”) will offer for sale at public auction the following property:

all right, title and interest of Lizer Josefovic (“Josefovic”) as a member in WATERVIEW ACQUISITION I, LLC, as such Collateral is described in that certain Collateral Assignment and Pledge of Membership Interest and Security Agreement, dated August 11, 2017, made by and between Lizer Josefovic and Howard Fensterman, as nominee for White Plains Health Care Properties, LLC, as such agreement may have been further amended or modified from time to time

It is the understanding and belief of the Secured Party, but without any warranty or representation by the Secured Party as to accuracy or completeness that the Collateral consists of 71% of all rights, title and interest of Josefovic as a member in Waterview Acquisition I, LLC.

The public auction will take place on July 1, 2021 starting at 10:00 a.m. Eastern Daylight Time (New York) at the at the law offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Ave., White Plains, New York 10601, phone: 914-681-0200. All interested prospective purchasers are invited to become Qualified Bidders. Only Qualified Bidders and their duly appointed agents and representatives will be permitted to attend the public auction. The terms of sale may be obtained by contacting the person named below.

Dated: June 10, 2021

Alfred E Donnellan  
DelBello Donnellan Weingarten Wise  
& Wiederkehr, LLP  
One North Lexington Ave.  
White Plains, NY 10601  
Phone: 914-681-0200  
e-mail: [aed@ddw-law.com](mailto:aed@ddw-law.com)

**OPERATOR:**  
A Holly Patterson Extended Care Facility  
875 Jerusalem Avenue  
Uniondale, NY 11553

**OPERATOR:**  
Aaron Manor Rehabilitation and Nursing  
Center  
100 St. Camillus Way  
Fairport, NY 14450

**OPERATOR:**  
Absolut Center for Nursing and  
Rehabilitation at Allegany, LLC  
2178 North Fifth Street  
Allegany, NY 14706

**OPERATOR:**  
Absolut Center for Nursing and  
Rehabilitation at Aurora Park, LLC  
292 Main Street  
East Aurora, NY 14052

**OPERATOR:**  
Absolut Center for Nursing and  
Rehabilitation at Endicott, LLC  
301 Nantucket Drive  
Endicott, NY 13760

**OPERATOR:**  
Absolut Center for Nursing and  
Rehabilitation at Gasport, LLC  
4540 Lincoln Drive  
Gasport, NY 14067

**OPERATOR:**  
Absolut Center for Nursing and  
Rehabilitation at Three Rivers, LLC  
101 Creekside Drive  
Painted Post, NY 14870

**OPERATOR:**  
Absolut Center for Nursing and  
Rehabilitation at Westfield, LLC  
26 Cass Street  
Westfield, NY 14787

**OPERATOR:**  
Acadia Center for Nursing and  
Rehabilitation  
1146 Woodcrest Avenue  
Riverhead, NY 11901

**OPERATOR:**  
Achieve Rehab and Nursing Facility  
170 Lake Street  
Liberty, NY 12754

**OPERATOR:**  
Adira at Riverside Rehabilitation and  
Nursing  
120 Odell Ave  
Yonkers, NY 10701

**OPERATOR:**  
Affinity Skilled Living and Rehabilitation  
Center  
305 Locust Avenue  
Oakdale, NY 11769

**OPERATOR:**  
Alice Hyde Medical Center  
45 Sixth Street  
Malone, NY 12953

**OPERATOR:**  
Alpine Rehabilitation and Nursing Center  
755 East Monroe Street  
Little Falls, NY 13365

**OPERATOR:**  
Amsterdam Nursing Home Corp (1992)  
1060 Amsterdam Avenue  
New York, NY 10025

**OPERATOR:**  
Andrus On Hudson  
185 Old Broadway  
Hastings-On-hudson, NY 10706

**OPERATOR:**  
Apex Rehabilitation & Care Center  
78 Birchwood Drive  
Huntington Station, NY 11746

**OPERATOR:**  
Atrium Center for Rehabilitation and  
Nursing  
630 E 104th Street  
Brooklyn, NY 11236

**OPERATOR:**  
Auburn Rehabilitation & Nursing Center  
85 Thornton Avenue  
Auburn, NY 13021

**OPERATOR:**  
Aurelia Osborn Fox Memorial Hospital  
One Norton Avenue  
Oneonta, NY 13820

**OPERATOR:**  
Autumn View Health Care Facility, LLC  
S 4650 Southwestern Blvd  
Hamburg, NY 14075

**OPERATOR:**  
Avon Nursing Home, LLC  
215 Clinton Street  
Avon, NY 14414

**OPERATOR:**  
Bainbridge Nursing & Rehabilitation Center  
3518 Bainbridge Avenue  
Bronx, NY 10467

**OPERATOR:**  
Baptist Health Nursing and Rehabilitation  
Center  
297 North Ballston Avenue  
Scotia, NY 12302

**OPERATOR:**  
Bayberry Nursing Home  
40 Keogh Lane  
New Rochelle, NY 10805

**OPERATOR:**  
Beach Gardens Rehab and Nursing Center  
17-11 Brookhaven Avenue  
Far Rockaway, NY 11691

**OPERATOR:**  
Beach Terrace Care Center  
640 West Broadway  
Long Beach, NY 11561

**OPERATOR:**  
Beacon Rehabilitation and Nursing Center  
140 Beach 113th Street  
Rockaway Park, NY 11694

**OPERATOR:**  
Bedford Center for Nursing and  
Rehabilitation  
40 Heyward Street  
Brooklyn, NY 11249

**OPERATOR:**  
Beechtree Center for Rehabilitation and  
Nursing  
318 South Albany Street  
Ithaca, NY 14850

OPERATOR:  
Beechwood Homes  
2235 Millersport Highway  
Getzville, NY 14068

OPERATOR:  
Belair Care Center Inc  
2478 Jerusalem Ave  
No Bellmore, NY 11710

OPERATOR:  
Bellhaven Center for Rehabilitation and  
Nursing Care  
110 Beaver Dam Road  
Brookhaven, NY 11719

OPERATOR:  
Bensonhurst Center for Rehabilitation and  
Healthcare  
1740 84th Street  
Brooklyn, NY 11214

OPERATOR:  
Berkshire Nursing & Rehabilitation Center  
10 Berkshire Road  
W Babylon, NY 11704

OPERATOR:  
Beth Abraham Center for Rehabilitation and  
Nursing  
612 Allerton Avenue  
Bronx, NY 10467

OPERATOR:  
Bethany Gardens Skilled Living Center  
800 West Chestnut Street  
Rome, NY 13440

OPERATOR:  
Bethany Nursing Home & Health Related  
Facility Inc  
3005 Watkins Road  
Horseheads, NY 14845

OPERATOR:  
Bethel Nursing & Rehabilitation Center  
67 Springvale Road  
Croton-On-hudson, NY 10520

OPERATOR:  
Bethel Nursing Home Company Inc  
17 Narragansett Avenue  
Ossining, NY 10562

OPERATOR:  
Betsy Ross Rehabilitation Center, Inc  
1 Elsie Street  
Rome, NY 13440

OPERATOR:  
Bezalel Rehabilitation and Nursing Center  
29-38 Far Rockaway Blvd  
Far Rockaway, NY 11691

OPERATOR:  
Bishop Rehabilitation and Nursing Center  
918 James Street  
Syracuse, NY 13203

OPERATOR:  
Boro Park Center for Rehabilitation and  
Healthcare  
4915 10th Ave  
Brooklyn, NY 11219

OPERATOR:  
Briarcliff Manor Center for Rehabilitation  
and Nursing Care  
620 Sleepy Hollow Road  
Briarcliff Manor, NY 10510

OPERATOR:  
Bridge View Nursing Home  
143-10 20th Ave  
Whitestone, NY 11357

OPERATOR:  
Bridgewater Center for Rehabilitation &  
Nursing, LLC  
159-163 Front Street  
Binghamton, NY 13905

OPERATOR:  
Brighton Manor  
989 Blossom Road  
Rochester, NY 14610

OPERATOR:  
Bronx Center for Rehabilitation & Health  
Care  
1010 Underhill Ave  
Bronx, NY 10472

OPERATOR:  
Bronx Gardens Rehabilitation and Nursing  
Center  
2175 Quarry Rd  
Bronx, NY 10457

OPERATOR:  
Bronx Park Rehabilitation & Nursing Center  
3845 Carpenter Ave  
Bronx, NY 10467

OPERATOR:  
Bronxcare Special Care Center  
1265 Fulton Avenue  
Bronx, NY 10456

OPERATOR:  
Brookhaven Health Care Facility, LLC  
801 Gazzola Blvd  
Patchogue, NY 11772

OPERATOR:  
Brookhaven Rehabilitation & Health Care  
Center LLC  
250 Beach 17th Street  
Far Rockaway, NY 11691

OPERATOR:  
Brooklyn Center for Rehabilitation and  
Residential Health Care  
170 Buffalo Avenue  
Brooklyn, NY 11213

OPERATOR:  
Brooklyn Gardens Nursing & Rehabilitation  
Center  
835 Herkimer Street  
Brooklyn, NY 11233

OPERATOR:  
Brooklyn United Methodist Church Home  
1485 Dumont Avenue  
Brooklyn, NY 11208

OPERATOR:  
Brooklyn-Queens Nursing Home  
2749 Linden Blvd  
Brooklyn, NY 11208

OPERATOR:  
Brookside Multicare Nursing Center  
7 Route 25a  
Smithtown, NY 11787

OPERATOR:  
Brothers of Mercy Nursing & Rehabilitation  
Center  
10570 Bergtold Road  
Clarence, NY 14031

**OPERATOR:**  
**Buena Vida Rehabilitation and Nursing Center**  
48 Cedar Street  
Brooklyn, NY 11221

**OPERATOR:**  
**Buffalo Center for Rehabilitation and Nursing**  
1014 Delaware Ave  
Buffalo, NY 14209

**OPERATOR:**  
**Buffalo Community Healthcare Center**  
1205 Delaware Avenue  
Buffalo, NY 14209

**OPERATOR:**  
**Bushwick Center for Rehabilitation and Health Care**  
50 Sheffield Avenue  
Brooklyn, NY 11207

**OPERATOR:**  
**Campbell Hall Rehabilitation Center Inc**  
23 Kiernan Rd  
Campbell Hall, NY 10916

**OPERATOR:**  
**Canterbury Woods**  
725 Renaissance Drive  
Williamsville, NY 14221

**OPERATOR:**  
**Capstone Center for Rehabilitation and Nursing**  
302 Swart Hill Road  
Amsterdam, NY 12010

**OPERATOR:**  
**Carillon Nursing and Rehabilitation Center**  
830 Park Avenue  
Huntington, NY 11743

**OPERATOR:**  
**Caring Family Nursing and Rehabilitation Center**  
22-41 New Haven Avenue  
Far Rockaway, NY 11691

**OPERATOR:**  
**Carmel Richmond Healthcare and Rehabilitation Center**  
88 Old Town Road  
Staten Island, NY 10304

**OPERATOR:**  
**Carthage Center for Rehabilitation and Nursing**  
1045 West Street  
Carthage, NY 13619

**OPERATOR:**  
**Casa Promesa**  
308 East 175 Street  
Bronx, NY 10457

**OPERATOR:**  
**Caton Park Rehabilitation and Nursing Center, LLC**  
1312 Caton Avenue  
Brooklyn, NY 11226

**OPERATOR:**  
**Catskill Regional Medical Center**  
68 Bushville Road, P.o. Box 515  
Harris, NY 12742

**OPERATOR:**  
**Cayuga Nursing and Rehabilitation Center**  
1229 Trumansburg Road  
Ithaca, NY 14850

**OPERATOR:**  
**Cedar Manor Nursing & Rehabilitation Center**  
Cedar Lane, P.o. Box 928  
Ossining, NY 10562

**OPERATOR:**  
**Central Island Healthcare**  
825 Old Country Rd  
Plainview, NY 11803

**OPERATOR:**  
**Central Park Rehabilitation and Nursing Center**  
116 Martin Luther King East  
Syracuse, NY 13205

**OPERATOR:**  
**Champlain Valley Physicians Hospital Medical Center SNF**  
75 Beekman Street  
Plattsburg, NY 12901

**OPERATOR:**  
**Chapin Home for the Aging**  
165-01 Chapin Parkway  
Jamaica, NY 11432

**OPERATOR:**  
**Charles T Sitrin Health Care Center Inc**  
2050 Tilden Avenue  
New Hartford, NY 13413

**OPERATOR:**  
**Chasehealth Rehab and Residential Care**  
One Terrace Heights, P.o. Box 250  
New Berlin, NY 13411

**OPERATOR:**  
**Chautauqua Nursing and Rehabilitation Center**  
10836 Temple Road  
Dunkirk, NY 14048

**OPERATOR:**  
**Chemung County Health Center-Nursing Facility**  
103 Washington Street  
Elmira, NY 14901

**OPERATOR:**  
**Chenango Memorial Hospital Inc SNF**  
179 North Broad Street  
Norwich, NY 13815

**OPERATOR:**  
**Chestnut Park Rehabilitation and Nursing Center**  
330 Chestnut Street  
Oneonta, NY 13820

**OPERATOR:**  
**Church Home of the Protestant Episcopal Church**  
505 Mt Hope Avenue  
Rochester, NY 14620

**OPERATOR:**  
**Cliffside Rehabilitation & Residential Health Care Center**  
119-19 Graham Court  
Flushing, NY 11354

**OPERATOR:**  
**Clifton Springs Hospital and Clinic Extended Care**  
2 Coulier Road  
Clifton Springs, NY 14432

**OPERATOR:**  
**Clinton County Nursing Home**  
16 Flynn Avenue  
Plattsburgh, NY 12901

**OPERATOR:**

Clove Lakes Health Care and  
Rehabilitation Center, Inc  
25 Fanning Street  
Staten Island, NY 10314

**OPERATOR:**

Cobble Hill Health Center, Inc  
380 Henry Street  
Brooklyn, NY 11201

**OPERATOR:**

Cold Spring Hills Center for Nursing  
and Rehabilitation  
378 Syosset-Woodbury Road  
Woodbury, NY 11797

**OPERATOR:**

Coler Rehabilitation and Nursing Care  
Center  
900 Main Street  
Roosevelt Island, NY 10044

**OPERATOR:**

Colonial Park Rehabilitation and  
Nursing Center  
950 Floyd Avenue  
Rome, NY 13440

**OPERATOR:**

Comprehensive Rehabilitation and  
Nursing Center at Williamsville  
147 Reist Street  
Williamsville, NY 14221

**OPERATOR:**

Concord Nursing and Rehabilitation  
Center  
300 Madison Street  
Brooklyn, NY 11216

**OPERATOR:**

Concourse Rehabilitation and Nursing  
Center, Inc  
1072 Grand Concourse  
Bronx, NY 10456

**OPERATOR:**

Conesus Lake Nursing Home  
6131 Big Tree Road, Box F  
Livonia, NY 14487

**OPERATOR:**

Cooperstown Center for Rehabilitation  
and Nursing  
128 Phoenix Mills Cross Road  
Cooperstown, NY 13326

**OPERATOR:**

Corning Center for Rehabilitation and  
Healthcare  
205 East First Street  
Corning, NY 14830

**OPERATOR:**

Cortland Park Rehabilitation and  
Nursing Center  
193 Clinton Avenue  
Cortland, NY 13045

**OPERATOR:**

Cortlandt Healthcare  
110 Oregon Road  
Peekskill, NY 10566

**OPERATOR:**

Creekview Nursing and Rehab Center  
525 Beehan Road  
Rochester, NY 14624

**OPERATOR:**

Crest Manor Living and Rehabilitation  
Center  
6745 Pittsford-Palmyra Road  
Fairport, NY 14450

**OPERATOR:**

Crouse Community Center Inc  
101 South Street  
Morrisville, NY 13408

**OPERATOR:**

Crown Heights Center for Nursing and  
Rehabilitation  
810-20 St Marks Avenue  
Brooklyn, NY 11213

**OPERATOR:**

Crown Park Rehabilitation and Nursing  
Center  
28 Kellogg Road  
Cortland, NY 13045

**OPERATOR:**

Cuba Memorial Hospital Inc SNF  
140 West Main Street  
Cuba, NY 14727

**OPERATOR:**

Cypress Garden Center for Nursing  
and Rehabilitation  
139-62 35th Avenue  
Flushing, NY 11354

**OPERATOR:**

Daleview Care Center  
574 Fulton Street  
Farmingdale, NY 11735

**OPERATOR:**

Daughters of Sarah Nursing Center  
180 Washington Avenue Extension  
Albany, NY 12203

**OPERATOR:**

Degraff Memorial Hospital-Skilled  
Nursing Facility  
445 Tremont Street  
North Tonawanda, NY 14120

**OPERATOR:**

Delhi Rehabilitation and Nursing  
Center  
41861 State Route 10  
Delhi, NY 13753

**OPERATOR:**

Delmar Center for Rehabilitation and  
Nursing  
125 Rockefeller Road  
Delmar, NY 12054

**OPERATOR:**

Diamond Hill Nursing and  
Rehabilitation Center  
100 New Turnpike Road  
Troy, NY 12182

**OPERATOR:**

Ditmas Park Care Center  
2107 Ditmas Avenue  
Brooklyn, NY 11226

**OPERATOR:**

Downtown Brooklyn Nursing &  
Rehabilitation Center  
520 Prospect Place  
Brooklyn, NY 11238

**OPERATOR:**

DR Susan Smith McKinney Nursing and  
Rehabilitation Center  
594 Albany Avenue  
Brooklyn, NY 11203

**OPERATOR:**

DRY Harbor Nursing Home  
61-35 Dry Harbor Road  
Middle Village, NY 11379

**OPERATOR:**

Dumont Center for Rehabilitation and Nursing Care  
676 Pelham Road  
New Rochelle, NY 10805

**OPERATOR:**

Dunkirk Rehabilitation & Nursing Center  
447-449 Lake Shore Drive West  
Dunkirk, NY 14048

**OPERATOR:**

East Haven Nursing & Rehabilitation Center  
2323-27 Eastchester Road  
Bronx, NY 10469

**OPERATOR:**

East Neck Nursing & Rehabilitation Center  
134 Great East Neck Road  
West Babylon, NY 11704

**OPERATOR:**

East Side Nursing Home  
62 Prospect St  
Warsaw, NY 14569

**OPERATOR:**

Eastchester Rehabilitation and Health Care Center  
2700 Eastchester Road  
Bronx, NY 10469

**OPERATOR:**

Eddy Heritage House Nursing and Rehabilitation Center  
2920 Tibbits Avenue  
Troy, NY 12180

**OPERATOR:**

Eddy Memorial Geriatric Center  
2256 Burdett Avenue  
Troy, NY 12180

**OPERATOR:**

Eddy Village Green  
421 W Columbia Street  
Cohoes, NY 12047

**OPERATOR:**

Eddy Village Green at Beverwyck  
40 Autumn Drive  
Slingerlands, NY 12159

**OPERATOR:**

Eden Rehabilitation & Nursing Center  
2806 George Street  
Eden, NY 14057

**OPERATOR:**

Edna Tina Wilson Living Center  
700 Island Cottage Road  
Rochester, NY 14612

**OPERATOR:**

Eger Health Care and Rehabilitation Center  
140 Meisner Avenue  
Staten Island, NY 10306

**OPERATOR:**

Elcor Nursing and Rehabilitation Center  
48 Colonial Drive  
Horseheads, NY 14845

**OPERATOR:**

Elderwood at Amherst  
4459 Bailey Ave  
Amherst, NY 14226

**OPERATOR:**

Elderwood at Cheektowaga  
225 Bennett Road  
Cheektowaga, NY 14227

**OPERATOR:**

Elderwood at Grand Island  
2850 Grand Island Blvd  
Grand Island, NY 14072

**OPERATOR:**

Elderwood at Hamburg  
5775 Maelou Drive  
Hamburg, NY 14075

**OPERATOR:**

Elderwood at Hornell  
One Bethesda Drive  
N Hornell, NY 14843

**OPERATOR:**

Elderwood at Lancaster  
1818 Como Park Blvd  
Lancaster, NY 14086

**OPERATOR:**

Elderwood at Liverpool  
4800 Bear Road  
Liverpool, NY 13088

**OPERATOR:**

Elderwood at Lockport  
104 Old Niagara Road  
Lockport, NY 14094

**OPERATOR:**

Elderwood at North Creek  
112 Ski Bowl Road  
North Creek, NY 12853

**OPERATOR:**

Elderwood at Ticonderoga  
101 Adirondack Drive  
Ticonderoga, NY 12883

**OPERATOR:**

Elderwood at Waverly  
37 North Chemung Street  
Waverly, NY 14892

**OPERATOR:**

Elderwood at Wheatfield  
2600 Niagara Falls Boulevard  
Niagara Falls, NY 14304

**OPERATOR:**

Elderwood at Williamsville  
200 Bassett Road  
Williamsville, NY 14221

**OPERATOR:**

Elderwood of Lakeside at Brockport  
170 West Avenue  
Brockport, NY 14420

**OPERATOR:**

Elderwood of Uihlein at Lake Placid  
185 Old Military Road  
Lake Placid, NY 12946

**OPERATOR:**

Elderwood of Uihlein at Lake Placid  
185 Old Military Road  
Lake Placid, NY 12946

**OPERATOR:**  
Elizabeth Church Manor Nursing Home  
863 Front Street  
Binghamton, NY 13905

**OPERATOR:**  
Elizabeth Seton Children's Center  
300 Corporate Boulevard South  
Yonkers, NY 10701

**OPERATOR:**  
Ellicott Center for Rehabilitation and  
Nursing  
200 Seventh Street  
Buffalo, NY 14201

**OPERATOR:**  
Ellis Residential & Rehabilitation  
Center  
600 McClellan Street  
Schenectady, NY 12304

**OPERATOR:**  
Elm Manor Nursing and Rehabilitation  
Center  
210 N Main Street  
Canandaigua, NY 14424

**OPERATOR:**  
Elmhurst Care Center, Inc  
100-17 23 Avenue  
East Elmhurst, NY 11369

**OPERATOR:**  
Emerge Nursing and Rehabilitation at  
Glen Cove  
2 Medical Plaza  
Glen Cove, NY 11542

**OPERATOR:**  
EPIC Rehabilitation and Nursing at  
White Plains  
120 Church Street  
White Plains, NY 10601

**OPERATOR:**  
Essex Center for Rehabilitation and  
Healthcare  
81 Park Street  
Elizabethtown, NY 12932

**OPERATOR:**  
Evergreen Commons Rehabilitation  
and Nursing Center  
1070 Luther Road  
East Greenbush, NY 12061

**OPERATOR:**  
Excel at Woodbury for Rehabilitation  
and Nursing, LLC  
8533 Jericho Tpke  
Woodbury, NY 11797

**OPERATOR:**  
Fairport Baptist Homes  
4646 Nine Mile Point Road  
Fairport, NY 14450

**OPERATOR:**  
Fairview Nursing Care Center Inc  
69-70 Grand Central Parkway  
Forest Hills, NY 11375

**OPERATOR:**  
Far Rockaway Center for Rehabilitation  
and Nursing  
13-11 Virginia St  
Far Rockaway, NY 11691

**OPERATOR:**  
Fasny Firemen's Home  
125 Harry-Howard Avenue  
Hudson, NY 12534

**OPERATOR:**  
Father Baker Manor  
6400 Powers Road  
Orchard Park, NY 14127

**OPERATOR:**  
Ferncliff Nursing Home Co Inc  
21 Ferncliff Dr  
Rhinebeck, NY 12572

**OPERATOR:**  
Fiddlers Green Manor Rehabilitation  
and Nursing Center  
168 West Main Street  
Springville, NY 14141

**OPERATOR:**  
Fieldston Lodge Care Center  
666 Kappock Street  
Bronx, NY 10463

**OPERATOR:**  
Finger Lakes Center for Living  
20 Park Avenue  
Auburn, NY 13021

**OPERATOR:**  
Fishkill Center for Rehabilitation and  
Nursing  
22 Robert R. Kasin Way  
Beacon, NY 12508

**OPERATOR:**  
Flushing Hospital Medical Center  
45th Avenue & Parsons Blvd  
Flushing, NY 11355

**OPERATOR:**  
Foltsbrook Center for Nursing and  
Rehabilitation  
104 North Washington Street  
Herkimer, NY 13350

**OPERATOR:**  
Fordham Nursing and Rehabilitation  
Center  
2678 Kingsbridge Terrace  
Bronx, NY 10463

**OPERATOR:**  
Forest Hills Care Center  
71-44 Yellowstone Blvd  
Forest Hills, NY 11375

**OPERATOR:**  
Forest View Center for Rehabilitation &  
Nursing  
71-20 110th Street  
Forest Hills, NY 11375

**OPERATOR:**  
Fort Hudson Nursing Center, Inc.  
319 Upper Broadway  
Fort Edward, NY 12828

**OPERATOR:**  
Fort Tryon Center for Rehabilitation  
and Nursing  
801 W 190th St  
New York, NY 10040

**OPERATOR:**  
Four Seasons Nursing and  
Rehabilitation Center  
1555 Rockaway Parkway  
Brooklyn, NY 11236

**OPERATOR:**  
Fox Run at Orchard Park  
One Fox Run Lane  
Orchard Park, NY 14127

**OPERATOR:**  
**Franklin Center for Rehabilitation and Nursing**  
142-27 Franklin Avenue  
Flushing, NY 11355

**OPERATOR:**  
**Friedwald Center for Rehabilitation and Nursing, LLC**  
475 New Hempstead Road  
New City, NY 10956

**OPERATOR:**  
**Fulton Center for Rehabilitation and Healthcare**  
847 Cohwy 122  
Gloversville, NY 12078

**OPERATOR:**  
**Fulton Commons Care Center Inc**  
60 Merrick Ave  
East Meadows, NY 11554

**OPERATOR:**  
**Garden Care Center**  
135 Franklin Avenue  
Franklin Square, NY 11010

**OPERATOR:**  
**Garden Gate Health Care Facility**  
2365 Union Road  
Cheektowaga, NY 14227

**OPERATOR:**  
**Ghent Rehabilitation & Nursing Center**  
1 Whittier Way  
Ghent, NY 12075

**OPERATOR:**  
**Glen Arden Inc**  
214 Harriman Drive  
Goshen, NY 10924

**OPERATOR:**  
**Glen Cove Center for Nursing and Rehabilitation**  
6 Medical Plaza  
Glen Cove, NY 11542

**OPERATOR:**  
**Glen Island Center for Nursing and Rehabilitation**  
490 Pelham Road  
New Rochelle, NY 10805

**OPERATOR:**  
**Glendale Home-Schdy CNTY Dept Social Services**  
59 Hetcheltown Road  
Scotia, NY 12302

**OPERATOR:**  
**Glengariff Rehabilitation and Healthcare Center**  
141 Dosoris Lane  
Glen Cove, NY 11542

**OPERATOR:**  
**Glens Falls Center for Rehabilitation and Nursing**  
152 Sherman Avenue  
Glens Falls, NY 12801

**OPERATOR:**  
**Gold Crest Care Center**  
2316 Bruner Avenue  
Bronx, NY 10469

**OPERATOR:**  
**Golden Gate Rehabilitation & Health Care Center**  
191 Bradley Ave  
Staten Island, NY 10314

**OPERATOR:**  
**Golden Hill Nursing and Rehabilitation Center**  
99 Golden Hill Drive  
Kingston, NY 12401

**OPERATOR:**  
**Good Samaritan Nursing and Rehabilitation Care Center**  
101 Elm Street  
Sayville, NY 11782

**OPERATOR:**  
**Good Shepherd Village at Endwell**  
14 Village Drive  
Endwell, NY 13760

**OPERATOR:**  
**Good Shepherd-Fairview Home Inc**  
80 Fairview Avenue  
Binghamton, NY 13904

**OPERATOR:**  
**Gowanda Rehabilitation & Nursing Center**  
100 Miller Street  
Gowanda, NY 14070

**OPERATOR:**  
**Grand Manor Nursing & Rehabilitation Center**  
700 White Plains Road  
Bronx, NY 10473

**OPERATOR:**  
**Grandell Rehabilitation and Nursing Center**  
645 W Broadway  
Long Beach, NY 11561

**OPERATOR:**  
**Granville Center for Rehabilitation and Nursing**  
17 Madison Street  
Granville, NY 12832

**OPERATOR:**  
**Greene Meadows Nursing and Rehabilitation Center**  
161 Jefferson Heights  
Catskill, NY 12414

**OPERATOR:**  
**Groton Community Health Care Center Residential Care Facility**  
120 Sykes Street  
Groton, NY 13073

**OPERATOR:**  
**Greenfield Health & Rehab Center**  
5949 Broadway  
Lancaster, NY 14086

**OPERATOR:**  
**Gurwin Jewish Nursing and Rehabilitation Center**  
68 Hauppauge Road  
Commack, NY 11725

**OPERATOR:**  
**Guthrie Cortland Medical Center**  
134 Homer Avenue  
Cortland, NY 13045

**OPERATOR:**  
**Hamilton Manor Nursing Home**  
1172 Long Pond Road  
Rochester, NY 14626

**OPERATOR:**  
**Hamilton Park Nursing and Rehabilitation Center**  
691 92 Street  
Brooklyn, NY 11228

**OPERATOR:**  
Harlem Center for Nursing and  
Rehabilitation  
30 West 138th Street  
New York, NY 10037

**OPERATOR:**  
Hamilton Park Nursing and  
Rehabilitation Center  
691 92 Street  
Brooklyn, NY 11228

**OPERATOR:**  
Harris Hill Nursing Facility, LLC  
2699 Wehrle Drive  
Williamsville, NY 14221

**OPERATOR:**  
Haven Manor Health Care Center, llc  
1441 Gateway Boulevard  
Far Rockaway, NY 11691

**OPERATOR:**  
Haym Solomon Home for the Aged  
2340 Cropsey Avenue  
Brooklyn, NY 11214

**OPERATOR:**  
Hebrew Home for the Aged at Riverdale  
5901 Palisade Avenue  
Bronx, NY 10471

**OPERATOR:**  
Helen Hayes Hospital  
51 N Route 9w  
West Haverstraw, NY 10993

**OPERATOR:**  
Helen Hayes Hospital RHCf  
51 N Route 9w  
West Haverstraw, NY 10993

**OPERATOR:**  
Hempstead Park Nursing Home  
800 Front Street  
Hempstead, NY 11550

**OPERATOR:**  
Henry J. Carter Skilled Nursing Facility  
1752 Park Avenue  
New York, NY 10035

**OPERATOR:**  
Heritage Green Rehab & Skilled  
Nursing  
P.o. Box 400, Route 430  
Greenhurst, NY 14742

**OPERATOR:**  
Heritage Park Rehab & Skilled Nursing  
150 Prather Avenue  
Jamestown, NY 14701

**OPERATOR:**  
Heritage Village Rehab and Skilled  
Nursing, Inc.  
4570 Route 60  
Gerry, NY 14740

**OPERATOR:**  
Highbridge Woodycrest Center  
936 Woodycrest Avenue  
Bronx, NY 10452

**OPERATOR:**  
Highfield Gardens Care Center of Great  
Neck  
199 Community Drive  
Great Neck, NY 11021

**OPERATOR:**  
Highland Care Center  
91-31 175th Street  
Jamaica, NY 11432

**OPERATOR:**  
Highland Nursing Home Inc  
182 Highland Road  
Massena, NY 13662

**OPERATOR:**  
Highland Park Rehabilitation and  
Nursing Center  
160 Seneca St  
Wellsville, NY 14895

**OPERATOR:**  
Highland Rehabilitation and Nursing  
Center  
120 Highland Avenue  
Middletown, NY 10940

**OPERATOR:**  
Highlands Living Center  
500 Hahnemann Trail  
Pittsford, NY 14534

**OPERATOR:**  
Highpointe On Michigan Health Care  
Facility  
1031 Michigan Avenue  
Buffalo, NY 14203

**OPERATOR:**  
Hilaire Rehab & Nursing  
9 Hilaire Drive  
Huntington, NY 11743

**OPERATOR:**  
Hill Haven Nursing Home  
1550 Empire Blvd  
Webster, NY 14580

**OPERATOR:**  
Hillside Manor Rehab & Extended Care  
Center  
182-15 Hillside Avenue  
Jamaica Estates, NY 11432

**OPERATOR:**  
Hollis Park Manor Nursing Home  
191-06 Hillside Avenue  
Hollis, NY 11423

**OPERATOR:**  
Holliswood Center for Rehabilitation  
and Healthcare  
195-44 Woodhull Avenue  
Hollis, NY 11423

**OPERATOR:**  
Hope Center for Hiv and Nursing Care  
1401 University Avenue  
Bronx, NY 10452

**OPERATOR:**  
Hopkins Center for Rehabilitation and  
Healthcare  
155 Dean Street  
Brooklyn, NY 11217

**OPERATOR:**  
Horizon Care Center  
64-11 Beach Channel Drive  
Arverne, NY 11692

**OPERATOR:**  
Hornell Gardens, LLC  
434 Monroe Avenue  
Hornell, NY 14843

OPERATOR:  
Houghton Rehabilitation & Nursing Center  
9876 Luckey Dr  
Houghton, NY 14744

OPERATOR:  
Hudson Park Rehabilitation and Nursing  
Center  
325 Northern Boulevard  
Albany, NY 12204

OPERATOR:  
Hudson Pointe at Riverdale Center for  
Nursing and Rehabilitation  
3220 Henry Hudson Parkway  
Bronx, NY 10463

OPERATOR:  
Hudson Valley Rehabilitation & Extended  
Care Center  
260 Vineyard Ave  
Highland, NY 12528

OPERATOR:  
Humboldt House Rehabilitation and  
Nursing Center  
64 Hager Street  
Buffalo, NY 14208

OPERATOR:  
Huntington Hills Center for Health and  
Rehabilitation  
400 South Service Road  
Melville, NY 11747

OPERATOR:  
Huntington Living Center  
369 East Main Street  
Waterloo, NY 13165

OPERATOR:  
Ideal Senior Living Center  
601 High Avenue  
Endicott, NY 13760

OPERATOR:  
Incarnation Childrens Center Inc  
142 Audubon Ave  
New York, NY 10032

OPERATOR:  
Ira Davenport Memorial Hospital SNF/HRF  
7571 State Route 54  
Bath, NY 14810

OPERATOR:  
Iroquois Nursing Home Inc  
4600 Southwood Heights Drive  
Jamesville, NY 13078

OPERATOR:  
Isabella Geriatric Center Inc  
515 Audubon Avenue  
New York, NY 10040

OPERATOR:  
Island Nursing and Rehab Center  
5537 Expressway Drive North  
Holtsville, NY 11742

OPERATOR:  
Jamaica Hospital Medical Center  
89th Avenue & Van Wyck Expressway  
Jamaica, NY 11418

OPERATOR:  
Jamaica Hospital Nursing Home Co Inc  
89-40 135th Street  
Jamaica, NY 11418

OPERATOR:  
James G. Johnston Memorial Nursing  
Home  
286 Deyo Hill Road  
Johnson City, NY 13790

OPERATOR:  
Jeanne Jugan Residence  
2999 Schurz Avenue  
Bronx, NY 10465

OPERATOR:  
Jefferson's Ferry  
500 Mather Drive  
So Setauket, NY 11720

OPERATOR:  
Jennie B Richmond Chaffee Nursing Home  
Company Inc  
222 East Main Street  
Springville, NY 14141

OPERATOR:  
Jewish Home of Central New York  
4101 E Genesee St  
Syracuse, NY 13214

OPERATOR:  
Jewish Home of Rochester  
2021 South Winton Road  
Rochester, NY 14618

OPERATOR:  
John T Mather Memorial Hospital of Port  
Jefferson New York Inc  
75 North Country Road  
Port Jefferson, NY 11777

OPERATOR:  
Katherine Luther Residential Health Care  
and Rehabilitation Center  
110 Utica Road  
Clinton, NY 13323

OPERATOR:  
Kendal at Ithaca  
2230 North Triphammer Road  
Ithaca, NY 14850

OPERATOR:  
Kendal On Hudson  
One Kendal Way  
Sleepy Hollow, NY 10591

OPERATOR:  
King David Center for Nursing and  
Rehabilitation  
2266 Cropsey Avenue  
Brooklyn, NY 11214

OPERATOR:  
King Street Home Inc  
787 King Street  
Port Chester, NY 10573

OPERATOR:  
Kings Harbor Multicare Center  
2000 E Gunhill Road  
Bronx, NY 10469

OPERATOR:  
Kingsway Arms Nursing Center Inc  
323 Kings Road  
Schenectady, NY 12304

OPERATOR:  
Kirkhaven  
254 Alexander Street  
Rochester, NY 14607

**OPERATOR:**  
Laconia Nursing Home  
1050 East 230th Street  
Bronx, NY 10466

**OPERATOR:**  
Latta Road Nursing Home East  
2102 Latta Road  
Rochester, NY 14612

**OPERATOR:**  
Latta Road Nursing Home West  
2100 Latta Road  
Rochester, NY 14612

**OPERATOR:**  
Lawrence Nursing Care Center, Inc  
350 Beach 54th Street  
Arverne, NY 11692

**OPERATOR:**  
Leroy Village Green Nursing and  
Rehabilitation Center  
10 Munson Street  
Le Roy, NY 14482

**OPERATOR:**  
Lewis County General Hospital-Nursing  
Home Unit  
7785 North State Street  
Lowville, NY 13367

**OPERATOR:**  
Linden Center for Nursing and  
Rehabilitation  
2237 Linden Boulevard  
Brooklyn, NY 11207

**OPERATOR:**  
Little Neck Care Center  
260-19 Nassau Blvd  
Little Neck, NY 11362

**OPERATOR:**  
Living Center at Geneva - North  
196-198 North Street  
Geneva, NY 14456

**OPERATOR:**  
Living Center at Geneva - South  
196-198 North Street  
Geneva, NY 14456

**OPERATOR:**  
Livingston County Center for Nursing and  
Rehabilitation  
11 Murray Hill Drive  
MT Morris, NY 14510

**OPERATOR:**  
Livingston Hills Nursing and Rehabilitation  
Center  
2781 Route 9  
Livingston, NY 12541

**OPERATOR:**  
Lockport Rehab & Health Care Center  
909 Lincoln Ave  
Lockport, NY 14094

**OPERATOR:**  
Long Beach Nursing and Rehabilitation  
Center  
375 East Bay Drive  
Long Beach, NY 11561

**OPERATOR:**  
Long Island Care Center Inc  
144-61 38th Ave  
Flushing, NY 11354

**OPERATOR:**  
Long Island State Veterans Home  
Sunny at Stonybrook 100 Patriots Road  
Stonybrook, NY 11790

**OPERATOR:**  
Loretto Health and Rehabilitation Center  
700 East Brighton Avenue  
Syracuse, NY 13205

**OPERATOR:**  
Lutheran Center at Poughkeepsie, Inc  
965 Dutchess Turnpike  
Poughkeepsie, NY 12603

**OPERATOR:**  
Lutheran Retirement Home  
715 Falconer Street  
Jamestown, NY 14701

**OPERATOR:**  
Luxor Nursing and Rehabilitation at Mills  
Pond  
273 Moriches Road  
St James, NY 11780

**OPERATOR:**  
Luxor Nursing and Rehabilitation at  
Sayville  
300 Broadway Avenue  
Sayville, NY 11782

**OPERATOR:**  
Lynbrook Restorative Therapy and Nursing  
243 Atlantic Avenue  
Lynbrook, NY 11563

**OPERATOR:**  
M.M. Ewing Continuing Care Center  
350 Parrish Street  
Canandaigua, NY 14424

**OPERATOR:**  
Manhattanville Health Care Center  
311 W 231st Street  
Bronx, NY 10463

**OPERATOR:**  
Maplewood Nursing Home Inc  
100 Daniel Drive  
Webster, NY 14580

**OPERATOR:**  
Margaret Tietz Nursing and Rehabilitation  
Center  
164-11 Chapin Parkway  
Jamaica, NY 11432

**OPERATOR:**  
Maria Regina Residence Inc  
1725 Brentwood Rd - Bldg 1  
Brentwood, NY 11717

**OPERATOR:**  
Martine Center for Rehabilitation and  
Nursing  
12 Tibbits Avenue  
White Plains, NY 10606

**OPERATOR:**  
Mary Manning Walsh Nursing Home Co Inc  
1339 York Avenue  
New York, NY 10021

**OPERATOR:**  
Masonic Care Community of New York  
2150 Bleecker Street  
Utica, NY 13501

**OPERATOR:**

Massapequa Center Rehabilitation & Nursing  
101 Loudon Ave.  
Amityville, NY 11701

**OPERATOR:**

Massena Rehabilitation & Nursing Center  
89 Grove Street  
Massena, NY 13662

**OPERATOR:**

Mayfair Care Center  
100 Baldwin Road  
Hempstead, NY 11550

**OPERATOR:**

Mcauley Residence  
1503 Military Road  
Kenmore, NY 14217

**OPERATOR:**

Meadow Park Rehabilitation and Health Care Center LLC  
78-10 164th Street  
Flushing, NY 11366

**OPERATOR:**

Meadowbrook Care Center, Inc  
320 West Merrick Road  
Freeport, NY 11520

**OPERATOR:**

Meadowbrook Healthcare  
154 Prospect Avenue  
Plattsburgh, NY 12901

**OPERATOR:**

Medford Multicare Center for Living  
3115 Horseblock Road  
Medford, NY 11763

**OPERATOR:**

Medina Memorial Hospital SNF  
200 Ohio Street  
Medina, NY 14103

**OPERATOR:**

Menorah Home & Hospital for Aged & Infirm  
1516 Oriental Boulevard  
Brooklyn, NY 11235

**OPERATOR:**

Mercy Hospital Skilled Nursing Facility  
55 Melroy Avenue  
Lackawanna, NY 14218

**OPERATOR:**

Mercy Living Center  
114 Wawbeek Ave  
Tupper Lake, NY 12986

**OPERATOR:**

Methodist Home for Nursing and Rehabilitation  
4499 Manhattan College Parkway  
Bronx, NY 10471

**OPERATOR:**

Middletown Park Rehabilitation & Health Care Center  
121 Dunning Road  
Middletown, NY 10940

**OPERATOR:**

Midway Nursing Home  
69-95 Queens Midtown Expressway  
Maspeth, NY 11378

**OPERATOR:**

Momentum at South Bay for Rehabilitation and Nursing  
340 East Montauk Highway  
East Islip, NY 11730

**OPERATOR:**

Monroe Community Hospital  
435 East Henrietta Road  
Rochester, NY 14620

**OPERATOR:**

Montefiore Nyack  
160 North Midland Avenue  
Nyack, NY 10960

**OPERATOR:**

Montgomery Nursing and Rehabilitation Center  
2817 Albany Post Road, Box 158  
Montgomery, NY 12549

**OPERATOR:**

Morningside Nursing and Rehabilitation Center  
1000 Pelham Parkway South  
Bronx, NY 10461

**OPERATOR:**

Morningstar Residential Care Center  
17 Sunrise Drive  
Oswego, NY 13126

**OPERATOR:**

Morris Park Rehabilitation and Nursing Center  
1235 Pelham Parkway North  
Bronx, NY 10469

**OPERATOR:**

Mosholu Parkway Nursing & Rehabilitation Center  
3356 Perry Avenue  
Bronx, NY 10467

**OPERATOR:**

Mount Sinai South Nassau  
One Healthy Way  
Oceanside, NY 11572

**OPERATOR:**

Mountainside Residential Care Center  
42158 State Highway #28  
Margaretville, NY 12455

**OPERATOR:**

MVHS Rehabilitation and Nursing Center  
1650 Champlin Avenue  
Utica, NY 13502

**OPERATOR:**

Nassau Rehabilitation & Nursing Center  
One Greenwich Street  
Hempstead, NY 11550

**OPERATOR:**

Nathan Littauer Hospital Nursing Home  
99 East State Street  
Gloversville, NY 12078

**OPERATOR:**

New Carlton Rehab and Nursing Center, LLC  
405 Carlton Ave  
Brooklyn, NY 11238

**OPERATOR:**

New East Side Nursing Home  
25 Bialystoker Place  
New York, NY 10002

**OPERATOR:**  
New Glen Oaks Nursing Home, Inc  
260-01 79th Avenue  
Glen Oaks, NY 11004

**OPERATOR:**  
New Gouverneur Hospital SNF  
227 Madison Street  
New York, NY 10002

**OPERATOR:**  
New Paltz Center for Rehabilitation and  
Nursing  
1 Jansen Road, P.o. Box 909  
New Paltz, NY 12561

**OPERATOR:**  
New Vanderbilt Rehabilitation and Care  
Center, Inc  
135 Vanderbilt Ave  
Staten Island, NY 10304

**OPERATOR:**  
New York Center for Rehabilitation &  
Nursing  
26-13 21st Street  
Astoria, NY 11102

**OPERATOR:**  
New York State Veterans Home at Montrose  
2090 Albany Post Rd  
Montrose, NY 10548

**OPERATOR:**  
Newark Manor Nursing Home Inc  
222 West Pearl Street  
Newark, NY 14513

**OPERATOR:**  
Newfane Rehab & Health Care Center  
2709 Transit Rd  
Newfane, NY 14108

**OPERATOR:**  
New York-Presbyterian/Queens  
56-45 Main Street  
Flushing, NY 11355

**OPERATOR:**  
Niagara Rehabilitation and Nursing Center  
822 Cedar Avenue  
Niagara Falls, NY 14301

**OPERATOR:**  
North Gate Health Care Facility  
7264 Nash Road  
North Tonawanda, NY 14120

**OPERATOR:**  
North Shore-Lij Orzac Center for  
Rehabilitation  
900 Franklin Avenue  
Valley Stream, NY 11580

**OPERATOR:**  
North Westchester Restorative Therapy and  
Nursing Center  
3550 Lexington Avenue  
Mohegan Lake, NY 10547

**OPERATOR:**  
Northeast Center for Rehabilitation and  
Brain Injury  
300 Grant Ave  
Lake Katrine, NY 12449

**OPERATOR:**  
Northern Dutchess Res Health Care  
Facility, Inc  
6525 Springbrook Avenue  
Rhinebeck, NY 12572

**OPERATOR:**  
Northern Manhattan Rehabilitation and  
Nursing Center  
116 East 125th St  
New York, NY 10035

**OPERATOR:**  
Northern Manor Geriatric Center Inc  
199 N Middletown Road  
Nanuet, NY 10954

**OPERATOR:**  
Northern Metropolitan Residential Health  
Care Facility Inc  
225 Maple Avenue  
Monsey, NY 10952

**OPERATOR:**  
Northern Riverview Health Care Center, Inc  
87 South Route 9w  
Haverstraw, NY 10927

**OPERATOR:**  
Northern Westchester Hospital  
400 East Main Street  
Mount Kisco, NY 10549

**OPERATOR:**  
Northwell Health Stern Family Center for  
Rehabilitation  
330 Community Drive  
Manhasset, NY 11030

**OPERATOR:**  
Northwoods Rehabilitation and Nursing  
Center at Moravia  
7 Keeler Avenue  
Moravia, NY 13118

**OPERATOR:**  
Norwegian Christian Home and Health  
Center  
1270-67th Street  
Brooklyn, NY 11219

**OPERATOR:**  
Norwich Rehabilitation & Nursing Center  
88 Calvary Drive  
Norwich, NY 13815

**OPERATOR:**  
Nottingham RCHF  
1305 Nottingham Road  
Jamesville, NY 13078

**OPERATOR:**  
NY Congregational Nursing Center, Inc  
135 Linden Boulevard  
Brooklyn, NY 11226

**OPERATOR:**  
Nyack Ridge Rehabilitation and Nursing  
Center  
476 Christian Herald Road  
Valley Cottage, NY 10989

**OPERATOR:**  
NYS Veterans Home  
4211 State Highway 220  
Oxford, NY 13830

**OPERATOR:**  
NYS Veterans Home in NYC  
178-50 Linden Blvd  
Jamaica, NY 11434

**OPERATOR:**  
Oak Hill Rehabilitation and Nursing Care  
Center  
602 Hudson St  
Ithaca, NY 14850

**OPERATOR:**  
Oasis Rehabilitation and Nursing, LLC  
6 Frowein Road  
Center Moriches, NY 11934

**OPERATOR:**  
Oceanside Care Center Inc  
2914 Lincoln Avenue  
Oceanside, NY 11572

**OPERATOR:**  
Oceanview Nursing & Rehabilitation  
Center, LLC  
315 Beach 9th Street  
Far Rockaway, NY 11691

**OPERATOR:**  
Onelda Center for Rehabilitation and  
Nursing  
1445 Kemble Street  
Utica, NY 13501

**OPERATOR:**  
Onelda Health Rehabilitation and Extended  
Care  
323 Genesee Street  
Onelda, NY 13421

**OPERATOR:**  
Onondaga Center for Rehabilitation and  
Nursing  
217 East Avenue  
Minoa, NY 13118

**OPERATOR:**  
Ontario Center for Rehabilitation and  
Healthcare  
3062 County Complex Drive  
Canandaigua, NY 14424

**OPERATOR:**  
Orchard Rehabilitation & Nursing Center  
600 Bates Road  
Medina, NY 14103

**OPERATOR:**  
Our Lady of Consolation Nursing and  
Rehabilitative Care Center  
111 Beach Drive  
West Islip, NY 11795

**OPERATOR:**  
Our Lady of Mercy Life Center  
2 Mercycare Lane  
Guilderland, NY 12084

**OPERATOR:**  
Our Lady of Peace Nursing Care Residence  
5285 Lewiston Road  
Lewiston, NY 14092

**OPERATOR:**  
Oxford Nursing Home  
144 So Oxford St  
Brooklyn, NY 11217

**OPERATOR:**  
Ozanam Hall of Queens Nursing Home Inc  
42-41 201st Street  
Bayside, NY 11361

**OPERATOR:**  
Palatine Nursing Home  
154 Lafayette Street  
Palatine Bridge, NY 13428

**OPERATOR:**  
Palm Gardens Center for Nursing and  
Rehabilitation  
615 Avenue C  
Brooklyn, NY 11218

**OPERATOR:**  
Park Avenue Extended Care Facility  
425 National Boulevard  
Long Beach, NY 11561

**OPERATOR:**  
Park Gardens Rehabilitation & Nursing  
Center LLC  
6585 Broadway  
Riverdale, NY 10471

**OPERATOR:**  
Park Nursing Home  
128 Beach 115th Street  
Rockaway Park, NY 11694

**OPERATOR:**  
Park Ridge Nursing Home  
1555 Long Pond Road  
Rochester, NY 14626

**OPERATOR:**  
Park Terrace Care Center  
59-20 Van Doren Street  
Rego Park, NY 11368

**OPERATOR:**  
Parker Jewish Institute for Health Care &  
Rehab  
271-11 76th Avenue  
New Hyde Park, NY 11040

**OPERATOR:**  
Parkview Care and Rehabilitation Center,  
Inc.  
5353 Merrick Road  
Massapequa, NY 11758

**OPERATOR:**  
Pathways Nursing and Rehabilitation  
Center  
1805 Providence Avenue  
Niskayuna, NY 12309

**OPERATOR:**  
Peconic Bay Skilled Nursing Facility  
1300 Roanoke Avenue  
Riverhead, NY 11901

**OPERATOR:**  
Peconic Landing at Southold  
1500 Brecknock Road  
Greenport, NY 11944

**OPERATOR:**  
Pelham Parkway Nursing Care and  
Rehabilitation Facility LLC  
2401 Laconia Ave  
Bronx, NY 10469

**OPERATOR:**  
Penfield Place  
1700 Penfield Rd  
Penfield, NY 14526

**OPERATOR:**  
Peninsula Nursing and Rehabilitation  
Center  
50-15 Beach Channel Drive  
Far Rockaway, NY 11691

**OPERATOR:**  
Penn Yan Manor Nursing Home Inc  
655 N Liberty Street  
Penn Yan, NY 14527

**OPERATOR:**  
Pine Haven Home  
Ny Route 217  
Philmont, NY 12565

**OPERATOR:**

Pine Valley Center for Rehabilitation and Nursing  
661 N Main St  
Spring Valley, NY 10977

**OPERATOR:**

Pinnacle Multicare Nursing and Rehabilitation Center  
801 Co-Op City Boulevard  
Bronx, NY 10475

**OPERATOR:**

Plattsburgh Rehabilitation and Nursing Center  
8 Bushey Boulevard  
Plattsburgh, NY 12901

**OPERATOR:**

Pontiac Nursing Home  
303 East River Road  
Oswego, NY 13126

**OPERATOR:**

Premier Genesee Center for Nursing and Rehabilitation  
278 Bank Street  
Batavia, NY 14020

**OPERATOR:**

Presbyterian Home for Central New York Inc  
4290 Middle Settlement Road  
New Hartford, NY 13413

**OPERATOR:**

Promenade Rehabilitation and Health Care Center  
140 Beach 114th Street  
Rockaway Park, NY 11694

**OPERATOR:**

Providence Rest, Inc.  
3304 Waterbury Avenue  
Bronx, NY 10465

**OPERATOR:**

Putnam Nursing & Rehabilitation Center  
404 Ludingtonville Road  
Holmes, NY 12531

**OPERATOR:**

Putnam Ridge  
46 Mt Ebo Road North  
Brewster, NY 10509

**OPERATOR:**

Quantum Rehabilitation and Nursing LLC  
63 Oakcrest Ave  
Middle Island, NY 11953

**OPERATOR:**

Queen of Peace Residence  
110-30 221st St  
Queens Village, NY 1142

**OPERATOR:**

Queens Boulevard Extended Care Facility  
61-11 Queens Boulevard  
Woodside, NY 11377

**OPERATOR:**

Queens Nassau Rehabilitation and Nursing Center  
520 Beach 19th Street  
Far Rockaway, NY 11691

**OPERATOR:**

Rebekah Rehab and Extended Care Center  
1072 Havemeyer Avenue  
Bronx, NY 10462

**OPERATOR:**

Regal Heights Rehabilitation and Health Care Center  
70-05 35th Ave  
Jackson Heights, NY 11372

**OPERATOR:**

Regels Care Center  
3200 Baychester Ave  
Bronx, NY 10475

**OPERATOR:**

Regency Extended Care Center  
65 Ashburton Avenue  
Yonkers, NY 10701

**OPERATOR:**

Rego Park Nursing Home  
111-26 Corona Avenue  
Flushing, NY 1136

**OPERATOR:**

Renaissance Rehabilitation and Nursing Care Center  
4975 Albany Post Road  
Staatsburg, NY 12580

**OPERATOR:**

Resort Nursing Home  
430 Beach 68th Street  
Arverne, NY 11692

**OPERATOR:**

Richmond Center for Rehabilitation and Specialty Healthcare  
91 Tompkins Avenue  
Staten Island, NY 10304

**OPERATOR:**

River Ridge Living Center  
100 Sandy Drive  
Amsterdam, NY 12010

**OPERATOR:**

River View Rehabilitation and Nursing Care Center  
510 Fifth Avenue  
Owego, NY 13827

**OPERATOR:**

Riverdale Nursing Home  
641 West 230th St  
Bronx, NY 10463

**OPERATOR:**

Riverside Center for Rehabilitation and Nursing  
90 No Main Street  
Castleton-On-Hudson, NY 12033

**OPERATOR:**

Robinson Terrace Rehabilitation and Nursing Center  
28652 State Highway 23  
Stamford, NY 12167

**OPERATOR:**

Rockaway Care Center  
353 Beach 48th Street  
Edgemere, NY 11691

**OPERATOR:**

Rockville Skilled Nursing & Rehabilitation Center, LLC  
50 Maine Avenue  
Rockville Centre, NY 11570

**OPERATOR:**

Rome Memorial Hospital, Inc - RHC  
1500 North James Street  
Rome, NY 13440

**OPERATOR:**

Rosa Copton Jewish Home and Infirmary  
2700 North Forest Road  
Getzville, NY 14068

**OPERATOR:**

Rosary Hill Home  
600 Linda Ave  
Hawthorne, NY 10532

**OPERATOR:**

Roscoe Rehabilitation and Nursing Center:  
420 Rockland Road  
Roscoe, NY 12776

**OPERATOR:**

Rosewood Rehabilitation and Nursing  
Center  
284 Troy Road  
Rensselaer, NY 12144

**OPERATOR:**

Ross Center for Nursing and Rehabilitation  
839 Suffolk Avenue  
Brentwood, NY 11717

**OPERATOR:**

Rutland Nursing Home, Inc.  
585 Schenectady Avenue  
Brooklyn, NY 11203

**OPERATOR:**

Safire Rehabilitation of Northtowns, LLC  
2799 Sheridan Drive  
Tonawanda, NY 14150

**OPERATOR:**

Safire Rehabilitation of Southtowns, LLC  
300 Dorrance Avenue  
Buffalo, NY 14220

**OPERATOR:**

Saints Joachim & Anne Nursing and  
Rehabilitation Center  
2720 Surf Avenue  
Brooklyn, NY 11224

**OPERATOR:**

Salamanca Rehabilitation & Nursing Center  
451 Broad Street  
Salamanca, NY 14779

**OPERATOR:**

Salem Hills Rehabilitation and Nursing  
Center  
539 Route 22, P.o. Box 360  
Purdys, NY 10578

**OPERATOR:**

Samaritan Keep Nursing Home Inc  
133 Pratt St  
Watertown, NY 13601

**OPERATOR:**

Samaritan Senior Village, Inc.  
22691 Campus Drive  
Watertown, NY 13601

**OPERATOR:**

San Simeon by the Sound Center for  
Nursing & Rehabilitation  
61700 Route 48, Po Box 2122  
Greenport, NY 11944

**OPERATOR:**

Sands Point Center for Health and  
Rehabilitation  
1440 Port Washington Blvd  
Port Washington, NY 11050

**OPERATOR:**

Sans Souci Rehabilitation and Nursing  
Center  
115 Park Avenue  
Yonkers, NY 10703

**OPERATOR:**

Sapphire Center for Rehabilitation and  
Nursing of Central Queens, LLC  
35-15 Parsons Blvd  
Flushing, NY 11354

**OPERATOR:**

Sapphire Nursing and Rehab at Goshen  
46 Harriman Drive  
Goshen, NY 10924

**OPERATOR:**

Sapphire Nursing at Meadow Hill  
172 Meadow Hill Road  
Newburgh, NY 12550

**OPERATOR:**

Sapphire Nursing at Wappingers  
37 Mesier Avenue  
Wappingers Falls, NY 12590

**OPERATOR:**

Saratoga Center for Rehab and Skilled  
Nursing Care  
149 Ballston Avenue  
Ballston Spa, NY 12020

**OPERATOR:**

Schaffer Extended Care Center  
16 Guion Place  
New Rochelle, NY 10802

**OPERATOR:**

Schenectady Center for Rehabilitation and  
Nursing  
526 Altamont Ave  
Schenectady, NY 12303

**OPERATOR:**

Schervier Nursing Care Center  
2975 Independence Ave  
Bronx, NY 10463

**OPERATOR:**

Schervier Pavilion  
22 Van Duzer Place  
Warwick, NY 10990

**OPERATOR:**

Schoellkopf Health Center  
621 Tenth Street  
Niagara Falls, NY 14302

**OPERATOR:**

Schofield Residence  
3333 Elmwood Avenue  
Kenmore, NY 14217

**OPERATOR:**

Schulman and Schachne Institute for  
Nursing and Rehabilitation  
555 Rockaway Parkway  
Brooklyn, NY 11212

**OPERATOR:**

Schuyler Hospital Inc and Long Term Care  
Unit  
220 Steuben Street  
Montour Falls, NY 14865

**OPERATOR:**

Sea Crest Nursing and Rehabilitation  
Center  
3035 West 24th St  
Brooklyn, NY 11224

**OPERATOR:**  
Sea View Hospital, Rehabilitation Center  
and Home  
460 Brielle Ave  
Staten Island, NY 10314

**OPERATOR:**  
Seagate Rehabilitation and Nursing Center  
3015 W 29 St  
Brooklyn, NY 11224

**OPERATOR:**  
Seneca Health Care Center  
2987 Seneca Street  
West Seneca, NY 14224

**OPERATOR:**  
Seneca Hill Manor Inc  
20 Manor Drive  
Oswego, NY 13126

**OPERATOR:**  
Seneca Nursing & Rehabilitation Center,  
LLC  
200 Douglas Drive  
Waterloo, NY 13165

**OPERATOR:**  
Seton Health at Schuyler Ridge Residentia  
Healthcare  
1 Abele Boulevard  
Clifton Park, NY 12065

**OPERATOR:**  
Shaker Place Rehabilitation and Nursing  
Center  
100 Heritage Lane  
Albany, NY 12211

**OPERATOR:**  
Sheepshead Nursing & Rehabilitation  
Center  
2840 Knapp St  
Brooklyn, NY 11235

**OPERATOR:**  
Shore View Nursing & Rehabilitation Cento  
2865 Brighton 3rd Street  
Brooklyn, NY 11235

**OPERATOR:**  
Silver Lake Specialized Rehabilitation and  
Care Center  
275 Castleton Avenue  
Staten Island, NY 10301

**OPERATOR:**  
Silvercrest  
144-45 87th Avenue  
Jamaica, NY 11435

**OPERATOR:**  
SKY View Rehabilitation and Health Care  
Center, LLC  
1260 Albany Post Road  
Croton On Hudson, NY 10520

**OPERATOR:**  
State Valley Center for Rehabilitation and  
Nursing  
10421 State Route 40  
Granville, NY 12632

**OPERATOR:**  
Smithtown Center for Rehabilitation &  
Nursing Care  
391 North Country Road  
Smithtown, NY 11787

**OPERATOR:**  
Sodus Rehabilitation & Nursing Center  
6884 Maple Ave  
Sodus, NY 14551

**OPERATOR:**  
Soldiers and Sailors Memorial Hospital  
Extended Care Unit  
418 North Main Street  
Penn Yan, NY 14527

**OPERATOR:**  
South Shore Rehabilitation and Nursing  
Center  
275 W Merrick Road  
Freeport, NY 11520

**OPERATOR:**  
Split Rock Rehabilitation and Health Care  
Center  
3525 Baychester Ave  
Bronx, NY 10466

**OPERATOR:**  
Sprain Brook Manor Rehab  
77 Jackson Ave  
Scarsdale, NY 10583

**OPERATOR:**  
Spring Creek Rehabilitation & Nursing Care  
Center  
660 Louisiana Avenue  
Brooklyn, NY 11239

**OPERATOR:**  
St Anns Community  
1500 Portland Avenue  
Rochester, NY 14621

**OPERATOR:**  
St Anns Community  
920 Cherry Ridge Boulevard  
Webster, NY 14580

**OPERATOR:**  
St Cabrini Nursing Home  
115 Broadway  
Dobbs Ferry, NY 10522

**OPERATOR:**  
St Camillus Residential Health Care Facility  
813 Fay Road  
Syracuse, NY 13219

**OPERATOR:**  
St Catherine Laboure Health Care Center  
2157 Main Street  
Buffalo, NY 14214

**OPERATOR:**  
St Catherine of Siena Nursing and  
Rehabilitation Care Center  
52 Route 25a  
Smithtown, NY 11787

**OPERATOR:**  
St Johnland Nursing Center, Inc  
395 Sunken Meadow Road  
Kings Park, NY 11754

**OPERATOR:**  
St Johns Health Care Corporation  
150 Highland Avenue  
Rochester, NY 14620

**OPERATOR:**  
St Johnsville Rehabilitation and Nursing  
Center  
7 Timmerman Avenue  
St Johnsville, NY 13452

**OPERATOR:**  
St Josephs Home  
950 Linden Street  
Ogdensburg, NY 13669

OPERATOR:  
St Josephs Home  
950 Linden Street  
Ogdensburg, NY 13669

OPERATOR:  
St Luke Residential Health Care Facility Inc  
299 East River Road  
Oswego, NY 13126

OPERATOR:  
St Marys Center Inc  
516 West 126th Street  
New York, NY 10027

OPERATOR:  
St Patricks Home  
66 Van Cortlandt Park South  
Bronx, NY 10463

OPERATOR:  
St Vincent Depaul Residence  
900 Intervale Avenue  
Bronx, NY 10459

OPERATOR:  
St. James Rehabilitation & Healthcare  
Center  
275 Moriches Road  
St James, NY 11780

OPERATOR:  
St. John's Penfield Homes  
65 Sonoma Drive  
Fairport, NY 14450

OPERATOR:  
St. Joseph's Hospital - Skilled Nursing  
Facility  
555 St. Joseph's Boulevard  
Elmira, NY 14902

OPERATOR:  
St. Josephs Place  
160 East Main Street  
Port Jervis, NY 12771

OPERATOR:  
St. Margaret's Center  
27 Hackett Boulevard  
Albany, NY 12208

OPERATOR:  
St. Mary's Hospital for Children  
29-01 216th Street  
Bayside, NY 11360

OPERATOR:  
St. Peter's Nursing and Rehabilitation  
Center  
301 Hackett Blvd  
Albany, NY 12208

OPERATOR:  
Staten Island Care Center  
200 Lafayette Avenue  
Staten Island, NY 10301

OPERATOR:  
Steuben Center for Rehabilitation and  
Healthcare  
7009 Rumsey Street Extension  
Bath, NY 14810

OPERATOR:  
Suffolk Center for Rehabilitation and  
Nursing  
25 Schoenfeld Blvd  
Patchogue, NY 11772

OPERATOR:  
Sullivan County Adult Care Center  
256 Sunset Lake Road, P.o. Box 671  
Liberty, NY 12754

OPERATOR:  
Sunharbor Manor  
255 Warner Avenue  
Roslyn Heights, NY 11577

OPERATOR:  
Sunnyside Care Center  
7000 Collamer Rd  
East Syracuse, NY 13057

OPERATOR:  
Sunrise Manor Center for Nursing and  
Rehabilitation  
1325 Brentwood Road  
Bay Shore, NY 11706

OPERATOR:  
Sunset Nursing and Rehabilitation Center,  
Inc.  
232 Academy Street  
Boonville, NY 13309

OPERATOR:  
Sunshine Children's Home and Rehab  
Center  
15 Spring Valley Road  
Ossining, NY 10562

OPERATOR:  
Surge Rehabilitation and Nursing LLC  
49 Oakcrest Avenue  
Middle Island, NY 11953

OPERATOR:  
Susquehanna Nursing & Rehabilitation  
Center, LLC  
282 Riverside Dr  
Johnson City, NY 13790

OPERATOR:  
Sutton Park Center for Nursing and  
Rehabilitation  
31 Lockwood Avenue  
New Rochelle, NY 10801

OPERATOR:  
Syracuse Home Association  
7740 Meigs Road  
Baldwinsville, NY 13027

OPERATOR:  
Tarrytown Hall Care Center  
20 Wood Court  
Tarrytown, NY 10591

OPERATOR:  
Ten Broeck Center for Rehabilitation &  
Nursing  
One Commons Drive  
Lake Katrine, NY 12449

OPERATOR:  
Terence Cardinal Cooke Health Care Center  
1249 Fifth Avenue  
New York, NY 10029

OPERATOR:  
Teresian House Nursing Home Co Inc  
200 Washington Ave Ext  
Albany, NY 12203

OPERATOR:  
Terrace View Long Term Care Facility  
462 Grider Street  
Buffalo, NY 14215

**OPERATOR:**

The Amsterdam at Harborside  
300 East Overlook  
Port Washington, NY 11060

**OPERATOR:**

The Baptist Home at Brookmeade  
46 Brockmeade Drive  
Rhinebeck, NY 12572

**OPERATOR:**

The Brightonian, Inc  
1919 Elmwood Avenue  
Rochester, NY 14620

**OPERATOR:**

The Brook at High Falls Nursing Home and  
Rehabilitation Center  
2150 St. Paul Street  
Rochester, NY 14621

**OPERATOR:**

The Center for Nursing and Rehabilitation  
at Hoosick Falls  
21 Danforth Street  
Hoosick Falls, NY 12090

**OPERATOR:**

The Chateau at Brooklyn Rehabilitation and  
Nursing Center  
3457 Nostrand Avenue  
Brooklyn, NY 11229

**OPERATOR:**

The Citadel Rehab and Nursing Center at  
Kingsbridge  
3400 Cannon Place  
Bronx, NY 10463

**OPERATOR:**

The Commons On St. Anthony, A Skilled  
Nursing & Short Term Rehabilitation  
Community  
3 St Anthony Street  
Auburn, NY 13021

**OPERATOR:**

The Cottages at Garden Grove, A Skilled  
Nursing Community  
5460 Meltzer Court  
Cicero, NY 13039

**OPERATOR:**

The Eleanor Nursing Care Center  
419 North Quaker Lane  
Hyde Park, NY 12538

**OPERATOR:**

The Emerald Peek Rehabilitation and  
Nursing Center  
2000 E Main Street  
Peekskill, NY 10566

**OPERATOR:**

The Enclave at Rye Rehabilitation and  
Nursing Center  
1000 High St  
Port Chester, NY 10573

**OPERATOR:**

The Five Towns Premier Rehabilitation &  
Nursing Center  
1050 Central Avenue  
Woodmere, NY 11596

**OPERATOR:**

The Friendly Home  
3156 East Avenue  
Rochester, NY 14618

**OPERATOR:**

The Grand Pavilion for Rehab & Nursing at  
Rockville Centre  
41 Maine Avenue  
Rockville Centre, NY 11570

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
Barnwell  
3230 Church Street  
Valatie, NY 12184

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
Batavia  
257 State St  
Batavia, NY 14020

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
Chittenango  
331 Russell Street  
Chittenango, NY 13037

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
Great Neck  
15 St Pauls Place  
Great Neck, NY 11021

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
Guilderland  
428 State Route 146  
Altamont, NY 12009

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
Mohawk  
99 Sixth Avenue  
Ilion, NY 13357

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
Pawling  
9 Reservoir Road  
Pawling, NY 12564

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
Queens  
157-15 19th Avenue  
Whitestone, NY 11357

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
River Valley  
140 Main St  
Poughkeepsie, NY 12601

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
Rome  
801 North James Street  
Rome, NY 13440

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
South Point  
One Long Beach Road  
Island Park, NY 11568

**OPERATOR:**

The Grand Rehabilitation and Nursing at  
Utica  
1657 Sunset Ave  
Utica, NY 13502

**OPERATOR:**

The Grove at Valhalla Rehabilitation and  
Nursing Center  
61 Grasslands Road  
Valhalla, NY 10595

**OPERATOR:**

The Hamlet Rehabilitation and Healthcare  
Center at Nesconset  
100 Southern Boulevard  
Nesconset, NY 11767

**OPERATOR:**

The Hamptons Center for Rehabilitation  
and Nursing  
64 County Road 39  
Southampton, NY 11968

**OPERATOR:**

The Heritage Rehabilitation and Health Care Center  
5606 15th Ave  
Brooklyn, NY 11219

**OPERATOR:**

The Highlands at Brighton  
5901 Lac De Ville Blvd  
Rochester, NY 14618

**OPERATOR:**

The Huribut  
1177 East Henrietta Rd  
Rochester, NY 14623

**OPERATOR:**

The Knolls  
55 Grasslands Road  
Valhalla, NY 10595

**OPERATOR:**

The New Jewish Home, Manhattan  
120 West 106th Street  
New York, NY 10025

**OPERATOR:**

The New Jewish Home, Sarah Neuman  
845 Palmer Avenue  
Mamaroneck, NY 10543

**OPERATOR:**

The Osborn  
101 Theall Road  
Rye, NY 10580

**OPERATOR:**

The Paramount at Somers Rehabilitation and Nursing Center  
Route 100  
Somers, NY 10589

**OPERATOR:**

The Pavilion at Queens for Rehabilitation & Nursing  
36-17 Parsons Boulevard  
Flushing, NY 11354

**OPERATOR:**

The Pearl Nursing Center of Rochester  
1335 Portland Avenue  
Rochester, NY 14621

**OPERATOR:**

The Phoenix Rehabilitation and Nursing Center  
140 St Edwards Street  
Brooklyn, NY 11201

**OPERATOR:**

The Pines at Catskill Center for Nursing & Rehabilitation  
154 Jefferson Heights  
Catskill, NY 12414

**OPERATOR:**

The Pines at Glens Falls Center for Nursing & Rehabilitation  
170 Warren Street  
Glens Falls, NY 12801

**OPERATOR:**

The Pines at Poughkeepsie Center for Nursing & Rehabilitation  
100 Franklin Street  
Poughkeepsie, NY 12601

**OPERATOR:**

The Pines at Utica Center for Nursing & Rehabilitation  
1800 Butterfield Ave  
Utica, NY 13501

**OPERATOR:**

The Pines Healthcare & Rehabilitation Centers Machias Campus  
9822 Route 16  
Machias, NY 14101

**OPERATOR:**

The Pines Healthcare & Rehabilitation Centers Olean Campus  
2245 West State Street  
Olean, NY 14760

**OPERATOR:**

The Plaza Rehab and Nursing Center  
100 West Kingsbridge Road  
Bronx, NY 10468

**OPERATOR:**

The Riverside  
150 Riverside Drive  
New York, NY 10024

**OPERATOR:**

The Shore Winds, LLC  
425 Beach Avenue  
Rochester, NY 14612

**OPERATOR:**

The Steven and Alexandra Cohen Pediatric Long Term Care Pavilion  
95 Bradhurst Avenue  
Valhalla, NY 10595

**OPERATOR:**

The Valley View Center for Nursing Care and Rehabilitation  
2 Glenmere Cove Road  
Goshen, NY 10924

**OPERATOR:**

The Villages of Orleans Health and Rehabilitation Center  
14012 Route 31  
Albion, NY 14411

**OPERATOR:**

The Wartburg Home  
Bradley Avenue  
Mount Vernon, NY 10552

**OPERATOR:**

The Willows at Ramapo Rehabilitation and Nursing Center  
30 Cragmere Road  
Suffern, NY 10901

**OPERATOR:**

Throgs Neck Rehabilitation & Nursing Center  
707 Throgs Neck Expressway  
Bronx, NY 10465

**OPERATOR:**

Tolstoy Foundation Rehabilitation and Nursing Center  
100 Lake Road  
Valley Cottage, NY 10989

**OPERATOR:**

Townhouse Center for Rehabilitation & Nursing  
755 Hempstead Turnpike  
Uniondale, NY 11553

**OPERATOR:**

Triboro Center for Rehabilitation and Nursing  
1160 Teller Ave  
Bronx, NY 10456

**OPERATOR:**

Troy Center for Rehabilitation and Nursing  
49 Marvin Avenue  
Troy, NY 12180

**OPERATOR:**

Trustees of the Eastern Star Hall and Home  
of the State of New York  
8290 State Rt 69 (po Box S)  
Oriskany, NY 13424

**OPERATOR:**

Union Plaza Care Center  
33-23 Union Street  
Flushing, NY 11354

**OPERATOR:**

United Health Services Hospitals Inc. -  
Binghamton General Hospital  
10-42 Mitchell Avenue  
Binghamton, NY 13903

**OPERATOR:**

United Hebrew Geriatric Center  
391 Pelham Road  
New Rochelle, NY 10805

**OPERATOR:**

United Helpers Canton Nursing Home  
205 State Street Road  
Canton, NY 13617

**OPERATOR:**

United Helpers Nursing Home  
8101 State Highway 68  
Ogdensburg, NY 13669

**OPERATOR:**

Unity Living Center  
89 Genesee St  
Rochester, NY 14611

**OPERATOR:**

University Center for Rehabilitation and  
Nursing  
2505 Grand Ave  
Bronx, NY 10468

**OPERATOR:**

Upper East Side Rehabilitation and Nursing  
Center  
211 East 79 St  
New York, NY 10021

**OPERATOR:**

Upstate University Hospital at Community  
General  
4900 Broad Road  
Syracuse, NY 13215

**OPERATOR:**

Utica Rehabilitation & Nursing Center  
2535 Genesee Street  
Utica, NY 13501

**OPERATOR:**

Valley Health Services Inc  
690 West German Street  
Herkimer, NY 13350

**OPERATOR:**

Valley View Manor Nursing Home  
40 Park Street  
Norwich, NY 13815

**OPERATOR:**

Van Duyn Center for Rehabilitation and  
Nursing  
5075 West Seneca Turnpike  
Syracuse, NY 13215

**OPERATOR:**

Van Rensselaer Manor  
85 Bloominggrove Drive  
Troy, NY 12180

**OPERATOR:**

Verrazano Nursing Home  
100 Castleton Avenue  
Staten Island, NY 10301

**OPERATOR:**

Vestal Park Rehabilitation and Nursing  
Center  
105 West Sheedy Road  
Vestal, NY 13850

**OPERATOR:**

Victoria Home  
25 N Malcolm Street  
Ossining, NY 10562

**OPERATOR:**

Villagecare Rehabilitation and Nursing  
Center  
214 West Houston Street  
New York, NY 10014

**OPERATOR:**

Warren Center for Rehabilitation and  
Nursing  
42 Gurney Lane  
Queensbury, NY 12804

**OPERATOR:**

Washington Center for Rehabilitation and  
Healthcare  
Route 40  
Argyle, NY 12809

**OPERATOR:**

Waters Edge Rehab & Nursing Center at  
Port Jefferson  
150 Dark Hollow Road  
Port Jefferson, NY 11777

**OPERATOR:**

Waterview Hills Rehabilitation and Nursing  
Center  
537 Route 22, P.o. Box 257  
Purdys, NY 10578

**OPERATOR:**

Waterview Nursing Care Center  
119-15 27th Avenue  
Flushing, NY 11354

**OPERATOR:**

Waterville Residential Care Center  
220 Tower Street  
Waterville, NY 13480

**OPERATOR:**

Wayne Center for Nursing & Rehabilitation  
3530 Wayne Avenue  
Bronx, NY 10467

**OPERATOR:**

Wayne County Nursing Home  
1529 Nye Road  
Lyons, NY 14489

**OPERATOR:**

Wayne Health Care  
100 Sunset Drive  
Newark, NY 14513

**OPERATOR:**

Wedgewood Nursing and Rehabilitation  
Center  
5 Church Street  
Spencerport, NY 14559

**OPERATOR:**

Wells Nursing Home Inc  
201 W Madison Avenue  
Johnstown, NY 12095

OPERATOR:  
Wellsville Manor Care Center  
4192a Bolivar Road  
Wellsville, NY 14895

OPERATOR:  
Wesley Gardens Corporation  
3 Upton Park  
Rochester, NY 14607

OPERATOR:  
Wesley Health Care Center Inc  
131 Lawrence Street  
Saratoga Springs, NY 12866

OPERATOR:  
West Lawrence Care Center, LLC  
1410 Seagirt Blvd  
Far Rockaway, NY 11691

OPERATOR:  
Westchester Center for Rehabilitation &  
Nursing  
10 Claremont Ave  
Mount Vernon, NY 10550

OPERATOR:  
Western New York State Veterans Home  
220 Richmond Avenue  
Batavia, NY 14020

OPERATOR:  
Westhampton Care Center  
78 Old Country Road  
Westhampton, NY 11977

OPERATOR:  
White Oaks Rehabilitation and Nursing  
Center  
8565 Jericho Turnpike  
Woodbury, NY 11797

OPERATOR:  
White Plains Center for Nursing Care  
220 West Post Road  
White Plains, NY 10606

OPERATOR:  
Wilkinson Residential Health Care Facility  
4988 St Hwy 30  
Amsterdam, NY 12010

OPERATOR:  
Williamsbridge Center for Rehabilitation  
and Nursing  
1540 Tomlinson Avenue  
Bronx, NY 10461

OPERATOR:  
Williamsville Suburban LLC  
163 South Union Road  
Williamsville, NY 14221

OPERATOR:  
Willow Point Rehabilitation and Nursing  
Center  
3700 Old Vestal Road  
Vestal, NY 13850

OPERATOR:  
Windsor Park Nursing Home  
212-40 Hillside Avenue  
Queens Village, NY 11427

OPERATOR:  
Wingate at Beacon  
10 Hastings Dr  
Beacon, NY 12508

OPERATOR:  
Wingate of Dutchess  
3 Summit Court  
Fishkill, NY 12524

OPERATOR:  
Wingate of Ulster  
One Wingate Way  
Highland, NY 12528

OPERATOR:  
Woodcrest Rehabilitation & Residential  
Health Care Center., LLC  
119-09 26th Avenue  
College Point, NY 11354

OPERATOR:  
Woodhaven Nursing Home  
1360 Route 112  
Port Jefferson Station, NY 11776

OPERATOR:  
Woodland Pond at New Paltz  
100 Woodland Pond Circle  
New Paltz, NY 12561

OPERATOR:  
Woodside Manor Nursing Home Inc  
2425 Clinton Avenue South  
Rochester, NY 14618

OPERATOR:  
Workmen's Circle Multicare Center  
3155 Grace Avenue  
Bronx, NY 10469

OPERATOR:  
Wyoming County Community Hospital SNF  
400 North Main Street  
Warsaw, NY 14569

OPERATOR:  
Yonkers Gardens Center for Nursing and  
Rehabilitation  
115 South Broadway  
Yonkers, NY 10701

OPERATOR:  
Yorktown Rehabilitation & Nursing Center  
2300 Catherine Street  
Cortlandt Manor, NY 10567

Jeremy Strauss  
The Grand  
17-20 Whiteshore Expressway  
Whitestone, NY 11357

Sam Sherman  
255 Warner Avenue  
Roselyn Heights, NY 11577

Kenneth Rozenberg  
Centers Healthcare  
1010 Underhill Avenue  
Bronx, NY 10472

Ben Philipson  
68 Highview Road  
Monsey, NY 10952

Joel Landau  
Allure  
755 Second Avenue  
2nd Floor  
New York, NY 10017

Ben Landa  
945 Broadway  
Woodmere, NY 11558

Mordy Lahasky  
Med Healthcare  
34 Lord Avenue  
Lawrence, NY 11559

Lizer Jozefovic  
Epic  
1280 Albany Post Road  
Croton-on-Hudson, N.Y. 10520

Mark Friedman  
Carerite  
180 Sullivan Ave, 3201  
Englewood, NJ 07632

Pasquale DeBenedictis  
Cassena  
830 Park Avenue  
Huntington, NY 11743

Jonathan Bleier  
c/o Highfield Gardens Care Center of  
Great Neck  
199 Community Drive  
Great Neck, NY 11021

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

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159 <a href="#">EXHIBIT(S)</a> - W (Motion #5) <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
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176	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> *Corrected*	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
177	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> (Motion #5) *Corrected* <i>Notice of Appeal</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
178	<a href="#">COUNTY CLERK CERTIFICATION OF MINUTES</a>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
179	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 1 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
180	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 2 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
181	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/10/2021 Received: 08/10/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
182	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/13/2021 Received: 08/13/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
183	<a href="#">NOTICE OF MOTION</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
184	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affirmation of Alfred E. Donnellan, Esq.</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
185	<a href="#">EXHIBIT(S)</a> - 1 (Motion #6) <i>Summons &amp; Complaint - Westchester County action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Document

Filed By

Status

#	Document	Filed By	Status
186	<a href="#">EXHIBIT(S)</a> - 2 (Motion #6) <i>Answer with Counterclaims and Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
187	<a href="#">EXHIBIT(S)</a> - 3 (Motion #6) <i>Amended Verified Complaint 2020.11.30</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
188	<a href="#">EXHIBIT(S)</a> - 4 (Motion #6) <i>Reply to Counterclaims and Answer to Third-Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
189	<a href="#">EXHIBIT(S)</a> - 5 (Motion #6) <i>First Amended Verified Complaint 2021.03.22</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
190	<a href="#">EXHIBIT(S)</a> - 6 (Motion #6) <i>Summons &amp; Complaint - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
191	<a href="#">EXHIBIT(S)</a> - 7 (Motion #6) <i>Answer - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
192	<a href="#">EXHIBIT(S)</a> - 8 (Motion #6) <i>Answer of MCB - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
193	<a href="#">EXHIBIT(S)</a> - 9 (Motion #6) <i>Decision and Order 2021.04.08</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
194	<a href="#">EXHIBIT(S)</a> - 10 (Motion #6) <i>First Amended Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
195	<a href="#">EXHIBIT(S)</a> - 11 (Motion #6) <i>Notice to Admit with exhibits</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
196	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of William Nicholson</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
197	<a href="#">EXHIBIT(S)</a> - 12 (Motion #6) <i>Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
198	<a href="#">EXHIBIT(S)</a> - 13 (Motion #6) <i>Development Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
199	<a href="#">EXHIBIT(S)</a> - 14 (Motion #6) <i>Jozefovic Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
200	<a href="#">EXHIBIT(S)</a> - 15 (Motion #6) <i>Neuman Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

201	<a href="#">EXHIBIT(S)</a> - 16 (Motion #6) <i>Pledge Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
202	<a href="#">EXHIBIT(S)</a> - 17 (Motion #6) <i>Letter of Intent</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
203	<a href="#">EXHIBIT(S)</a> - 18 (Motion #6) <i>White Plains TCO</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
204	<a href="#">EXHIBIT(S)</a> - 19 (Motion #6) <i>AIA form G704</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
205	<a href="#">EXHIBIT(S)</a> - 20 (Motion #6) <i>NYSDOH letter 2019.12.02</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
206	<a href="#">EXHIBIT(S)</a> - 21 (Motion #6) <i>NYSDOH email 2019.10.01</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
207	<a href="#">EXHIBIT(S)</a> - 22 (Motion #6) <i>Term Sheet 2015.11.20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
208	<a href="#">EXHIBIT(S)</a> - 23 (Motion #6) <i>Jozefovic Affidavit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
209	<a href="#">EXHIBIT(S)</a> - 35 (Motion #6) <i>Operating Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
210	<a href="#">EXHIBIT(S)</a> - 36 (Motion #6) <i>Zafrin e-mail dated 4-11-17</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
211	<a href="#">EXHIBIT(S)</a> - 37 (Motion #6) <i>Estoppel Certificate to Security Benefit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
212	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Edward Tabor</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
213	<a href="#">EXHIBIT(S)</a> - 24 (Motion #6) <i>Itemization of amounts due under lease and LOI</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
214	<a href="#">EXHIBIT(S)</a> - 25 (Motion #6) <i>List of Rents &amp; Late Charges</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
215	<a href="#">EXHIBIT(S)</a> - 26 (Motion #6) <i>Notice of Default</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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Status

216	<a href="#">EXHIBIT(S)</a> - 27 (Motion #6) <i>Accelerated Rent (NPV)</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
217	<a href="#">EXHIBIT(S)</a> - 28 (Motion #6) <i>Professional Fees</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
218	<a href="#">EXHIBIT(S)</a> - 29 (Motion #6) <i>Security Benefit Notice of Default dated 4-16-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
219	<a href="#">EXHIBIT(S)</a> - 30 (Motion #6) <i>Notice of Default 5-22-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
220	<a href="#">EXHIBIT(S)</a> - 31 (Motion #6) <i>Complaint in Security Benefit Foreclosure Action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
221	<a href="#">EXHIBIT(S)</a> - 32 (Motion #6) <i>Itemization of Amounts Due</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
222	<a href="#">EXHIBIT(S)</a> - 33 (Motion #6) <i>Unreimbursed Deposits and Payments</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
223	<a href="#">EXHIBIT(S)</a> - 38 (Motion #6) <i>Payment of Real Estate Taxes</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
224	<a href="#">EXHIBIT(S)</a> - 39 (Motion #6) <i>Certificates of Insurance</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
225	<a href="#">EXHIBIT(S)</a> - 40 (Motion #6) <i>Tenant Insurance Analysis</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Exhibit Z

## To Donnellan Aff.

Invoice Date: 06/15/2021

Westfair Communications, Inc.  
701 Westchester Ave.  
Suite 100J  
White Plains, N.Y. 10604-3407  
914-694-3600

Abrams, Fensterman, Fensterman  
81 Main St  
Ste 306  
White Plains, NY 10601  
Phone: 914-607-7010  
Fax: - -

Your sales representative is:  
Sylvia Sikoutris

Issue Dates	Description	Amount
In Westchester County Business Journal:		
LEG: Legal Advertising		
06/21/2021 - 06/28/2021	Legal Advertising - 49 Lines	\$ 107.80
	WATERVIEW ACQUISITION I, LLC	
	2 insertions	
	Other Charges	\$ 0.00
	<b>TOTAL CHARGES -----&gt;</b>	<b>\$ 107.80</b>

**NOTICE OF SECURED PARTY PUBLIC AUCTION OF 71% OF THE MEMBERSHIP INTERESTS IN WATERVIEW ACQUISITION I, LLC**

NOTICE IS HEREBY GIVEN that White Plains Health Care Properties, LLC ("Secured Party") will offer for sale at public auction the following property: all right, title and interest of Lizer Josefovich ("Josefovich") as a member in WATERVIEW ACQUISITION I, LLC, as such Collateral is described in that certain Collateral Assignment and Pledge of Membership Interest and Security Agreement, dated August 11, 2017, made by and between Lizer Josefovich and Howard Fensterman, as nominee for White Plains Health Care Properties, LLC, as such agreement may have been further amended or modified from time to time. It is the understanding and belief of the Secured Party, but without any warranty or representation by the Secured Party as to accuracy or completeness, that the Collateral consists of 71% of all rights, title and interest of Josefovich as a member in Waterview Acquisition I, LLC. The public auction will take place on July 1, 2021 starting at 10:00 a.m. Eastern Daylight Time (New York) at the law offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Ave., White Plains, New York 10601, phone: 914-681-0200. All interested prospective purchasers are invited to become Qualified Bidders. Only Qualified Bidders and their duly appointed agents and representatives will be permitted to attend the public auction. The terms of sale may be obtained by contacting the person named below.

Dated: June 21, 2021  
Alfred E Donnellan  
DelBello Donnellan Weingarten Wise  
& Wiederkehr, LLP  
One North Lexington Ave.  
White Plains, NY 10601  
Phone: 914-681-0200

# Exhibit AA

## To Donnellan Aff.

**TERMS OF SALE FOR PUBLIC AUCTION OF  
71% OF THE MEMBERSHIP INTERESTS IN  
WATERVIEW ACQUISITION I, LLC**

The following are the Terms of Sale for the public auction, occurring on Thursday, July 1, 2021 at 10:00 a.m. Eastern Daylight Time (New York), of the following property:

**all right, title and interest of Lizer Jozefovic (“Jozefovic”) in the membership interests of WATERVIEW ACQUISITION I, LLC (which person is believed to own 71% of the membership interests of WATERVIEW ACQUISITION I, LLC and which limited liability company in turn is believed to operate a 130-bed skilled nursing facility known as "Waterview Hills Rehabilitation and Nursing Center" located at 537 Route 22, Purdys, New York 10578), as such Collateral is described in that certain Collateral Assignment and Pledge of Membership Interest and Security Agreement, dated August 11, 2017, made by and between Lizer Jozefovic (“Jozefovic”) and Howard Fensterman, as nominee for White Plains Health Care Properties I, LLC (“Secured Party”), as such agreement may have been further amended or modified from time to time;**

**pursuant to the Notice of Secured Party Public Auction (the “Notice”), a copy of which is attached hereto as Exhibit A.**

The public auction will take place on July 1, 2021 starting at 10:00 a.m. Eastern Daylight Time (New York) at the law offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, phone: 914-681-0200.

1. It is the understanding and belief of the Secured Party, but without any warranty or representation by the Secured Party as to accuracy or completeness, that the Collateral consists of 71% of all rights, title and interest of Jozefovic as a member in Waterview Acquisition I, LLC.
2. The Collateral will be sold subject to the security interest of Metropolitan Commercial Bank, 99 Park Avenue, 4th floor New York, NY 10016, which filed a UCC-1 financing statement on December 23, 2019 with respect to the Collateral.
3. The Collateral will be sold subject to all licensing and approval requirements of the New York State Department of Health.
4. Only the bids of “Qualified Bidders” will be considered by the Secured Party. All bids must be accompanied by evidence satisfactory to the Secured Party in its sole and absolute discretion of the proposed bidder’s ability to make payment of the balance of the purchase price.
5. Only “Qualified Bidders” and their duly appointed agents and representatives (whose names and contact information must be disclosed in writing prior to the time of the sale) may be present at the sale virtually or by phone.

To be a “Qualified Bidder,” prior to the sale, the proposed bidder must deposit at least ten (10%) percent of the amount of the bid in escrow with DelBello Donnellan, which deposit shall be returned to the proposed bidder only if the proposed bidder is not the successful bidder. For wire transfer instructions, contact Alfred Donnellan, Esq.,

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, phone: 914-681-0200, e-mail: [aed@ddw-law.com](mailto:aed@ddw-law.com).

6. The Collateral is an unregistered security under the Securities Act of 1933 (the “33 Act”). Because of this, and the fact that the Collateral is being sold as a single unit, to be a Qualified Bidder, the proposed bidder must, no later than the sale, provide to the Secured Party a letter (the “33 Act Letter”), in form and substance satisfactory to the Secured Party in its sole and absolute discretion, representing (i) that it is purchasing the Collateral for its own account and not with a view to distribution thereof; (ii) that the Collateral will not be resold or transferred or otherwise hypothecated by the proposed bidder without the prior registration in accordance with the 33 Act and applicable state blue sky laws or unless an exemption from such registration under the 33 Act or applicable state blue sky laws is available; (iii) that it possesses sufficient business experience to evaluate the risk of purchasing the Collateral; and (iv) that it has sufficient financial means to afford the risk of the investment. The Collateral will be appropriately conveyed pursuant to a Transfer Statement (described below), which will bear an appropriate legend to the effect that the Collateral may not be sold or transferred without registration under the 33 Act or the availability of a valid exemption from such registration.
7. The Collateral will be offered for sale as a single unit and not in parts or as separate units to the highest “Qualified Bidder.”
8. The Secured Party may modify the Terms of Sale and add additional terms by announcement made prior to or at the time of the public auction.
9. The Secured Party may reject any and all bids in its sole and absolute discretion and withdraw the Collateral from sale at any time and for any reason whatsoever.
10. The Secured Party may cancel the public auction or cause the sale to be adjourned from time to time, without prior written notice or further publication upon one day's written notice of by announcement prior to or at the time and place appointed for the public auction or at any adjournment thereof.
11. The Secured Party reserves the right to bid at the time and place of the public auction, to become the purchaser of the Collateral and to credit bid against the purchase price of the Collateral any and all indebtedness of Jozefovic to the Secured Party. In the event the Secured Party is the successful bidder, it shall not be required to deposit any cash prior to or at the time of the public auction and, to the extent its bid exceeds the amount of the indebtedness of Jozefovic to it, the excess of the amount bid over the amount of such indebtedness shall be due and payable within ten (10) days of the conclusion of the public auction.
12. Jozefovic’s right, title and interest in the Collateral will be conveyed by an appropriate transfer statement (the “Transfer Statement”), pursuant to §9-619(a) of Revised Article 9 of the Uniform Commercial Code, on an “as is, where is” basis and without representations or warranties of any kind or nature whatsoever, including, without limitation, any representation or warranty of merchantability or fitness, title, possession, quiet enjoyment, or the like. On information and belief, and without any representations or warranties of any kind or nature whatsoever, Jozefovic is a party to and subject to the terms and provisions of that certain Collateral Assignment and Pledge of Membership

Interest and Security Agreement, dated August 11, 2017, made by and between Lizer Jozefovic and Howard Fensterman, as nominee for White Plains Health Care Properties I, LLC, which is annexed hereto and made a part hereof. It shall be the sole responsibility of the successful bidder, and not that of the Secured Party, to obtain a new membership interest certificate evidencing the transfer of ownership of the Collateral to the purchaser.

- 13. The entire amount of the bid will be due and payable within ten (10) days of the conclusion of the public auction, failing which the Secured Party will be entitled to the deposit held in escrow by DelBello Donnellan.
- 14. At the time and place set for the public auction, and before any proposed bidder shall be entitled to have its bid considered, such proposed bidder must execute such acknowledgements as the Secured Party may require that such proposed bidder has reviewed the form of the Transfer Statement and is prepared to execute such investment letters and other acknowledgements as may be required as part of the Transfer Statement on the part of a successful bidder.
- 15. The successful bidder will be required to execute a Memorandum of Sale in the form provided below at the time the bid is accepted.
- 16. If the successful bidder defaults, the Secured Party is authorized to retain the bid deposit. The posting of the bid deposit shall constitute the successful bidder's waiver of any and all right, title and interest in and to the bid deposit, other than as a credit against the successful bid upon payment by the successful bidder of the bid amount in compliance with the terms hereof or the return thereof if the proposed bidder is not the successful bidder.
- 17. In the event the Secured Party is unable for any reason to consummate the sale of the Collateral to the successful bidder, its sole obligation to the proposed bidder shall be the return of the principal amount of the proposed bidder's deposit, without interest.

**Memorandum of Sale**

The undersigned has this \_\_\_ day of July, 2021, purchased the Collateral described in the annexed Notice of Secured Party Public Auction for the sum of \_\_\_\_\_ (\$ \_\_\_\_\_ ) Dollars and hereby promises and agrees to comply with the foregoing Terms of Sale.

Dated: July \_\_, 2021

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title (if any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

Received from \_\_\_\_\_, the purchaser, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_ ) Dollars, being ten (10%) percent of the amount bid by the Purchaser for the Collateral sold.

Dated: July \_\_, 2021

\_\_\_\_\_  
Escrow Agent

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title (if any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

**EXHIBIT A**

**NOTICE OF SECURED PARTY PUBLIC AUCTION OF  
71% OF THE MEMBERSHIP INTERESTS IN  
WATERVIEW ACQUISITION I, LLC**

NOTICE IS HEREBY GIVEN that White Plains Health Care Properties, LLC (“Secured Party”) will offer for sale at public auction the following property:

all right, title and interest of Lizer Josefovic (“Josefovic”) as a member in WATERVIEW ACQUISITION I, LLC, as such Collateral is described in that certain Collateral Assignment and Pledge of Membership Interest and Security Agreement, dated August 11, 2017, made by and between Lizer Josefovic and Howard Fensterman, as nominee for White Plains Health Care Properties, LLC, as such agreement may have been further amended or modified from time to time

It is the understanding and belief of the Secured Party, but without any warranty or representation by the Secured Party as to accuracy or completeness that the Collateral consists of 71% of all rights, title and interest of Josefovic as a member in Waterview Acquisition I, LLC.

The public auction will take place on July 1, 2021 starting at 10:00 a.m. Eastern Daylight Time (New York) at the at the law offices of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Ave., White Plains, New York 10601, phone: 914-681-0200. All interested prospective purchasers are invited to become Qualified Bidders. Only Qualified Bidders and their duly appointed agents and representatives will be permitted to attend the public auction. The terms of sale may be obtained by contacting the person named below.

Dated: June 10, 2021

Alfred E Donnellan  
DelBello Donnellan Weingarten Wise  
& Wiederkehr, LLP  
One North Lexington Ave.  
White Plains, NY 10601  
Phone: 914-681-0200  
e-mail: [aed@ddw-law.com](mailto:aed@ddw-law.com)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
- against -  
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants and Third-Party Plaintiff,  
- against -  
CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,  
Third-Party Defendants.

Index No. 60278/2020

AFFIDAVIT OF  
HOWARD FENSTERMAN

LIZER JOZEFOVIC,  
Plaintiff,  
- against -  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,  
Defendants.

New York County Index No.  
655549/2020

Consolidated under Westchester  
County Index No. as per April 8,  
2021 Decision and Order.

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NASSAU )

Howard Fensterman, being duly sworn, deposes and says:

1. I am a member of WPH Properties.<sup>1</sup> I have personal knowledge of the facts and circumstances set forth in this affidavit.
2. I submit this affidavit in opposition to Jozefovic's motion for a temporary restraining

<sup>1</sup> Terms not defined in this affidavit have the meanings ascribed to them in the Nicholson affidavit.

order and preliminary injunction to enjoin WPH Properties from proceeding under UCC Article 9 to dispose of and/or sell the Waterview Membership Interest.

3. The relevant facts are fully set forth in the accompanying affidavit of William Nicholson, the Manager of WPH Properties, sworn to on June 29, 2021 (the "Nicholson affidavit") and the accompanying affirmation of Alfred E. Donnellan, Esq., dated June 29, 2021.

4. Pursuant to the Pledge Agreement, Jozefovic pledged and assigned to WPH Properties his controlling, 71% membership interest in Waterview (the "Waterview Membership Interest"). The pledge and assignment were security for: (i) Jozefovic's obligations concerning the maintenance of certain bank accounts containing funds sufficient to cover a \$1.6 million additional security deposit that HBL was required to provide to WPH Properties under the Lease; and (ii) HBL's obligations under the Lease. Jozefovic failed to comply with his obligations under the Pledge Agreement and HBL defaulted on its obligations under the Lease.

5. As more fully explained in the Nicholson affidavit and the accompanying memorandum of law, Jozefovic failed to take all of the necessary steps to add me as a co-signatory to the Waterview JPM Accounts, as required by the Pledge Agreement. Contrary to the express provisions of the Pledge Agreement and the Waterview resolution attached to the Pledge Agreement, I was never provided with full the authority necessary to ensure that the balance in the Waterview JPM Accounts was not reduced to below \$1.6 million.

6. Jozefovic's claim that I did not return the bank documents that were sent to me is false. The email that I received from HBL's counsel, Mark Zafrin, directed me to send the signed documents to Skyview, 1280 Albany Post Road, Croton-on-Hudson, New York 10520. A copy is attached as Exhibit CC. I sent the documents by Federal Express to that address the following day. A copy of the Fed Ex receipt is attached as Exhibit DD.

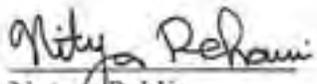
7. More fundamental is that HBL also failed (and continues to this date to refuse) to deposit the \$1.6 million Additional Security Deposit in WPH Properties' Rent Security Deposit Account, a breach of both the Pledge Agreement and the Lease. Exhibit A, Lease, § 7.1(a)(iii). HBL committed a number of other breaches of the Lease as well,

8. Contrary to Jozefovic's claims, neither I nor the law firm for which I serve as managing partner, Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP ("Abrams Fensterman"), have ever represented Jozefovic as counsel in his personal capacity.

9. Abrams Fensterman does represent Waterview in litigation to collect unpaid invoices, in connection with applications for Medicaid benefits and in so-called Fair Hearing administrative proceedings arising out of Medicaid reimbursement disputes. None of the matters in which the Abrams Fensterman law firm represents or has ever represented Waterview has anything whatsoever to do with any of the issues in this case, including the Pledge Agreement, the Lease or the Waterview Operating Agreement or Jozefovic's pledge and assignment of the Waterview Membership Interest to WPH Properties.

  
Howard Fensterman

Sworn to before me this  
29th day of June 2021,

  
Notary Public  
Nitya Rehawi  
Notary Public, State of New York  
No. 01RE0227608  
Qualified in Nassau County  
Commission Expires September 7, 2022

# Exhibit CC

## to Fensterman Aff.

**Howard Fensterman**

**From:** Mark H. Zafrin (NY) <mzafrin@mrlip.com>  
**Sent:** Wednesday, August 16, 2017 2:35 PM  
**To:** Howard Fensterman  
**Cc:** Lizer Jozefovic; Gerald Bilfow  
**Subject:** RE: Re:

Please Fedex Them to Skyview-1280 Albany Post Road, Croton-on-Hudson, New York 10520 and Lizer will deliver them to the Bank—WE are almost there

**Mark H. Zafrin**

**M<sup>I</sup>R MICHELMAN & ROBINSON, LLP**

Los Angeles | Orange County | San Francisco | Chicago | **New York**

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T 212.730.7700 F 212.730.7725

E [mzafrin@mrlip.com](mailto:mzafrin@mrlip.com) [www.mrlip.com](http://www.mrlip.com)

[Bio vCard](#)

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**From:** Howard Fensterman [mailto:HFensterman@Abramslaw.com]  
**Sent:** Wednesday, August 16, 2017 11:32 AM  
**To:** Mark H. Zafrin (NY) <mzafrin@mrlip.com>  
**Subject:** Re:

Where do I send it?

*Sent from my iPad*

On Aug 16, 2017, at 12:34 PM, Mark H. Zafrin (NY) <[mzafrin@mrlip.com](mailto:mzafrin@mrlip.com)> wrote:

Enclosed please find the Chase Certification that we received today; Please note that the Certification requires that the Resolution that we prepared be annexed as an exhibit. What I need from Howard is original signature cards from Howard with wet ink signatures—Lizer should have all of the resolutions and certifications signed this evening.

**Mark H. Zafrin**

Los Angeles | Orange County | San Francisco | Chicago | **New York**

800 Third Avenue, 24th Floor, New York, NY 10022

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[Bio vCard](#)

# Exhibit DD

## to Fensterman Aff.

**Howard Fensterman**

**From:** John Takesky  
**Sent:** Tuesday, June 29, 2021 4:23 PM  
**To:** Howard Fensterman  
**Subject:** fedex

**Ship Date:** Aug 16, 2017 **Cust. Ref.:** Admin  
**Payor:** Shipper **Ref.#3:**

Fuel Surcharge - FedEx has applied a fuel surcharge of 3.75% to this shipment.  
 Distance Based Pricing, Zone 2

Automation	INET	<b>Sender</b>
Tracking ID	770025064630	Howard Fensterman
Service Type	FedEx Priority Overnight	Abrams, Fensterman
Package Type	FedEx Envelope	3 Dakota Drive, Su
Zone	02	NEW HYDE PARK
Packages	1	
Rated Weight	N/A	
Delivered	Aug 17, 2017 10:07	Transportation Ch
Svc Area	A4	Discount
Signed by	C.BILLINGS	<b>Fuel Surcharge</b>
FedEx Use	000000000/186/_	<b>Total Charge</b>

**John Takesky**

**ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORM**

*Assistant Business Manager*

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

– against –

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

LIZER JOZEFOVIC,

Plaintiff,

New York County Index No.  
655549/2020

– against –

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.

Consolidated under Westchester  
County Index No. as per April 8,  
2021 Decision and Order.

**MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP**

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– and –

**ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO, FERRARA, WOLF & CARONE, LLP**

*Co-Counsel for Plaintiff and Third-Party Defendants*

81 Main Street, Suite 306

White Plains, New York 10601

Tel.: (914) 607-7010

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**PRELIMINARY STATEMENT**

White Plains Healthcare Properties I, LLC (“WPH Properties”), CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson respectfully submit this memorandum of law in opposition to the motion of Lizer Jozefovic (“Jozefovic”) for a temporary restraining order and preliminary injunction taking any action to transfer, assign, convey, or sell Jozefovic’s membership interest in Waterview Acquisition I, LLC (“Waterview”) during the pendency of this action and reducing the rent security below \$1.6 million during the pendency of this action.

**SUMMARY OF ARGUMENT**

Jozefovic pledged his interest in Waterview as security for the satisfaction by HBL SNF, LLC (“HBL”) of its obligations under its Amended and Restated Operating Lease (the “Lease”) for a \$65 million state-of-the-art nursing facility from WPH Properties. HBL is in breach of the Lease by, among many other things, failing to provide \$5.3 million in security deposits, as the Lease requires. In fact, HBL has not posted a dime of security. HBL’s breach entitles WPH Properties, as a secured creditor, to sell Jozefovic’s interest in Waterview. This is the second time it has noticed such a sale.

WPH Properties’ security interest did not terminate when Jozefovic tendered banking documents to one of WPH Properties’ principals. The express terms of the pledge agreement provide that the security interest terminates only when the \$1.6 million is deposited in WPH Properties’ tenant security deposit account. That has never happened.

Nor does the lien on the Waterview membership certificates that Jozefovic gave to Metropolitan Commercial Bank (“MCB”) prevent WPH Properties from exercising its right to sell Jozefovic’s interest. WPH Properties’ security interest attached to Jozefovic’s membership interest

before a certificate for that interest was created. Jozefovic could not defeat that security instrument by creating a membership certificate and pledging it to MCB. WPH Properties is still a secured creditor entitled under the UCC to sell Jozefovic's membership interest subject to the interest of MCB.

Jozefovic and MCB also cannot establish the irreparable harm and balancing of the equities in their favor that is necessary to that relief. HBL took occupancy in September 2019 and has been in continuous occupancy since without posting any security deposit whatsoever. It is also in breach of the Lease in many other respects.

Selling Jozefovic's membership interest will not cause any irreparable harm to Jozefovic or to MCB. MCB will have the same lien on the same membership interest after the sale that it has today. HBL is in default under the Lease; Jozefovic will simply be held to account for that default in accordance with the agreement he made with WPH Properties.

The only party that will be harmed here is WPH Properties if the sale is not permitted to proceed. It will be stuck with a tenant in possession of its \$65 million state-of-the-art nursing facility with no security deposit and no ability to enforce the pledge for which it negotiated. The equities balance solidly in favor of WPH Properties. The motion should be denied.

#### STATEMENT OF FACTS

WPH Properties respectfully refers the court to the affidavit of William A. Nicholson sworn to on June 28, 2021 (the "Nicholson aff." or "Nicholson affirmation"), which summarizes the relevant facts.

ARGUMENT

I

**The motion for a temporary restraining order and preliminary injunction should be denied because Jozefovic failed to present evidence in support of the motion**

Jozefovic failed to submit an affidavit from anyone with personal knowledge to support his application. The only support for the motion was an attorney’s affirmation. That should have been fatal to the motion. See *Morales v. Coram Materials Corp.*, 51 A.D.3d 86, 96 (2d Dept 2008); *McDermott v. South Farmingdale Water District*, 167 A.D.2d 517 (2d Dept. 1990). At the conference on June 25, 2021, the Court allowed Jozefovic to cure this deficiency by submitting an affidavit of someone with personal knowledge by noon on June 28, 2021. Jozefovic failed to do that. He submitted his affirmation at 4:35 p.m. That affirmation was untimely and should be disregarded and the motion should be denied for failure to provide the required evidentiary support.

II

**Jozefovic and Metropolitan Commercial Bank have failed to establish the elements necessary for a preliminary injunction and temporary restraining order**

“To obtain a preliminary injunction, a movant must establish, by clear and convincing evidence: (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balancing of the equities in the movant’s favor.” *Alayoff v. Alayoff*, 112 A.D.3d at 564 (2d Dep’t 2013), quoting from *Arthur J. Gallagher & Co. v. Marchese*, 96 A.D.3d 791 (2d Dep’t 2012). “Pursuant to CPLR 6301, a temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss, or damage will result unless the defendant is restrained before the hearing can be held.” *Crescentini v. Slate Hill Biomass Energy, LLC*, 113 A.D.3d 806, 807 (2d Dep’t 2014)..

**A. Jozefovic cannot demonstrate a likelihood of success on the merits.**

**1. WPH Properties is entitled to dispose of the Waterview membership interest.**

The Pledge Agreement unambiguously pledges and assigns the Waterview Membership Interest to WPH Properties in order to secure the promises made by Jozefovic in the Pledge Agreement and by HBL in the Lease. HBL does not dispute that it is in default under the Lease. WPH Properties is a “secured party” under Article 9 of the New York UCC. § 9-102-73(A) defines a “secured party,” as relevant here, as a person “in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.” Here, pursuant to the Pledge Agreement, Jozefovic pledged and assigned the Waterview Membership Interest to WPH Properties as collateral to secure HBL’s obligations under the Lease and Jozefovic’s obligation under the Pledge Agreement with respect to the Waterview JPM Accounts. Nicholson aff., ¶ 4 & ex. D, at 2, second Whereas clause. The Pledge Agreement therefore granted WPH Properties a security interest, making the Pledge Agreement a security agreement under the UCC and WPH Properties a secured party under UCC §§ 1-201(35); 9-102-73(A).

Pursuant to Article 9 of the UCC, a secured party has the right to dispose of collateral upon a default. “After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.” N.Y.U.C.C. § 9-610(a).

The Pledge Agreement is a clear, unambiguous contract entered into at arms-length between Jozefovic and WPH Properties that should be enforced. When sophisticated parties agree to the terms of an unambiguous contract, the terms of the contract control and the contract will be enforced according to its terms. *See Matter of Wallace v 600 Partners Co.*, 86 N.Y.2d 543, 548 (1995). Courts will neither modify nor rewrite a contract when the terms of the contract are clear.

See *Morlee Sales Corp. v Manufacturers Tr. Co.*, 9 N.Y.2d 16, 19 (1961); *Ligeras Enterprises, Inc. v Carla Realty Co.*, 164 A.D.3d 783, 784 (2d Dep’t 2018). As fully detailed below and in the Nicholson affidavit, Jozefovic and HBL breached its obligations under the Lease and Pledge Agreement. See Nicholson aff., ¶¶ 13 - 27. WPH Properties is therefore entitled to exercise its rights under Article 9 of the UCC and the Pledge Agreement by disposing of the Waterview Membership Interest at a public sale.

**2. WPH Properties still has security interest under the Pledge Agreement because HBL has never deposited \$1.6 million in WPH Properties’ Rent Security Account.**

Contrary to Jozefovic’s argument, the Pledge Agreement does not provide that it terminates when the \$1.6 million has been deposited in the Waterview JPM Account. What it provides, specifically, is that the Pledge Agreement terminates when the \$1.6 million is deposited in WPH Properties’ Rent Security Account:

2. Upon effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the interest in the company assigned to the Assignee pursuant to Paragraph 1 hereof shall be automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect.

Nicholson aff., ¶ 6 - 8 & ex. D, at 2. Since the \$1.6 million Additional Security Deposit was never delivered to WPH Properties in accordance with Section 7.1(a)(iii) of the Lease, the Pledge Agreement remains in full force and effect. And because the Pledge Agreement, by its express terms, secures the obligations under the Lease, the failure to deliver the \$1.6 million in additional rent security was also a default under the Pledge Agreement.

**3. The tender of the bank documents, although irrelevant under the terms of the Pledge Agreement, was, in any event, insufficient to satisfy Jozefovic’s obligation.**

Jozefovic’s argument about the tender of the bank documents to Howard Fensterman is

irrelevant. Even if that story were factually correct, the tender did not terminate the Pledge Agreement. But the story is also false.

The Pledge Agreement obligates Jozefovic to transfer the funds into the two JPM Accounts owned by Waterview (account number xxxxxx7002 and account number xxx-x0885) and to add Fensterman as a signatory to both of those accounts to guarantee that no withdrawals would be made from those accounts that would reduce the balance below \$1.6 million, “so as to ensure that when required 60 days prior to the commencement date [of the Lease] the money in the account or equivalent shall be delivered as additional cash security for the [L]ease.” Nicholson aff., ex. D & ¶ 15-18. Similarly, the Waterview Resolution attached as Exhibit A to the Pledge Agreement requires, among other things, that “[t]he Company add Howard Fensterman as a co-signatory to the following account Waterview Acquisition I, LLC Account Number 7002 and Account Number 0885 at JP Morgan Chase together with Marc Neuman and Lizer Jozefovic.” Nicholson aff., ex. D.

In other words, the funds in the Waterview JPM Accounts were intended to secure the obligation under the Lease to post the \$1.6 million Additional Security Deposit by adding Fensterman as a co-signatory. The agreement was that Fensterman, as co-signatory, would ensure that the balance of Waterview JPM Accounts was at least \$1.6 million, the amount of the Additional Security Deposit, and those funds would be used to post the Additional Security Deposit as required under the Lease when that became due. That is why the Pledge Agreement does not terminate until the \$1.6 million is deposited into WPH Properties’ Rent Security Deposit Account.

Fensterman was never added as a signatory to either Account 7002 or Account Number 0885. As to Account 7002, Jozefovic makes no claim that Fensterman was added as a signatory to

Account 7002. That alone was a breach of the provisions of the Waterview Resolution and therefore of the Pledge Agreement.

The Giardino affirmation states that the \$1.6 million in “Additional Rent Security” was transferred to Account 0885. Giardino aff., ¶ 45; Jozefovic aff., ¶ 135. But that is beside the point. The point is that Jozefovic failed to take all of the necessary steps to add Fensterman as a co-signatory to the Waterview JPM Accounts, a clear breach of the Pledge Agreement.

The Giardino affirmation vaguely states that “the resolution and account holder information [for Account 0885] were tendered to Fensterman” and that “Fensterman simply had to sign the forms provided and submit them in order to become a signatory on” Account 0885. Giardino aff., ¶¶ 46, 47; Jozefovic aff., ¶¶ 36, 39. In support of these claims, the Giardino affirmation attaches as exhibit H certain account documents for Account 0885 and an August 17, 2017 email from Mr. Zafrin to Fensterman stating “Howard I need your signature on the last page.” Giardino aff., ex. H. One of the documents, the Limited Liability Company Certification states on page 1 (in bold lettering): “Use this form to certify the members/managers authorized to act on an investment account for a Limited Liability Company. A Signatory Information Sheet MUST BE provided for all signers Someone executing an LLC Certification was also required to provide a Signatory Information Sheet.” Therefore, execution of the LLC Certification alone was insufficient to make Fensterman an authorized signatory on Account 0885. And the account documents attached to the Giardino affirmation do not include a Signatory Information Sheet for Howard Fensterman.

**4. WPH Properties did not waive its rights under the Pledge Agreement.**

In one sentence and without further explanation, Jozefovic argues that WPH Properties’ “failure to consummate the account transaction in 2017 constitutes a complete waiver of contractual rights.” Defendants’ br., at 14-15. It is completely unclear that this means. WPH Properties did not waive any rights and Jozefovic has offered no proof whatsoever that it did.

Jozefovic’s contention that WPH Properties “waived its rights under the [Pledge Agreement] with respect to Rent Security by accepting a \$2.2 million payment from Epic,” Defendants’ br., at 15, is also frivolous. To reiterate, the Lease obligates HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease and, as previously noted, an Additional Security Deposit in the amount of \$1,600,000. Nicholson aff. ex. A, § 7.1. HBL defaulted on its obligation to provide security deposits before the commencement date of the Lease. It was HBL’s immediate default under the Lease by not paying the required security deposits in the amounts of \$3,700,000 and an additional \$1,600,000 that prompted WPH Properties and HBL to negotiate the letter of intent dated November 20, 2019 (the “LOI”). Giardino aff., ex. I. HBL also defaulted under the terms of the LOI in a number of ways, including by failing to provide the required security deposit in the re-negotiated amount, failing to pay rent, failing to pay municipal and utility payments, failing to pay real estate taxes, failing to enter into the required Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank and by failing to obtain an \$8,000,000 working capital credit line.

**5. MCB’s lien on the Waterview membership Interest does not affect WPH Properties’ right to sell the interest.**

After pledging Waterview Membership Interest to WPH Properties, Jozefovic pledged the same interest to MCB. That violated his covenant in the Pledge Agreement that he would “not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in” Waterview Hills. Nicholson aff., ex. D, at 2, § 3. He did that by amending the Waterview Hills operating agreement to create membership certificates. That also violated his agreement “not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect

this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee.” Nicholson aff., ex. D, at 2, § 4. WPH Properties did not consent to the amendment that allowed for the assignment of the membership certificate to MCB. WPH Properties acknowledges that MCB’s lien is prior to WPH Properties’ lien because MCB perfected first. But the UCC nevertheless allows a junior creditor to sell the collateral subject to the senior creditor’s lien. And there is no reason that Jozefovic should be allowed to defeat WPH Properties’ right to sell the Waterview Membership Interest by subsequently pledging it to MCB in violation of the Pledge Agreement.

First, the fact that MCB has an alleged senior security interest in the Waterview Membership Interest does not prohibit WPH Properties from disposing of the collateral in accordance with Article 9 of the UCC. N.Y.U.C.C. § 9-610(a) provides that “[a]fter default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.” The section does not provide that only the most senior secured creditor may conduct a sale. The Official Comments confirm this. Official Comment 5 to N.Y.U.C.C. § 9-610 states “[d]isposition rights under subsection (a) are not limited to first-priority security interests. Rather, any secured party as to whom there has been a default has the right to dispose of collateral under this subsection.” For example, courts have held that a party may foreclose a subordinate membership interest. *CMI II, LLC v. Interactive Brand Dev., Inc.*, 13Misc3d 1214(A), 2006 WL 2770095, (N.Y. Co. Sup. 2006) (“IIG alleges that plaintiff cannot foreclose on the Collateral because IIG has a more senior security interest. However, the fact that plaintiff’s security interest is subordinated does not preclude plaintiff from seeking and obtaining foreclosure. As part of the foreclosure process, plaintiff is

entitled to have the amount secured by IIG's senior security interest judicially determined, and to have that amount satisfied out of the sale of the Collateral.”)

Second, the UCC does not require that the secured party possess the collateral in order to foreclose. UCC § 9-102-73(A) defines a secured party, as relevant here, as “a person in whose favor a security interest is created or provided for under a security agreement. . . .” It does not require that the secured party have possession. Nothing in UCC Article 9 provides that possession of certificates is required as a precondition to a UCC Article 9 foreclosure. It requires only that the party foreclosing be a “secured party.” See N.Y.U.C.C. § 9-601(a). Further, N.Y.U.C.C. § 9-613 does not require that a notice of a sale of collateral under Article 9 state whether the secured party is in possession of the collateral. Indeed, “[s]ection 9-202 declares the policy of Article 9 of the Code stating that ‘each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.’” *In re Yale Exp. Sys., Inc.*, 370 F.2d 433, 437 (2d Cir. 1966).

Generally, a membership interest is an intangible asset unless the operating agreement specifically provides that such interest must be evidenced by a certificate. N.Y. Limit. Liab. Co. § 603 (b). In this case, Jozefovic’s membership interest is a general intangible asset because its operating agreement did not provide otherwise. Even if the operating agreement was amended after Jozefovic pledged his membership interest, the certificate is relevant only to resolve the priority of competing claims. *Abele Tractor & Equip. Co., Inc. v. Schaeffer*, 167 A.D.3d 1256, 1259 (3d Dept 2018) (“An unperfected security interest may be enforced directly against a debtor (see UCC 9–201, 9–203[a], [b]); perfection is relevant only to resolve the priority of competing claims (see UCC 9–322).”). The case cited by MCB is inapposite. The creditor in *In re Domestic Fuel Corp.* – a bankruptcy case – held a security interest in corporate stock, not a membership

interest in a limited liability company. *In re Domestic Fuel Corp.*, 71 B.R. 734 (1987). Unlike stock certificates, a membership interest in an LLC is not required to be evidenced by a written instrument. *See* N.Y. Limit. Liab. Co. § 603 (b). *Hotel 71 Mezz Lender LLC v. Falor*, 14 N.Y.3d 303 (2010), is illustrative. In that case, the Court of Appeals rejected arguments analogizing a party’s ownership/membership interest in various LLC to shares of corporate stock for purposes of attachment of that interest. *Id.* at 316-17. (“Corporate shares are typically evidenced by stock certificates. Defendants’ interests, on the other hand, are not evidenced by “ownership” certificates or any other written instrument.”) The Court stated that “defendants’ ownership/ membership interests in 22 out-of-state limited liability companies—is akin to intangible contract rights, and is clearly assignable and transferable” and concluded that the intangible property interests’ situs is wherever the debtor is present. (“Just as a debt clings to the debtor when he enters a state other than the state where the debt was incurred, it follows that defendants’ uncertificated ownership interests, which defendant Mitchell possesses or has custody over, travel with him, and were attachable in New York based on his presence in this state.”) *Id.* 315-16. Likewise here, WPH Properties possesses an intangible uncertified ownership interest and it ‘travels’ with it. Thus, MCB’s possession of a certificate – which is not a conclusive fact – does not preclude WPH Properties from selling its security interest.

MCB’s Pledge Agreement (Exhibit B to Bandazian Aff.) only contains a pledge for Jozefovic’s uncertificated membership interest in Waterview Acquisition, not a pledge on a certificate. MCB’s UCC filing ((Exhibit D to Bandazian Aff.) also describes a pledge on an uncertificated membership interest, not a membership certificate. And while the Amended and Restated Operating Agreement of Waterview Acquisition (Exhibit C to Bandazian Aff.) states in Section 2.8 that membership interests “shall be evidenced by a certificate or certificates the form

of which is attached to this Agreement as Schedule 2.8,” no such form is attached to the Operating Agreement submitted by MCB to the Court. Finally, MCB did not submit a copy of its purported certificate of membership interest in its opposition papers. There is no evidence that MCB’s pledge for the uncertificated membership interest was actually converted to a pledge for a certificated interest. While MCB claims to be in possession of a certificate, no copy has ever been provided and there is no evidence of that documents’ existence except for Bandazian’s statements to that effect.

Nothing in MCB’s supplemental submission to this Court shows that the WPH Properties’ Pledge Agreement is in any way invalid or that its uncertificated security interest cannot be sold. All MCB provides are arguments relating to the validity of its own pledge and the priority of its interest. But none of those points preclude WPH Properties from exercising their right to sell Jozefovic’s membership interest subject to MCB’s alleged senior interest. *See supra CMI II, LLC, 13Misc3d 1214(A), 2006 WL 2770095*. So far, however, the only evidence MCB has provided is of a UCC filing and an agreement pledging Jozefovic’s membership interest, not a membership certificate.

UCC section 8-103(c) provides in pertinent part that “[a]n interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, *its terms expressly provide that it is a security governed by this Article*, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.” (Emphasis added). Without a copy of the certificate, the parties and this Court are unable to ascertain whether or not it complies with the UCC requirement or the requirements in N.Y. Limit. Liab. Co. § 603 (b), stating in pertinent part: “The existence of the restrictions on the sale or transfer of a membership interest, as contained

in this chapter and, if applicable, in the operating agreement, shall be noted conspicuously on the face or back of every certificate representing a membership interest issued by a limited liability company.” MCB has not provided proof of the existence of the certificate at any point during the parties’ dispute – not in their opposition to the sale in the New York County action and not in their opposition to the current sale. Thus, as the record stands, all MCB has is the same uncertified intangible security interest in Jozefovic’s membership interest that WPH Properties has.

Further, WPH Properties should not be made to bear any loss of value in its collateral because of Jozefovic’s attempt to defraud it and/or MCB. WPH Properties’ sale is commercially reasonable and MCB will not be prejudiced if the sale is made subject to its security interest. MCB’s security is for the amount of \$3 million (Bandazian Aff. §§ 3 and 4. Jozefovic himself states in his affidavit that his “Membership Interest is worth no less than \$6 million.” (Jozefovic Supplemental Aff. § 86). Thus, Jozefovic’s membership is likely to sell for more than the MCB loan is worth and its value will likely continue to accrue following any sale. Precluding WPH Properties from exercising its rights due to Jozefovic’s actions would only encourage other debtors to engage in the same tactic of certificating their interest in violation of a prior pledge to defeat the pledge when the pledgee seeks to enforce it.

**6. The members of Waterview consented to the pledge and assignment of the Waterview Membership Interest**

Jozefovic’s claim that the pledge and assignment of the Waterview Membership Interest was prohibited by Waterview’s operating agreement is also incorrect. Jozefovic aff., ¶¶ 42-44. The Pledge Agreement was executed by both Waterview and Jozefovic. And the Waterview resolution attached to the Pledge Agreement, which authorizes adding the requirement for Howard Fensterman’s signature, *was executed by all the members of Waterview*, and specifically provides that the “action is taken pursuant to the applicable New York limited liability company statutory

laws and the operating agreement of the Company, by the written consent of a majority of its members and managers of the Company.” *Id.* at 8.

In any event, a prohibition on pledge of the Waterview Membership Interest absent consent of all the members is illegal and void. See *Allen v. Biltmore Tissue Corp.*, 2 N.Y.2d 534, 542 (1957) The rule articulated in *Allen v. Biltmore Tissue Corp.* prohibits the exactly the kind of restriction here: one that gives the other members of Waterview the right to unilaterally control whether one member may transfer or pledge his ownership interest. See *Rafe v. Hindin*, 29 A.D.2d 481 (2d Dep't), *aff'd*, 23 N.Y.2d 759 (1958) (voiding as against public policy a legend on a stock certificate providing that “each stockholder is required to obtain the consent of the other stockholder to a proposed transfer of the stock to a third party. . . .” Membership Interests in limited liability companies are, like stocks, personal property, N.Y. Limited Liab. Co. Law § 610, and therefore should be treated identically with respect to illegal restraints on alienation than shares in closely-held corporations.

**7. Jozefovic’s remaining arguments in opposition to the sale are without basis.**

None of Jozefovic’s arguments in opposition to the sale of the Waterview Membership Interest have any merit.

**a. The notice of the sale is not defamatory.**

Jozefovic complains that the Notification of Disposition of Collateral is “defamatory” because it refers to Jozefovic as “assignor” and states that WPH Properties will sell the Waterview Membership Interest at public auction “to satisfy Epic’s debts.” Defendants’ br., at 16. These assertions are frivolous. The notice makes no reference whatever to Epic or to “Epic’s debts.” Epic is not a party to the Lease or the Pledge Agreement. WPH Properties is authorized to conduct a public sale of the Waterview Membership Interest in the event of a default under the Pledge Agreement (to which Jozefovic is a party) or the Lease (to which HBL is a party). The essence of

Jozefovic’s claim, that WPH Properties’ distribution of a notice of that sale in accordance with the UCC is defamatory, is absurd. Jozefovic’s assertion that the notice refers to Jozefovic as an “assignor” is wrong. It does nothing more than a reference to the Pledge Agreement, which defines Jozefovic as the “Assignor” in its first paragraph. *Giardino aff., ex. C*, at 1. And the notice does not state that WPH Properties will sell the Waterview Membership Interest at public auction to “satisfy debts.” *Defendants’ br.*, at 16.

**b. The requirement that the New York State Department of Health approve the sale does not prevent a sale subject to the approval of the New York State Department of Health.**

Jozefovic argues that the approval of the New York State Department of Health (“NYSDOH”) is a prerequisite for sale of the Waterview Membership Interest. Westchester Healthcare agrees, but that is not an obstacle to UCC sale. The Terms of Sale being provided to prospective purchasers provide that “[t]he Collateral will be sold subject to all licensing and approval requirements of the New York State Department of Health.” *Nicholson aff., ex. J*.

**c. Jozefovic’s claims against Howard Fensterman are without merit.**

Finally, Jozefovic argues that his utterly baseless claims against Howard Fensterman for breach of fiduciary duty, legal malpractice and violation Judiciary Law § 487 support his motion for injunctive relief. Each those claims is frivolous and in any event none of them support Jozefovic’s motion for injunctive relief.

Neither Mr. Fensterman nor Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (“Abrams Fensterman”), the law firm for which he serves as managing partner, has ever represented Jozefovic in his personal capacity. *See* accompanying affirmation of Howard Fensterman dated June 29, 2021 (the “Fensterman affidavit” or “Fensterman aff.”), ¶ 7. The lack of an attorney-client relationship is fatal to Jozefovic’s malpractice claim. *Cusack v. Greenberg Traurig, LLP*, 109 A.D.3d 747,747 (1st Dep’t 2013) (Court properly dismissed claim

of legal malpractice, as there was no attorney-client relationship because the “defendant represented the corporate entity, not its shareholders or employees and, thus, not plaintiff.”); *Learning Annex, L.P. v. Blank Rome LLP*, 106 A.D.3d 663, 663 (1st Dep’t 2013) (“[A] claim for legal malpractice . . . would fail to state a cause of action in the absence of an attorney-client relationship.”); *Fortress Credit Corp. v. Dechert LLP*, 89 A.D.3d 615, 616 (1st Dep’t 2011) (“legal malpractice cause of action fails because the parties had no attorney-client relationship”).

The lack of an attorney-client relationship is also fatal to Jozefovic’s breach of fiduciary duty claim. A fiduciary relationship arises “between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation. *EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19 (2005) “A fiduciary relation exists when confidence is reposed on one side and there is resulting superiority and influence on the other.” *AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co.*, 11 N.Y.3d 146, 158 (2008). Mr. Fensterman never acted as counsel to Jozefovic and he has made no showing whatever that Mr. Fensterman otherwise has “a duty to act for or to give advice for the benefit of” Jozefovic.

Finally, Josefovich’s claim under Judiciary Law § 487 is not viable either given the absence of an attorney-client relationship. *Mecca v. Shang*, 258 A.D.2d 569, 570 (2d Dep’t 1999) (affirming dismissal of Judiciary Law § 487 claim because plaintiff “never retained the defendants’ legal services”); *see also Rogath v. Koegel*, No. 96 Civ. 8729, 1998 WL 695668, at \*4 n.10 (S.D.N.Y. Oct. 6, 1998) (dismissing Judiciary Law § 487 claim because plaintiff could not plead that any fiduciary duty or attorney-client relationship existed between plaintiff and defendant).

Abrams Fensterman does represent Waterview (which Jozefovic’s motion papers refers to as Epiq) in completely unrelated matters. As a matter of law, that representation is of the limited liability company alone and does not extend to Jozefovic or the other members of Waterview. See

*Stang LLC v Hudson Sq. Hotel, LLC*, 2016 N.Y. Slip Op. 32434[U], 29-30 (Sup. Ct. New York Cty. [Anil C. Singh, J.] December 12, 2016), *aff'd*, 158 A.D.3d 446 (1st Dep't 2018).

Further, as stated in the Fensterman affidavit, Abrams Fensterman represents Waterview in litigation to collect unpaid invoices, in applications for Medicaid benefits and in so-called Fair Hearing administrative proceedings arising out of Medicaid reimbursement disputes. Because none of the matters in which Abrams Fensterman represents or has ever represented Waterview has anything whatever to do with any of the issues in this case, Fensterman aff., ¶ 8, none of those representations creates an actual or potential conflict of interest And in any event, Waterview is not a plaintiff in this case and has not, and cannot asserted any claims against Fensterman; indeed, there would be absolutely no factual or legal basis for doing so.

**B. Jozefovic cannot demonstrate irreparable harm.**

To demonstrate entitlement to injunctive relief with respect to a disposition of collateral under N.Y.U.C.C. § 9-625, a movant is required to establish irreparable harm. *Lombard v. Station Square Inn Apartments Corp.*, 94 A.D.3d 717, 721 (2d Dep't 2012); *see generally* 306 *Rutledge, LLC v. City of New York*, 90 A.D.3d 1026, 1028 (2d Dep't 2011) (quoting *Mar v. Liquid Mgt. Partners, LLC*, 62 A.D.3d 762, 763 (2d Dep't 2009)); *Broadway 500 W. Monroe*, 80 A.D.3d 483, 484 (1st Dep't 2011).

Jozefovic will not suffer irreparable harm here. The Waterview Membership Interest is a purely commercial one, the loss of which is quantifiable and compensable by monetary damages. *Lombard v. Station Square Inn Apartments Corp.*, 94 A.D.3d 717, 721 (2d Dep't 2012); *1248 Assoc. Mezz II LLC v. 12E48 Mezz II LLC*, No. 651812/2020, 2020 WL 2569405 (Sup. Ct. New York Cty. [Frank P. Nervo, J.] May 8, 2020). The disposition of that interest at a UCC sale would result in a loss of Jozefovic's investment in Waterview, nothing more. Such a loss can be compensated by money damages and, therefore, Jozefovic cannot possibly suffer irreparable harm

as a result of the UCC sale. The motion for injunctive relief should therefore be denied.

**C. The balance of the equities weighs heavily in WPH Properties' favor.**

Finally, to enjoin the sale, Jozefovic must establish that the balance of the equities tip in his favor; that is, he is "required to show that the irreparable injury to be sustained is more burdensome to him than the harm that would be caused to the defendant through the imposition of the injunction. *Lombard*, 94 A.D.3d at 721 (citing *Klein, Wagner & Morris v Lawrence A. Klein, P.C.*, 186 A.D.2d 631, 633 (2d Dep't 1992)). Jozefovic cannot possibly make this showing.

It is undisputed that Jozefovic pledged the same membership interest to both WPH Properties and MCB. If MCB was not aware of Jozefovic's prior pledge to WPH Properties, it was only because Jozefovic made fraudulent misrepresentations to MCB on the assignability of his membership interest.

WPH Properties has suffered irreparable harm. As a result of HBL's refusal to make timely rents payments under the Lease, WPH Properties was unable to make certain monthly payments of debt service required by the Note and the Construction Loan Agreement. And because HBL had also failed to make the required security deposits under the Lease, WPH Properties lacked an alternative source of funds upon which to draw upon to make the untimely rent payments. *Nicholson aff.*, ¶ 32.

The Lease requires HBL to cooperate in WPH Properties' efforts to refinance the Mortgage. *Nicholson aff.*, ex. A, §7.8. As a direct result of HBL's defaults under the Lease, however, WPH Properties was unable to refinance the Mortgage securing the construction loan prior to maturity. HBL's default under the Lease made it impossible to refinance the Mortgage because any new lender would have required proof that the Lease (which would provide the necessary funding in the form of rents to pay debt service on the new mortgage loan) was not in default. Due to HBL's default, it was therefore impossible for WPH Properties to provide any

prospective new lender an estoppel certificate or other evidence certifying that the Lease was not in default. As a result, the construction loan has now matured and is in default, placing the ongoing operations of the Facility and WPH Properties at imminent risk because the construction Security Benefit may foreclose at any time. Nicholson aff., ¶ 35.

The lender, Security Benefit issued notices of default and commenced an action to foreclose the Mortgage, but then withdrew the foreclosure action without prejudice to renew upon expiration of the moratorium on commercial foreclosure proceedings in New York State Upon expiration of the statutory foreclosure prohibition on August 31, 2021, Security Benefit will almost certainly recommence instate the Foreclosure Action. Nicholson aff., ¶ 36

The failures of Jozefovic and HBL, which Jozefovic controls, to comply with their contractual obligations under the Pledge Agreement and the Lease and guarantees have therefore caused WPH Properties substantial prejudice and financial harm and placed its principal asset, the Facility, at serious risk of foreclosure by Security Benefit. Enjoining WPH Properties from exercising their contractual and statutory remedies for these defaults would obviously cause it substantial, completely unwarranted harm. Nicholson aff., ¶ 36.

On the other hand, the only consequences Jozefovic will suffer as a result of the UCC sale is the loss of his Waterview Membership Interest, which is precisely what he bargained for in the event he defaulted on his obligations under the Pledge Agreement and the Lease. Nicholson aff., ¶ 37. Where alleged harm to movant is self-created, the balance of equities does not tip in movant's favor. *Sync Realty Grp., Inc. v. Rotterdam Ventures, Inc.*, 63 A.D.3d 1429, 1431 (3d Dep't 2009) ("Considering that plaintiff's alleged harm appears to be in part self-created, it cannot be said that the balance of equities tilts in plaintiff's favor.").

II

**If the Court grants an injunction, Jozefovic must be required to post a \$1.6 million bond**

CPLR 6312(b) requires that when the Court grants a preliminary injunction it must require the movant to provide an undertaking in an amount to be fixed by the Court, that the movant, if it is finally determined that he or she was not entitled to an injunction, will pay to the other party all damages and costs which may be sustained by reason of the injunction. CPLR 6312(b); *Putter v. Singer*, 73 A.D.3d 1147, 1148 (2d Dep’t 2010) (“While fixing the amount of an undertaking when granting a motion for a preliminary injunction is a matter within the sound discretion of the court, CPLR 6312(b) requires that the party seeking an injunction give an undertaking.”); *Livas v. Mitzner*, 303 A.D.2d 381, 383 (2d Dep’t 2003) (same).

“The amount of the undertaking . . . must not be based upon speculation and must be rationally related to the damages the nonmoving party might suffer if the court later determines that the relief to which the undertaking relates should not have been granted.” *Olympic Ice Cream Co., Inc. v. Sussman*, 151 A.D.3d 872, 874 (2d Dep’t 2017) (quoting *Access Medical Group, P.C. v. Straus Family Capital Group, Inc.*, 44 A.D.3d 975, 975 (2d Dep’t 2007)).

For the reasons set forth in the accompanying affirmation of Alfred E. Donnellan, Esq., the amount of the bond should be \$1.6 million.

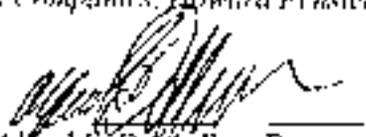
**CONCLUSION**

For all of these reasons, WPH Properties respectfully requests that the motion for a temporary restraining order and preliminary injunction be denied in its entirety and that the Court award such other relief as it deems just.

Dated: White Plains, New York  
June 29, 2021

**DE BELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP**

*Lead Counsel for White Plains Healthcare Properties I, LLC, UCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson*

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- and -

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Tel.: (914) 697-7010

**CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, ALFRED E. DONNELLAN, ESQ., an attorney at law licensed to practice in the State of New York, and counsel of record herein, certify that this document contains 6,458 words, exclusive of the caption page, table of contents and table of authorities and signature block, as counted by the word count of the word-processing system used to prepare this document.

Dated: White Plains, New York  
June 29, 2021

  
ALFRED E. DONNELLAN

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

----- x  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 HBL SNF, LLC, LIZER JOZEOFVIC *w/a* LIZER :  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and :  
 Third-Party Plaintiffs. :  
 :  
 v. :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, WILLIAM :  
 NICHOLSON, and METROPOLITAN :  
 COMMERCIAL BANK :  
 :  
 Third-Party :  
 Defendants. :  
 ----- x

Index No.: 60278-2020  
**SUPPLEMENTAL AFFIDAVIT  
 OF BRETT BANDAIZIAN IN  
 PARTIAL JOINDER AND  
 SUPPORT OF DEFENDANTS' /  
 THIRD-PARTY PLAINTIFFS'  
 ORDER TO SHOW CAUSE FOR  
 A TEMPORARY RESTRAINING  
 ORDER AND PRELIMINARY  
 INJUNCTION**

STATE OF NEW YORK )  
 ) ss:  
 COUNTY OF NEW YORK )

**BRETT BANDAIZIAN**, being duly sworn, deposes and says:

1. I am a Vice President, Commercial Lending, of third-party defendant and cross-claimant Metropolitan Commercial Bank ("MCB"), and respectfully submit this supplemental affidavit in partial joinder and support of the motion by defendants / third-party plaintiffs Lizer Jozefovic ("Jozefovic"), HBL SNF LLC ("HBL"), and Mark Neuman ("Neuman") (collectively, "Movants") for an order pursuant to CPLR Article 63 enjoining plaintiff White Plains Healthcare Properties I, LLC ("WPHP") and the third-party defendants (collectively, the "WP Parties"), during the pendency of this action, from, among other things, taking any action to transfer,



NUMBER

#1\*

FORMED UNDER THE LAWS OF THE STATE OF NEW YORK

# WATERVIEW ACQUISITION I, LLC

This Certifies that Herbert Lizer Jozefovic is the registered owner of Seventy and 1/10-(70.1%) Percent of the membership in the Limited Liability Company transferable only on the books of the Company in accordance with the Company's Operating Agreement and pursuant to the provisions of Section 2801-a(4)(b) of the New York State Public Health Law.

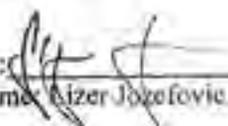
In Witness Whereof, the said Limited Liability Company has caused this Certificate to be signed by its duly authorized Manager as of the 10<sup>th</sup> day of December 2019.

  
Herbert (Lizer) Jozefovic-Manager

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ [print or typewrite the name of the transferee], \_\_\_\_\_ [insert Social Security Number or other taxpayer identification number of transferee], the following specified percentage of Interests: \_\_\_\_\_ [identify percentage of Interests being transferred], and irrevocably constitutes and appoints \_\_\_\_\_ as attorney-in-fact to transfer **the same** on the books and records of the Company, with full power of substitution in the premises.  
 Dated: \_\_\_\_\_

TRANSFEROR:

LIZER JOZEFOVIC,  
an individual

By:   
 Name: Lizer Jozefovic

Address: 53 Mariner Way , Monsey NY 10952

**THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") OR ANY STATE SECURITIES OR BLUE SKY LAWS AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF WITHOUT REGISTRATION UNDER THE ACT OR UNDER ANY APPLICABLE STATE SECURITIES OR BLUE SKY LAWS UNLESS SUCH SALE, TRANSFER, PLEDGE OR OTHER DISPOSITION IS EXEMPT FROM REGISTRATION THEREUNDER.**



during the pendency of this action, from, among other things, taking any action to transfer, assign, convey, or sell Josefovich's membership interests in Waterview Acquisition I, LLC ("Waterview"), which have now been certificated (the "Certificate").

2. In their papers filed last night (June 29, 2021), the WP Parties insincerely raised for the first time a question as to whether or not the Certificate exists, and to resolve that "question" MCB submits a true copy of the Certificate in the accompanying supplemental affidavit of Brett Bandazian.

3. In any event, examination of the Certificate is not really necessary because Waterview "opted in" to treat its membership interests as securities under UCC Article 8 and such election is determined by the language in the operating agreement. *See In re Brown*, 479 B.R. 112, 117 (Bankr. D. Kan. 2012). This makes sense given the fact that "[a] member's interest may be a certificated security or an uncertificated security within the meaning of section 8-102 of the uniform commercial code if the requirements of section 8-103(c) are met ...." N.Y. Limited Liability Company Law § 603. In *In re Brown*, the Court ultimately determined that the limited liability interests at issue were general intangibles. *Id.* In doing so, however, the Court studied the provisions of the operating agreement, without concern for any certificate, noting that:

None of the conditions listed in § 8-103(c) are met by the units in question here. The units are not traded on any market and the operating agreement makes no provision for Article Eight to apply to them. KMC is a hospital, not an investment company. Because these units are not securities under Article Eight, they cannot be investment property under Article Nine. *Id.* (emphasis added).

4. Conversely, Waterview's Operating Agreement clearly states that its interests are to be certificated and treated as securities (Malatak Aff. Ex. C to Exhibit 1 (Doc No. 124)) and that is all that is required. There is no requirement -- and the WP Parties cite to none -- that the election

to "opt in" be stated on the Certificate. *See also*, "The Article 8 Opt In," Law Journal Newsletters, September 2016 ("For a limited liability company or partnership to 'opt in' under UCC Article 8, the entity must adhere to the requirements contained in section 8-103 of the UCC. Specifically, an entity's operating agreement must contain explicit language stating that the entity has opted to have its membership interest treated as a security. \*\*\* If the entity chooses to issue certificates, **the certificates will frequently (though not always)** contain language notice that the entity has elected to opt in under Article 8"), a true copy of which is annexed hereto as **Exhibit 7** (emphasis added).

5. In summary, Waterview elected, through its Operating Agreement, to treat its interests as securities under Article 8. Accordingly, the interests are securities, MCB is currently in possession of the Certificate and thus, the WP Parties are not able to conduct a commercially reasonable sale.

**WHEREFORE**, MCB respectfully requests that the Court issue an order granting (1) Movants' order to show cause for a temporary restraining order and preliminary injunction, except that the injunction should not be extended to MCB and (2) MCB such other and further relief as this Court deems just and proper.

Dated: New York, New York  
June 30, 2021

  
ROBERT J. MALATAK



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THE BANKRUPTCY STRATEGIST

# The Article 8 Opt In

When a lender provides financing to a commercial borrower, it typically requires the borrower to grant a security interest in some or all of the borrower's assets. Among many other types of assets or collateral, a borrower may be required to grant a security interest in stock or membership interests owned by the borrower, including stock or membership interests in the borrower's subsidiaries or affiliates.

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Of course, simply obtaining a security interest provides only marginal protection relative to parties other than the borrower ' including, for example, competing secured creditors or trustees in bankruptcy. *See, e.g.,* UCC ' 9-322 (priority rules governing competing security interests in collateral); and 11 U.S.C. ' 546 (bankruptcy trustee possesses rights and powers of certain lien creditors). Thus, in addition to merely obtaining a security interest, a lender must take all necessary steps under the Uniform Commercial Code ("UCC" (the UCC has been adopted in all 50 states with some ' usually, but not always, minor ' variations)) or other applicable law to perfect that interest.

The appropriate method for perfecting a security interest varies depending on the type of collateral. To perfect security interests in many types of assets, a lender need only file a UCC financing statement in the appropriate filing jurisdiction. For other assets, a UCC financing statement may not perfect a security interest, or it may only provide a fragile level of perfection that is vulnerable to being trumped by a party that has perfected through a different means.

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**Cross-Border Insolvency In Brazil: The UNCITRAL Model Law Dances to A Samba Beat**



BY NYANA ABREU MILLER AND RAUL TORRAO

Thus, knowing the proper and best way to perfect a security interest in a given type of asset is critical for parties and advisors involved in secured lending. Navigating the intricacies of the system can be challenging, even for experienced professionals. However, some types of assets present an extra degree of challenge because the best way to perfect interests in such assets may vary depending on the situation and the



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BY MICHAEL L. COOK

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### When Does Content of a Debtor's Bar Date Notice Satisfy Due Process?



BY FRANCIS J. LAWALL AND KENNETH A. LISTWAK

The Third Circuit recently examined whether the content of a debtor's bar date notice satisfied due process, so as to discharge unknown litigation creditors' claims against the company after confirmation of the debtor's Chapter 11 plan of reorganization.

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organizational documents of the entity in question. Membership interests in limited liability companies, general partnerships, and limited partnerships are one example of this phenomenon.

### Security or General Intangible

In the absence of the steps discussed below, membership interests in limited liability companies and partnerships will be treated as general intangibles. Pursuant to ' 9-310 of the UCC, the means by which to perfect a security interest in a general intangible is the filing of a UCC-1 financing statement in the proper jurisdiction. UCC ' 9-310. Thus, assuming a secured lender has obtained a valid security interest in a limited liability company or partnership membership interest, once the financing statement is filed in the appropriate jurisdiction, the lender's interest will be perfected. If no other creditor has taken similar steps, the lender will have a first priority security interest in the membership interest (conversely, if another party has already taken the necessary steps to perfect a security interest in the entity's membership interest, then the "first to file" rules set forth in Article 9 will govern priority ( see UCC ' 9-322)).

To illustrate, if Blue Bank agrees to provide financing to Red Corp., and as part of the transaction, Red Corp. grants Blue Bank a security interest in among other things its membership interest in Red LLC, then once Blue Bank files a financing statement in the appropriate jurisdiction, it will have a perfected security interest in the membership interest of Red LLC that is held by Red Corp.

However, a limited liability company or partnership may take certain steps which, for purposes of perfection under the UCC, will change the character of the entity's membership interest from a general intangible to a security. This is commonly referred to as the Article 8 "opt in." Whether an entity has elected to opt in will affect the optimal means by which to perfect a security interest in the entity's membership interest.

### The 'Opt In' Mechanism

For a limited liability company or partnership to "opt in" under UCC Article 8, the entity must adhere to the requirements contained in section 8-103 of the UCC. Specifically, an entity's operating agreement must contain explicit language stating that the entity has opted to have its membership interest treated as a security. See UCC ' 8-103(c). To effectively opt in under Article 8, an entity's operating agreement should contain language such as that shown below:

Each interest in [name of issuer] shall constitute and shall remain a 'security' within the meaning of (i) Section 8-102(a)(15) of the Uniform Commercial Code as in effect from time to time in the State of [state of organization of issuer] [cite to UCC in applicable state] and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995, and the [issuer] has, pursuant to the [list relevant organizational documents of



the issuer], 'opted in' to such provisions for the purpose of the UCC. Notwithstanding any provision of this Agreement to the contrary, to the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the UCC, such provision of Article 8 of the UCC shall be controlling.

When dealing with an entity that is considering the Article 8 opt in, or one that has already opted in, several issues are important to keep in mind. First, section 8-103's opt in provision explicitly applies only to limited liability companies, limited partnerships, and general partnerships; it does not apply to corporations or other entities.

Additionally, as section 8-103(c) of the UCC makes clear, an entity must expressly elect to have its membership interest treated as a security; otherwise, its membership interest will be treated as a general intangible. Thus, it is impossible for a limited liability company or a partnership to accidentally or inadvertently opt in.

Finally, for an entity that chooses to opt in, its membership interest can be certificated or uncertificated. If the entity chooses to issue certificates, the certificates will frequently (though not always) contain language noting that the entity has elected to opt in under Article 8. As discussed below, if an entity has elected to opt in, the lender will often require that the membership interest be certificated so as to enable the lender to take possession of the certificates.

**Effect of Article 8 Opt In on Perfection**

As noted above, if a limited liability company or partnership has taken the steps to opt in, then for purposes of perfection, the membership interest will no longer be classified as a general intangible ' rather, it will be classified as a security. In such an instance, the best way to perfect a security interest in the membership interest is no longer the filing of a financing statement; instead, the optimal perfection method is either control or possession.

If the membership interest is uncertificated, then the best means to perfect the security interest is through control. Conversely, if the membership interest is certificated, the best way for a secured party to perfect is to take possession of the certificate (methods by which to perfect a security interest in a security are addressed in UCC " 9-310 (filing of financing statement), 9-312 (various means), 9-313 (possession), and 9-314 (control)). Even if an entity has elected to opt in, the filing of a valid financing statement will perfect the lender's interest; however, this method of perfection does not provide the lender with the highest form of protection, which is best achieved via control or possession. See UCC " 9-312 and 9-328.

**Dangers for the Unwary Lender**

There are several risks for a lender providing financing secured, at least in part, by a membership interest in a partnership or limited liability company. If the lender perfects its security interest in the membership interest solely by filing a financing statement, and the entity has elected to opt in, then the lender is at risk of its security interest being trumped by a party that perfected either by control or possession, which are superior methods of perfection under Article 9 of the UCC. See UCC ' 9-328.

By way of illustration, if Blue Bank provides financing to Red Corp. and, as part of the transaction, Red Corp. grants Blue Bank a security interest in its membership interest in Red LLC, then once Blue Bank files a financing statement in the appropriate jurisdiction, it will have a perfected security interest in the membership interest of Red LLC that is owned by Red Corp. If Red LLC has not elected to opt in, then Blue Bank's priority would only be at risk if another party filed a financing statement that qualified as a prior filing under ' 9-322 of the UCC. However, if Red LLC did opt in,



then Blue Bank's priority could be primed by another party that perfects by control or possession of Red LLC's membership interest. This would be the result even if the other party perfects its interest after Blue Bank files its financing statement.

Another ongoing risk for a lender is an entity's ability to change its opt-in status. A lender's security interest may be weakened or abrogated if the entity either opts in or elects to opt out after the lender has taken necessary steps to perfect its security interest in the entity's membership interest. For example, if Red LLC opts in after Blue Bank provided Red Corp. with financing, and another lender subsequently perfects by control or possession of the membership interest, then Blue Bank would face the same priority issues discussed above.

Conversely, if an entity chooses to opt out after a lender has provided financing, and the lender has not filed a financing statement perfecting its security interest in the entity's membership interest, then the lender will be unperfected, since the entity's membership interest will be classified as a general intangible which, as noted above, can only be perfected through the filing of a financing statement.

Consequently, many lenders require a borrower to affirmatively represent and warrant that any limited liability company or partnership whose membership interest is being pledged as security either has or has not elected to opt in under Article 8, and that such entity will not alter its election status. Additionally, when an entity has opted in, many lenders require the entity's membership interest to be certificated and possession of the certificates to be transferred to the lender.

### Conclusion

The Article 8 opt-in election adds an additional layer of complexity to the already labyrinthine rules governing perfection of security interests under the UCC. A lender that is unaware of the nuances created by the opt in (or if the entity's Article 8 opt in status is different than the lender believes) may find its security interest vulnerable to being primed by another party that has taken steps to perfect in a superior manner under the circumstances. Even worse, the lender may discover that it is unperfected entirely with respect to the membership interest in question.

As a final matter, it is also worth noting that while the opt in provides additional complications with respect to perfection of security interests in limited liability and partnership membership interests, the opt in may also provide several additional benefits for a secured lender. Among other things, when an entity has elected to opt in, a secured lender may in certain circumstances qualify as a protected purchaser under ' 8-303 of the UCC. As these added opt-in benefits are worthy of a separate article unto itself, a fuller discussion of them will come at a later date.

---

**Andrew L. Turscak, Jr.** is a partner and **James J. Henderson** is an associate in the Business Restructuring, Creditors' Rights & Bankruptcy Group at Thompson Hine LLP in Cleveland. They can be reached at [andrewturscak@thompsonhine.com](mailto:andrewturscak@thompsonhine.com) and [jim.henderson@thompsonhine.com](mailto:jim.henderson@thompsonhine.com).

The views expressed in the article are those of the authors and not necessarily the views of their clients or other attorneys in their firm.

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*the Commercial Division*  
At ~~L.A.S. Part~~ of the Supreme Court of the State of New York, held in and for the County of Westchester, at the Courthouse located at 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the 30<sup>th</sup> day of June, 2021.

PRESENT:

Hon. Gretchen Walsh  
Justice Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC, and MARK NEUMAN,

Defendants and Third-Party Plaintiffs,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK

Third-Party Defendants  
-----X

**ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

UPON the annexed First Amended Verified Amended Answer with Affirmative Defenses, Counterclaims, and Third-Party Complaint dated May 21, 2021, the Complaint dated October 22, 2020 from the consolidated action *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et*

al., No. 655549/2020, the Affirmation of John Giardino dated June 22, 2021, the Memorandum of Law dated June 22, 2021, and upon each of the exhibits and all of the papers and proceedings heretofore had herein, and sufficient cause being alleged therefore:

LET THE PLAINTIFF WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, and THIRD-PARTY DEFENDANTS CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK, show cause before this Court located at ~~145 Park~~

*the Commercial Division*  
~~Room~~ 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the 30<sup>th</sup>

day of June, 2021 11:00 a.m. ~~a.m.~~, or as soon thereafter as counsel may be heard;

WHY a preliminary order pursuant to Article 63 of the Civil Practice Law and Rules should not be entered, pending determination of this action, enjoining (1) Plaintiff and Third-Party Defendants and their agents from taking any action to transfer, assign, convey, or sell Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC during the pendency of this action; (2) Defendants and Third-Party Plaintiffs and their agents from reducing the Rent Security below \$1.6 million during the pendency of this action; and (3) Granting such other relief as the Court deems just and proper.

IT BEING alleged in the Amended Answer and Third-Party Complaint, the Complaint, and the Affirmations that temporary relief is necessary to prevent irreparable harm to Defendants and Third-Party Plaintiffs pending the hearing and determination of the motion for a preliminary injunction, and it appearing that Defendants and Third-Party Plaintiffs are entitled to a preliminary injunction pursuant to CPLR § 6301 to enjoin Plaintiff and Third-Party Defendants as stated above; it is:

~~ORDERED, that pending the hearing and determination of Defendants and Third-Party Plaintiffs' motion for a preliminary injunction, (1) Plaintiff and Third-Party Defendants are temporarily enjoined and restrained from taking any action to transfer, assign, convey or sell Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC; and (2) Defendants and Third-Party Plaintiffs are temporarily enjoined and restrained from taking any action to reduce the Rent Security below \$1.6 million.~~

*GW*  
*J.S.C.*

~~AND IT IS FURTHER ORDERED that Plaintiff and Third-Party Defendants' response to this motion, if any, shall be hand delivered or emailed to Defendants and Third-Party Plaintiffs' counsel and filed with the Court on or before \_\_\_\_\_, 2021;~~

~~AND IT IS FURTHER ORDERED that Defendants and Third-Party Plaintiffs reply, if any, should be delivered or emailed to Plaintiff and Third-Party Defendants' counsel and filed with the Court on or before \_\_\_\_\_, 2021;~~

*GW*  
*J.S.C.*

~~SUFFICIENT CAUSE BEING ALLEGED THEREFORE, IT IS ORDERED THAT service of this order and the papers upon which it is granted be deemed due, timely and sufficient if made as follows:~~

*GW*  
*J.S.C.*

- a) By overnight mail service upon Plaintiff White Plains Healthcare Properties I, LLC, on or before the \_\_\_\_ day of June, 2021, or by electronic service of said papers;
- b) By overnight mail service upon Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson on or before the \_\_\_\_ day of June, 2021, or by electronic service of said papers; and

*As stated on the record of the conference held on 6/30/21, all parties have submitted their respective papers and this motion is fully submitted as of 6/30/21.*

*Douglas Walsh*  
*J.S.C.*

~~c) By overnight mail service upon Third-Party Defendant Metropolitan Commercial Bank, on or before the \_\_\_\_\_ day of June, 2021, or by electronic service of said papers.~~

GW  
J.S.C.

ENTER:

*Gretchen Walsh*  
 Hon. Gretchen Walsh  
 JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I, :  
LLC, :

Plaintiff, :

Index No 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
JOZOFVIC, and MARK NEUMAN, :

Defendants and Third-Party Plaintiffs, :

-against-

CCC EQUITIES, LLC, PROJECT EQUITY :  
CONSULTING, THE CONGRESS COMPANIES, :  
HOWARD FENSTERMAN, WILLIAM :  
NICHOLSON, and METROPOLITAN :  
COMMERCIAL BANK :

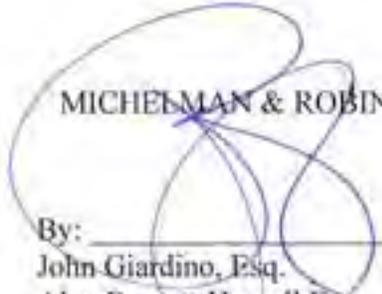
Third-Party Defendants

-----X

**NOTICE OF ENTRY**

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Supreme Court, Westchester County, signed by Hon. Gretchen Walsh on June 30, 2021, and entered in the Office of the Clerk on June 30, 2021.

Dated: New York, New York  
June 30, 2021

MICHELMAN & ROBINSON, LLP  


By: \_\_\_\_\_  
John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
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(212) 730-7700  
jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Defendants and Third-Party  
Plaintiffs*

*the Commercial Division*  
At ~~L.A.S. Part~~ of the Supreme Court of the State of New York, held in and for the County of Westchester, at the Courthouse located at 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the 30<sup>th</sup> day of June, 2021.

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~~Room~~ 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the 30<sup>th</sup>

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*GW  
J.S.C.*

~~AND IT IS FURTHER ORDERED that Plaintiff and Third-Party Defendants' response to this motion, if any, shall be hand delivered or emailed to Defendants and Third-Party Plaintiffs' counsel and filed with the Court on or before \_\_\_\_\_, 2021;~~

*As stated on the record of the conference held on 6/30/21, all parties have submitted their respective papers and this motion is fully submitted as of 6/30/21.*

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*GW  
J.S.C.*

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*GW  
J.S.C.*

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- b) By overnight mail service upon Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson on or before the \_\_\_\_\_ day of June, 2021, or by electronic service of said papers; and

*Dubler Walsh  
J.S.C. 6/30/21*

~~c) By overnight mail service upon Third-Party Defendant Metropolitan Commercial Bank, on or before the \_\_\_\_\_ day of June, 2021, or by electronic service of said papers.~~

GW  
J.S.C.

ENTER:

*Gretchen Walsh*

Hon. Gretchen Walsh  
JUSTICE OF THE SUPREME COURT

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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

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151	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
152	<a href="#">EXHIBIT(S)</a> - P (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
153	<a href="#">EXHIBIT(S)</a> - Q (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
154	<a href="#">EXHIBIT(S)</a> - R (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
155	<a href="#">EXHIBIT(S)</a> - S (Motion #5) <i>Bankruptcy Court Order</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
156	<a href="#">EXHIBIT(S)</a> - T (Motion #5) <i>Operating Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
157	<a href="#">EXHIBIT(S)</a> - U (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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158	<a href="#">EXHIBIT(S)</a> - V (Motion #5) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
159	<a href="#">EXHIBIT(S)</a> - W (Motion #5) <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
160	<a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
161	<a href="#">EXHIBIT(S)</a> - X (Motion #5) <i>Notification of Disposition of Collateral</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
162	<a href="#">EXHIBIT(S)</a> - Y (Motion #5) <i>June 10,2021 Letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
163	<a href="#">EXHIBIT(S)</a> - Z (Motion #5) <i>Publication</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
164	<a href="#">EXHIBIT(S)</a> - AA (Motion #5) <i>Terms of Sale</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
165	<a href="#">EXHIBIT(S)</a> - BB (Motion #5) <i>Amended and Restated Operating Agreement of Waterview</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
166	<a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affidavit of Howard Fensterman</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
167	<a href="#">EXHIBIT(S)</a> - CC (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
168	<a href="#">EXHIBIT(S)</a> - DD (Motion #5) <i>Fed Ex Receipt</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
169	<a href="#">MEMORANDUM OF LAW IN OPPOSITION</a> (Motion #5)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
170	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Supplemental Affidavit of Brett Bandazian in Partial Joinder and Support of Defendants'/Third-Party ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
171	<a href="#">EXHIBIT(S)</a> - 6 (Motion #5) <i>Exhibit 6 Certificate</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

172	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF CROSS-MOTION</a> (Motion #5) <i>Second Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants'/T ... show more</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
173	<a href="#">EXHIBIT(S)</a> - 7 (Motion #5) <i>Exhibit 7 - Article</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
174	<a href="#">ORDER TO SHOW CAUSE</a> (Motion #5)	Court User Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
175	<a href="#">NOTICE OF ENTRY</a>	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
176	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> *Corrected*	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
177	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> (Motion #5) *Corrected* <i>Notice of Appeal</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
178	<a href="#">COUNTY CLERK CERTIFICATION OF MINUTES</a>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
179	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 1 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
180	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 2 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
181	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/10/2021 Received: 08/10/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
182	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/13/2021 Received: 08/13/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
183	<a href="#">NOTICE OF MOTION</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
184	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affirmation of Alfred E. Donnellan, Esq.</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
185	<a href="#">EXHIBIT(S)</a> - 1 (Motion #6) <i>Summons &amp; Complaint - Westchester County action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Document

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Status

#	Document	Filed By	Status
186	<a href="#">EXHIBIT(S)</a> - 2 (Motion #6) <i>Answer with Counterclaims and Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
187	<a href="#">EXHIBIT(S)</a> - 3 (Motion #6) <i>Amended Verified Complaint 2020.11.30</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
188	<a href="#">EXHIBIT(S)</a> - 4 (Motion #6) <i>Reply to Counterclaims and Answer to Third-Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
189	<a href="#">EXHIBIT(S)</a> - 5 (Motion #6) <i>First Amended Verified Complaint 2021.03.22</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
190	<a href="#">EXHIBIT(S)</a> - 6 (Motion #6) <i>Summons &amp; Complaint - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
191	<a href="#">EXHIBIT(S)</a> - 7 (Motion #6) <i>Answer - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
192	<a href="#">EXHIBIT(S)</a> - 8 (Motion #6) <i>Answer of MCB - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
193	<a href="#">EXHIBIT(S)</a> - 9 (Motion #6) <i>Decision and Order 2021.04.08</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
194	<a href="#">EXHIBIT(S)</a> - 10 (Motion #6) <i>First Amended Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
195	<a href="#">EXHIBIT(S)</a> - 11 (Motion #6) <i>Notice to Admit with exhibits</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
196	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of William Nicholson</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
197	<a href="#">EXHIBIT(S)</a> - 12 (Motion #6) <i>Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
198	<a href="#">EXHIBIT(S)</a> - 13 (Motion #6) <i>Development Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
199	<a href="#">EXHIBIT(S)</a> - 14 (Motion #6) <i>Jozefovic Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
200	<a href="#">EXHIBIT(S)</a> - 15 (Motion #6) <i>Neuman Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>

201	<a href="#">EXHIBIT(S)</a> - 16 (Motion #6) <i>Pledge Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
202	<a href="#">EXHIBIT(S)</a> - 17 (Motion #6) <i>Letter of Intent</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
203	<a href="#">EXHIBIT(S)</a> - 18 (Motion #6) <i>White Plains TCO</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
204	<a href="#">EXHIBIT(S)</a> - 19 (Motion #6) <i>AIA form G704</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
205	<a href="#">EXHIBIT(S)</a> - 20 (Motion #6) <i>NYSDOH letter 2019.12.02</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
206	<a href="#">EXHIBIT(S)</a> - 21 (Motion #6) <i>NYSDOH email 2019.10.01</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
207	<a href="#">EXHIBIT(S)</a> - 22 (Motion #6) <i>Term Sheet 2015.11.20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
208	<a href="#">EXHIBIT(S)</a> - 23 (Motion #6) <i>Jozefovic Affidavit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
209	<a href="#">EXHIBIT(S)</a> - 35 (Motion #6) <i>Operating Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
210	<a href="#">EXHIBIT(S)</a> - 36 (Motion #6) <i>Zafrin e-mail dated 4-11-17</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
211	<a href="#">EXHIBIT(S)</a> - 37 (Motion #6) <i>Estoppel Certificate to Security Benefit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
212	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Edward Tabor</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
213	<a href="#">EXHIBIT(S)</a> - 24 (Motion #6) <i>Itemization of amounts due under lease and LOI</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
214	<a href="#">EXHIBIT(S)</a> - 25 (Motion #6) <i>List of Rents &amp; Late Charges</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
215	<a href="#">EXHIBIT(S)</a> - 26 (Motion #6) <i>Notice of Default</i> # <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

Status

216	<a href="#">EXHIBIT(S)</a> - 27 (Motion #6) <i>Accelerated Rent (NPV)</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
217	<a href="#">EXHIBIT(S)</a> - 28 (Motion #6) <i>Professional Fees</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
218	<a href="#">EXHIBIT(S)</a> - 29 (Motion #6) <i>Security Benefit Notice of Default dated 4-16-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
219	<a href="#">EXHIBIT(S)</a> - 30 (Motion #6) <i>Notice of Default 5-22-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
220	<a href="#">EXHIBIT(S)</a> - 31 (Motion #6) <i>Complaint in Security Benefit Foreclosure Action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
221	<a href="#">EXHIBIT(S)</a> - 32 (Motion #6) <i>Itemization of Amounts Due</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
222	<a href="#">EXHIBIT(S)</a> - 33 (Motion #6) <i>Unreimbursed Deposits and Payments</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
223	<a href="#">EXHIBIT(S)</a> - 38 (Motion #6) <i>Payment of Real Estate Taxes</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
224	<a href="#">EXHIBIT(S)</a> - 39 (Motion #6) <i>Certificates of Insurance</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
225	<a href="#">EXHIBIT(S)</a> - 40 (Motion #6) <i>Tenant Insurance Analysis</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 : Index No. 60278/2020  
 Plaintiff, :  
 :  
 -against- :  
 :  
 HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, WILLIAM :  
 NICHOLSON, and METROPOLITAN :  
 COMMERCIAL BANK :  
 :  
 Third-Party Defendants  
 -----X

**NOTICE OF APPEAL**

PLEASE TAKE NOTE that Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman appeal to the Supreme Court of the State of New York – Second Department, from the attached Decision and Order of Hon. Gretchen Walsh, Supreme Court, Westchester County – Commercial Division, dated and entered on June 30, 2021, denying Defendants and Third-Party Plaintiffs’ Order to Show Cause for Preliminary Injunction and Temporary Restraining Order, dated June 22, 2021 [Mot. #5].

Dated: New York, New York  
June 30, 2021

MICHELMAN & ROBINSON, LLP

By: \_\_\_\_\_

John Giardino, Esq.  
 Alex Barnett-Howell Esq.  
 800 Third Avenue, 24<sup>th</sup> Floor  
 New York, NY 10022  
 (212) 730-7700  
 jgiardino@mrlp.com  
 abarnett-howell@mrlp.com  
*Attorneys for Defendants and Third-Party  
 Plaintiffs*

# Supreme Court of the State of New York Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
  
- against -  
HBL SNF, LLC, LIZER JOZEFOVIC A/KIA LIZER JOZOFOVIC, and MARK NEUMAN

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

### Case Type

- Civil Action
- CPLR article 75 Arbitration
- Action Commenced under CPLR 214-g
- CPLR article 78 Proceeding
- Special Proceeding Other
- Habeas Corpus Proceeding

### Filing Type

- Appeal
- Original Proceedings
- CPLR Article 78
- Eminent Domain
- Labor Law 220 or 220-b
- Public Officers Law § 36
- Real Property Tax Law § 1278
- Transferred Proceeding
- CPLR Article 78
- Executive Law § 298
- CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input checked="" type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Appeal

Paper Appealed From (Check one only): If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

- Amended Decree, Amended Judgement, Amended Order, Decision, Decree, Determination, Finding, Interlocutory Decree, Interlocutory Judgment, Judgment, Order, Order & Judgment, Partial Decree, Resettled Decree, Resettled Judgment, Resettled Order, Ruling, Other (specify):

Court: Supreme Court County: Westchester

Dated: 06/30/2021 Entered: 6/30/2021

Judge (name in full): Gretchen Walsh Index No.: 60278/2020

Stage: Interlocutory, Final, Post-Final Trial: Yes, No If Yes: Jury, Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? Yes, No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: Order to Show Cause, Notice of Petition, Writ of Habeas Corpus Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court County: Choose County

Judge (name in full): Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court County: Choose County

Judge (name in full): Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed. Defendants appeal from the Supreme Court's June 30, 2021 Order denying Defendants and Third-Party Plaintiffs' Order to Show Cause for Preliminary Injunction and Temporary Restraining Order.

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Whether the Supreme Court erred in denying Defendants and Third-Party Plaintiffs' Order to Show Cause for Preliminary Injunction and Temporary Restraining Order.

**Party Information**

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	WHITE PLAINS HEALTHCARE PROPERTIES I,LLC	Plaintiff <input type="checkbox"/>	Respondent <input type="checkbox"/>
2	HBL SNF, LLC,	Defendant 3rd-Party Plain <input type="checkbox"/>	Appellant <input type="checkbox"/>
3	LIZER JOZEFOVIC A/KIA LIZER JOZOFOVIC	Defendant 3rd-Party Plain <input type="checkbox"/>	Appellant <input type="checkbox"/>
4	MARK NEUMAN	Defendant 3rd-Party Plain <input type="checkbox"/>	Appellant <input type="checkbox"/>
5	CCC EQUITIES, LLC	3rd-Party Defendant <input type="checkbox"/>	Respondent <input type="checkbox"/>
6	PROJECT EQUITY CONSULTING	3rd-Party Defendant <input type="checkbox"/>	Respondent <input type="checkbox"/>
7	THE CONGRESS COMPANIES	3rd-Party Defendant <input type="checkbox"/>	Respondent <input type="checkbox"/>
8	HOWARD FENSTERMAN	3rd-Party Defendant <input type="checkbox"/>	Respondent <input type="checkbox"/>
9	WILLIAM NICHOLSON	3rd-Party Defendant <input type="checkbox"/>	Respondent <input type="checkbox"/>
10	METROPOLITAN COMMERCIAL BANK	3rd-Party Defendant <input type="checkbox"/>	Appellant <input type="checkbox"/>
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Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: John Giardino, Esq. / MICHELMAN & ROBINSON, LLP

Address: 800 Third Avenue, 24th Floor

City: New York

State: NY

Zip: 10022

Telephone No: (212) 730-7700

E-mail Address: jgiardino@mrlp.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above) 2,3,4

Attorney/Firm Name: Alfred E. Donnellan / DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR LLP

Address: 1 N Lexington Ave

City: White Plains

State: NY

Zip: 10601

Telephone No: (914) 681-0200

E-mail Address: aed@ddw-law.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: James P Tracy / WINDELS MARX LANE & MITTENDORF LLP

Address: 156 West 56th Street

City: New York

State: NY

Zip: 10019

Telephone No: 212-237-1000

E-mail Address: jtracy@windelsmarx.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-against-

HBI, SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC, and MARK NEUMAN,

Defendants and Third-Party Plaintiffs,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK

Third-Party Defendants  
-----X

**NOTICE OF ENTRY**

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Supreme Court, Westchester County, signed by Hon. Gretchen Walsh on June 30, 2021, and entered in the Office of the Clerk on June 30, 2021.

Dated: New York, New York  
June 30, 2021



MICHELMAN & ROBINSON, LLP

By: \_\_\_\_\_

John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
(212) 730-7700  
jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Defendants and Third-Party  
Plaintiffs*

*the Commercial Division*  
At ~~L.A.S. Part~~ of the Supreme Court of the State of New York, held in and for the County of Westchester, at the Courthouse located at 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the 30<sup>th</sup> day of June, 2021.

PRESENT:

Hon. Gretchen Walsh  
Justice Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC, and MARK NEUMAN,

Defendants and Third-Party Plaintiffs,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK

Third-Party Defendants

-----X

Index No. 60278/2020

**ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

UPON the annexed First Amended Verified Amended Answer with Affirmative Defenses, Counterclaims, and Third-Party Complaint dated May 21, 2021, the Complaint dated October 22, 2020 from the consolidated action *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et*

al., No. 655549/2020, the Affirmation of John Giardino dated June 22, 2021, the Memorandum of Law dated June 22, 2021, and upon each of the exhibits and all of the papers and proceedings heretofore had herein, and sufficient cause being alleged therefore:

LET THE PLAINTIFF WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, and THIRD-PARTY DEFENDANTS CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK, show cause before this Court located at ~~145 Park~~ the Commercial Division Room 1111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the 30<sup>th</sup> day of June, 2021 11:00 a.m. ~~p.m.~~, or as soon thereafter as counsel may be heard;

WHY a preliminary order pursuant to Article 63 of the Civil Practice Law and Rules should not be entered, pending determination of this action, enjoining (1) Plaintiff and Third-Party Defendants and their agents from taking any action to transfer, assign, convey, or sell Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC during the pendency of this action; (2) Defendants and Third-Party Plaintiffs and their agents from reducing the Rent Security below \$1.6 million during the pendency of this action; and (3) Granting such other relief as the Court deems just and proper.

IT BEING alleged in the Amended Answer and Third-Party Complaint, the Complaint, and the Affirmations that temporary relief is necessary to prevent irreparable harm to Defendants and Third-Party Plaintiffs pending the hearing and determination of the motion for a preliminary injunction, and it appearing that Defendants and Third-Party Plaintiffs are entitled to a preliminary injunction pursuant to CPLR § 6301 to enjoin Plaintiff and Third-Party Defendants as stated above; it is:

~~ORDERED, that pending the hearing and determination of Defendants and Third-Party Plaintiffs' motion for a preliminary injunction, (1) Plaintiff and Third-Party Defendants are temporarily enjoined and restrained from taking any action to transfer, assign, convey or sell Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC; and (2) Defendants and Third-Party Plaintiffs are temporarily enjoined and restrained from taking any action to reduce the Rent Security below \$1.6 million.~~

*GW*  
*J.S.C.*

~~AND IT IS FURTHER ORDERED that Plaintiff and Third-Party Defendants' response to this motion, if any, shall be hand delivered or emailed to Defendants and Third-Party Plaintiffs' counsel and filed with the Court on or before \_\_\_\_\_, 2021;~~

~~AND IT IS FURTHER ORDERED that Defendants and Third-Party Plaintiffs reply, if any, should be delivered or emailed to Plaintiff and Third-Party Defendants' counsel and filed with the Court on or before \_\_\_\_\_, 2021;~~

*GW*  
*J.S.C.*

~~SUFFICIENT CAUSE BEING ALLEGED THEREFORE, IT IS ORDERED THAT service of this order and the papers upon which it is granted be deemed due, timely and sufficient if made as follows:~~

- a) By overnight mail service upon Plaintiff White Plains Healthcare Properties I, LLC, on or before the \_\_\_\_ day of June, 2021, or by electronic service of said papers;
- b) By overnight mail service upon Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson on or before the \_\_\_\_ day of June, 2021, or by electronic service of said papers; and

*GW*  
*J.S.C.*

*As stated on the record of the conference held on 6/30/21, all parties have submitted their respective papers and this motion is fully submitted as of 6/30/21.*  
*D. Walsh*  
*J.S.C.*

*6/30/21*

~~c) By overnight mail service upon Third-Party Defendant Metropolitan Commercial Bank, on or before the \_\_\_\_\_ day of June, 2021, or by electronic service of said papers.~~

GW  
J.S.C.

ENTER:

*Gretchen Walsh*  
Hon. Gretchen Walsh  
JUSTICE OF THE SUPREME COURT



Alfred E. Donnellan  
Delbello Donnellan Weingarten Wise & Wiederkehr LLP  
1 N Lexington Avenue #11  
White Plains, New York 10601  
Tel: (914) 681-0200  
*Attorneys for Plaintiff*

*[Handwritten Signature]*  
Emily Carlino

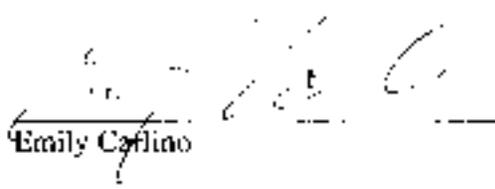
Sworn to before me this  
30<sup>th</sup> day of June, 2021

*[Handwritten Signature]*  
Notary Public



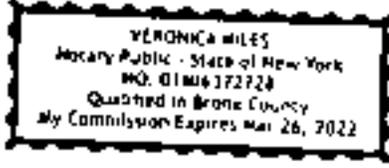


Robert J. Malatac  
Windels Marx Lane & Mittendorf, LLP  
120 Albany Street Plaza, Floor 6  
New Brunswick, NJ 08901  
Tel: (732) 846-7600  
*Attorneys for Third-Party Defendants*

  
Emily Caplino

Sworn to before me this  
30<sup>th</sup> day of June, 2021

  
Notary Public



SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----	X	
WHITE PLAINS HEALTHCARE PROPERTIES	:	Index No.: 60278/2020
I, LLC,	:	
	:	<b><u>NOTICE OF APPEAL</u></b>
Plaintiff,	:	
	:	
v.	:	
	:	
HBL SNF, LLC, LIZER JOZEFOVIC a/k/a	:	
LIZER JOZOFOVIC, and MARK NEUMAN,	:	
	:	
Defendants and	:	
Third-Party	:	
Plaintiffs.	:	
	:	
v.	:	
	:	
CCC EQUITIES, LLC, PROJECT EQUITY	:	
CONSULTING, THE CONGRESS	:	
COMPANIES, HOWARD FENSTERMAN,	:	
WILLIAM NICHOLSON, and	:	
METROPOLITAN COMMERCIAL BANK	:	
	:	
Third-Party	:	
Defendants.	:	
-----	X	

**PLEASE TAKE NOTICE** that third-party defendant Metropolitan Commercial Bank (“MCB”), hereby appeals to the Appellate Division, Second Department, from the Decision and Order, dated June 30, 2021, of the Supreme Court of the State of New York, County of Westchester, Hon. Gretchen Walsh, entered in this action on June 30, 2021, denying Defendants and Third-Party Plaintiffs’ Order to Show Cause for Preliminary Injunction and Temporary Restraining Order, dated June 22, 2021, which motion was joined by MCB. This appeal is taken from each and every part of said Decision and Order, as well as from the whole thereof.

Dated: New York, New York  
June 30, 2021

**WINDELS MARX LANE & MITTENDORF, LLP**

By: Robert J. Malatak

Digitally signed by Robert J. Malatak  
DN: cn=Robert J. Malatak, o=Windels Marx Lane &  
Mittendorf LLP, ou,  
email=rmalatak@windelmarx.com, c=US  
Date: 2021.07.01 16:09:23 -0400

Robert Malatak  
James Tracy  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
(212) 237-1000  
*Attorneys for Third-Party Defendant Metropolitan  
Commercial Bank*

# Supreme Court of the State of New York Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

**Case Title:** Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC  
  
Plaintiff  
  
- against -  
  
HBL SNF, LLC, LIZER JOSEFOVIC a/k/a LIZER JOZOFOVIC, and MARK NEUMAN  
Defendants and Third-Party Plaintiffs  
CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK  
Third-Party Defendants

For Court of Original Instance  
  
Date Notice of Appeal Filed

For Appellate Division

### Case Type

- Civil Action
- CPLR article 75 Arbitration
- Action Commenced under CPLR 214-g
- CPLR article 78 Proceeding
- Special Proceeding Other
- Habeas Corpus Proceeding

### Filing Type

- Appeal
- Original Proceedings
- Eminent Domain
- Labor Law 220 or 220-b
- Public Officers Law § 36
- Real Property Tax Law § 1278
- Transferred Proceeding
- CPLR Article 78
- Executive Law § 298
- CPLR 5704 Review

**Nature of Suit:** Check up to three of the following categories which best reflect the nature of the case.

<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input checked="" type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Appeal

Paper Appealed From (Check one only): If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

- Amended Decree, Amended Judgement, Amended Order, Decision, Decree, Determination, Finding, Interlocutory Decree, Interlocutory Judgment, Judgment, Order, Order & Judgment, Partial Decree, Resettled Decree, Resettled Judgment, Resettled Order, Ruling, Other (specify):

Court: Supreme Court County: Westchester

Dated: 06/30/2021 Entered: June 30, 2021

Judge (name in full): Hon. Gretchen Walsh Index No.: 60278/2020

Stage: Interlocutory Final Post-Final Trial: Yes No If Yes: Jury Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? Yes No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: Order to Show Cause Notice of Petition Writ of Habeas Corpus Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court County: Choose County

Judge (name in full): Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court County: Choose County

Judge (name in full): Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed. This is an appeal of a denial of an Order to Show Cause seeking a temporary restraining order and preliminary injunction to enjoin the sale of certificated membership interests in a limited liability company.

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Appellant/Third-Party Defendant Metropolitan Commercial Bank ("MCB") appeals the denial of a preliminary injunction enjoining the sale of certain certificated membership interests in an limited liability company because (1) MCB has a security interest senior to plaintiff White Plains Healthcare Properties I, LLC; and (2) MCB has possession of the certificate, so the junior creditor cannot conduct a commercially reasonable sale. There are also disputes concerning whether the junior creditor's security interest has been terminated pursuant to the terms of its security agreement.

**Party Information**

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Metropolitan Commercial Bank	3rd-Party Defendant <input type="checkbox"/>	Appellant <input type="checkbox"/>
2			
3	HBF SNF LLC	Defendant 3rd-Party Plain <input type="checkbox"/>	Respondent-Appellant <input type="checkbox"/>
4	Lizer Jozefovic	Defendant 3rd-Party Plain <input type="checkbox"/>	Respondent-Appellant <input type="checkbox"/>
5	Mark Neuman	Defendant 3rd-Party Plain <input type="checkbox"/>	Respondent-Appellant <input type="checkbox"/>
6			
7	White Plains Healthcare Properties I, LLC	Plaintiff <input type="checkbox"/>	Respondent <input type="checkbox"/>
8	Howard Fensterman	3rd-Party Defendant <input type="checkbox"/>	Respondent <input type="checkbox"/>
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## Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Robert Malatak / Windels Marx Lane & Mittendorf, LLP

Address: 156 West 56th Street

City: New York

State: NY

Zip: 10019

Telephone No: 212-237-1000

E-mail Address: rmalatak@windelsmarx.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1

Attorney/Firm Name: John Giardino / Michelman & Robinson, LLP

Address: 800 Third Avenue, 24th Floor

City: New York

State: NY

Zip: 10022

Telephone No: 212-730-7700

E-mail Address: jgiardino@mrlp.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1

Attorney/Firm Name: John Giardino

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 3, 4, 5

Attorney/Firm Name: Alfred Donnellan / DelBello Donnellan Weingarten Wise & Wiederkehr, LLP

Address: 1 North Lexington Avenue

City: White Plains

State: NY

Zip: 10601

Telephone No: 914-681-0200

E-mail Address: aed@ddw-law.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 7-8

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I, :  
LLC, :

Plaintiff, :

Index No. 60278/2020

-against- :

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
JOZOFOVIC, and MARK NEUMAN, :

Defendants and Third-Party Plaintiffs, :

-against- :

CCC EQUITIES, LLC, PROJECT EQUITY :  
CONSULTING, THE CONGRESS COMPANIES, :  
HOWARD FENSTERMAN, WILLIAM :  
NICHOLSON, and METROPOLITAN :  
COMMERCIAL BANK :

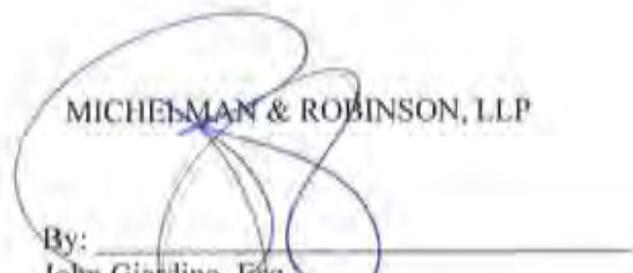
Third-Party Defendants

-----X

**NOTICE OF ENTRY**

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of the Decision and Order of the Supreme Court, Westchester County, signed by Hon. Gretchen Walsh on June 30, 2021, and entered in the Office of the Clerk on June 30, 2021.

Dated: New York, New York  
June 30, 2021

MICHELMAN & ROBINSON, LLP  


By:  
John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
(212) 730-7700  
jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Defendants and Third-Party  
Plaintiffs*

*the Commercial Division*  
At ~~L.A.S. Part~~ of the Supreme Court of the State of New York, held in and for the County of Westchester, at the Courthouse located at 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the 30<sup>th</sup> day of June, 2021.

PRESENT:

Hon. Gretchen Walsh  
Justice Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
  
Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC, and MARK NEUMAN,  
  
Defendants and Third-Party Plaintiffs,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK  
  
Third-Party Defendants

-----X

**ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

UPON the annexed First Amended Verified Amended Answer with Affirmative Defenses, Counterclaims, and Third-Party Complaint dated May 21, 2021, the Complaint dated October 22, 2020 from the consolidated action *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et*

al., No. 655549/2020, the Affirmation of John Giardino dated June 22, 2021, the Memorandum of Law dated June 22, 2021, and upon each of the exhibits and all of the papers and proceedings heretofore had herein, and sufficient cause being alleged therefore:

LET THE PLAINTIFF WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, and THIRD-PARTY DEFENDANTS CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK, show cause before this Court located at ~~145 Park~~ the Commercial Division ~~Room~~ 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the 30<sup>th</sup> day of June, 2021 11:00 a.m. ~~a.m.~~, or as soon thereafter as counsel may be heard;

WHY a preliminary order pursuant to Article 63 of the Civil Practice Law and Rules should not be entered, pending determination of this action, enjoining (1) Plaintiff and Third-Party Defendants and their agents from taking any action to transfer, assign, convey, or sell Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC during the pendency of this action; (2) Defendants and Third-Party Plaintiffs and their agents from reducing the Rent Security below \$1.6 million during the pendency of this action; and (3) Granting such other relief as the Court deems just and proper.

IT BEING alleged in the Amended Answer and Third-Party Complaint, the Complaint, and the Affirmations that temporary relief is necessary to prevent irreparable harm to Defendants and Third-Party Plaintiffs pending the hearing and determination of the motion for a preliminary injunction, and it appearing that Defendants and Third-Party Plaintiffs are entitled to a preliminary injunction pursuant to CPLR § 6301 to enjoin Plaintiff and Third-Party Defendants as stated above; it is:

~~ORDERED, that pending the hearing and determination of Defendants and Third-Party Plaintiffs' motion for a preliminary injunction, (1) Plaintiff and Third-Party Defendants are temporarily enjoined and restrained from taking any action to transfer, assign, convey or sell Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC; and (2) Defendants and Third-Party Plaintiffs are temporarily enjoined and restrained from taking any action to reduce the Rent Security below \$1.6 million.~~

*GW  
J.S.C.*

~~AND IT IS FURTHER ORDERED that Plaintiff and Third-Party Defendants' response to this motion, if any, shall be hand delivered or emailed to Defendants and Third-Party Plaintiffs' counsel and filed with the Court on or before \_\_\_\_\_, 2021;~~

*As stated on the record of the conference held on 6/30/21, all parties have submitted their respective papers and this motion is fully submitted as of 6/30/21.*

~~AND IT IS FURTHER ORDERED that Defendants and Third-Party Plaintiffs reply, if any, should be delivered or emailed to Plaintiff and Third-Party Defendants' counsel and filed with the Court on or before \_\_\_\_\_, 2021;~~

*GW  
J.S.C.*

~~SUFFICIENT CAUSE BEING ALLEGED THEREFORE, IT IS ORDERED THAT service of this order and the papers upon which it is granted be deemed due, timely and sufficient if made as follows:~~

*GW  
J.S.C.*

- a) By overnight mail service upon Plaintiff White Plains Healthcare Properties I, LLC, on or before the \_\_\_\_ day of June, 2021, or by electronic service of said papers;
- b) By overnight mail service upon Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson on or before the \_\_\_\_ day of June, 2021, or by electronic service of said papers; and

*Douglas Walsh  
J.S.C.*

~~c) By overnight mail service upon Third-Party Defendant Metropolitan Commercial Bank, on or before the \_\_\_\_\_ day of June, 2021, or by electronic service of said papers.~~

GW  
J.S.C.

ENTER:

*Gretchen Walsh*  
 Hon. Gretchen Walsh  
 JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

----- x

WHITE PLAINS HEALTHCARE  
PROPERTIES I, L.L.C.

: Index No.: 60278 2020

Plaintiff.

v.

AFFIDAVIT OF SERVICE

HBL SNF, LLC, LIZER JOZEFOVIC a/k/a  
LIZER JOZOPOVIC, and MARK NEUMAN,

Defendants and  
Third-Party

Plaintiffs.

v.

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS  
COMPANIES, HOWARD FENSTERMAN,  
WILLIAM NICHOLSON, and  
METROPOLITAN COMMERCIAL BANK

Third-Party  
Defendants.

----- x

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

FRANCISCO VELEZ, being duly sworn, deposes and says:

I am employed by the firm of Windels Marx Lane & Mittendorf, L.L.P., attorneys for Third-Party Defendant Metropolitan Commercial Bank in the above-referenced action. I am over 18 years of age and not a party to the within action.

On June 30, 2021, deponent served a true copy of the within Notice of Appeal, Informational Statement, and Copy of Order by electronic transmission to all parties who have appeared in this matter by operation of the Court's e-filing system. Parties have access to this filing through the Court's NYSCEF System:

HBF SNF LLC  
Lizer Jozefovic  
Mark Neuman



No. 1228450

**Certification**

**STATE OF NEW YORK, COUNTY OF NEW YORK, SS:**

**I, Milton Adair Tingling, County Clerk and Clerk of Supreme Court New York County,**

**do hereby certify that on July 20, 2021 I have compared**

**the document attached hereto,**

**New York County Clerk's minutes page(s) 5**

**with the originals filed in my office and the same is a correct transcript**

**therefrom and of the whole of such original in witness**

**whereto I have affixed my signature and seal.**

*Milton Adair Tingling*  
**MILTON ADAIR TINGLING  
NEW YORK COUNTY CLERK**



NYSCEF  
 New York County Supreme Court

**Document List**  
**Index # 655549/2020**

Created on:07/20/2021 03:36 PM

Case Caption: **Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al**  
 Judge Name: **Nancy Bannon**

Doc#	Document Type/Information	Status	Date Received	Filed By
1	SUMMONS + COMPLAINT	Processed	10/22/2020	Giardino, J.
2	ORDER TO SHOW CAUSE ( PROPOSED )	Processed	10/23/2020	Giardino, J.
3	AFFIRMATION EMERGENCY AFFIRMATION OF MARK ZAFRIN IN SUPPORT OF ORDER TO SHOW CAUSE WITH EXHIBITS A-I	Processed	10/23/2020	Giardino, J.
4	AFFIRMATION AFFIRMATION OF LIZER JOZEFOVIC IN SUPPORT OF ORDER TO SHOW CAUSE	Processed	10/23/2020	Giardino, J.
5	MEMORANDUM OF LAW IN SUPPORT	Processed	10/23/2020	Giardino, J.
6	RJI -RE: ORDER TO SHOW CAUSE	Processed	10/23/2020	Giardino, J.
7	ORDER TO SHOW CAUSE ( PROPOSED )	Processed	10/26/2020	Donnellan, A.
8	AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP Emergency Affirmation of Alfred E. Donnellan in support of Order to Show Cause	Processed	10/26/2020	Donnellan, A.
9	EXHIBIT(S) Summons and Verified Complaint	Processed	10/26/2020	Donnellan, A.
10	EXHIBIT(S) Summons and Complaint	Processed	10/26/2020	Donnellan, A.
11	EXHIBIT(S) Lease	Processed	10/26/2020	Donnellan, A.
12	EXHIBIT(S) Pledge Agreement	Processed	10/26/2020	Donnellan, A.
13	MEMORANDUM OF LAW IN SUPPORT	Processed	10/26/2020	Donnellan, A.
14	AFFIDAVIT Affidavit of Brett Bandazian in Partial Support of Plaintiff's Motion, by Order to Show Cause, for A	Processed	10/27/2020	Malatak, R.
15	EXHIBIT(S) Guaranty of Payment	Processed	10/27/2020	Malatak, R.
16	EXHIBIT(S) Assignment of Pledge of Membership	Processed	10/27/2020	Malatak, R.
17	EXHIBIT(S) Operating Agreement	Processed	10/27/2020	Malatak, R.
18	EXHIBIT(S) UCC Statement	Processed	10/27/2020	Malatak, R.
19	EXHIBIT(S) Notification of Disposition of Collateral	Processed	10/27/2020	Malatak, R.
20	EXHIBIT(S) WP UCC	Processed	10/27/2020	Malatak, R.



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 New York County Supreme Court

**Document List**  
**Index # 655549/2020**

Created on:07/20/2021 03:36 PM

Doc#	Document Type/Information	Status	Date Received	Filed By
21	EXHIBIT(S) Windels Letter	Processed	10/27/2020	Malatak, R.
22	EXHIBIT(S) DelBello Letter	Processed	10/27/2020	Malatak, R.
23	ORDER TO SHOW CAUSE	Processed	10/27/2020	Court User
24	AFFIRMATION/AFFIDAVIT OF SERVICE Certificate of Service of Order to Show Cause and Supporting Documents	Processed	10/30/2020	Giardino, J.
25	AFFIRMATION/AFFIDAVIT OF SERVICE Certificate of Service of Order to Show Cause and Supporting Documents	Processed	10/30/2020	Giardino, J.
26	NOTICE OF APPEARANCE (POST RJI) Notice of Appearance as Counsel for Defendant Metropolitan Commercial Bank	Processed	11/03/2020	Malatak, R.
27	NOTICE OF APPEARANCE (POST RJI) Notice of Appearance as Counsel for Defendant Metropolitan Commercial Bank	Processed	11/03/2020	Tracy, J.
28	MEMORANDUM OF LAW IN SUPPORT Defendant Metropolitan Bank's Memorandum of Law in Partial Support of Plaintiff Lizer Jozefovic's Or	Processed	11/09/2020	Malatak, R.
29	AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP Affirmation of Robert J. Malatak in Partial Support of Plaintiff's Order to Show Cause for a Prelimi	Processed	11/09/2020	Malatak, R.
30	EXHIBIT(S) Exhibit 1 - Bandazian Affidavit	Processed	11/09/2020	Malatak, R.
31	EXHIBIT(S) Exhibit A - Guaranty Payment	Processed	11/09/2020	Malatak, R.
32	EXHIBIT(S) Exhibit B - Assignment and Pledge of Membership	Processed	11/09/2020	Malatak, R.
33	EXHIBIT(S) Exhibit C - Operating Agreement	Processed	11/09/2020	Malatak, R.
34	EXHIBIT(S) Exhibit D - UCC Statement	Processed	11/09/2020	Malatak, R.
35	EXHIBIT(S) Exhibit E - Notification of Disposition of Collateral	Processed	11/09/2020	Malatak, R.
36	EXHIBIT(S) Exhibit F - WP UCC	Processed	11/09/2020	Malatak, R.
37	EXHIBIT(S) Exhibit G - Windels Letter	Processed	11/09/2020	Malatak, R.
38	EXHIBIT(S) Exhibit H - Delbello Letter	Processed	11/09/2020	Malatak, R.
39	AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE Affidavit of Howard Fensterman	Processed	11/09/2020	Donnellan, A.
40	AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE Affidavit of William A. Nicholson	Processed	11/09/2020	Donnellan, A.



NYSCEF  
 New York County Supreme Court

**Document List**  
**Index # 655549/2020**

Created on:07/20/2021 03:36 PM

Doc#	Document Type/Information	Status	Date Received	Filed By
41	EXHIBIT(S) Lease	Processed	11/09/2020	Donnellan, A.
42	EXHIBIT(S) Jozefovic Guaranty	Processed	11/09/2020	Donnellan, A.
43	EXHIBIT(S) Neuman Guaranty	Processed	11/09/2020	Donnellan, A.
44	EXHIBIT(S) Collateral assignment	Processed	11/09/2020	Donnellan, A.
45	EXHIBIT(S) UCC financing statement	Processed	11/09/2020	Donnellan, A.
46	EXHIBIT(S) Notice of Default	Processed	11/09/2020	Donnellan, A.
47	EXHIBIT(S) Notice to Jozefovic	Processed	11/09/2020	Donnellan, A.
48	EXHIBIT(S) Adjournment of sale ntoice	Processed	11/09/2020	Donnellan, A.
49	EXHIBIT(S) Notification of disposition of collateral	Processed	11/09/2020	Donnellan, A.
50	EXHIBIT(S) Letter dated October 9, 2020	Processed	11/09/2020	Donnellan, A.
51	EXHIBIT(S) Notice of secured party public auction	Processed	11/09/2020	Donnellan, A.
52	EXHIBIT(S) Terms of sale	Processed	11/09/2020	Donnellan, A.
53	EXHIBIT(S) Operating agreement of Waterview Acquisition I LLC	Processed	11/09/2020	Donnellan, A.
54	EXHIBIT(S) Construction loan agreement	Processed	11/09/2020	Donnellan, A.
55	EXHIBIT(S) Note	Processed	11/09/2020	Donnellan, A.
56	EXHIBIT(S) Mortgage	Processed	11/09/2020	Donnellan, A.
57	EXHIBIT(S) Security benefit notice of default dated April 16, 2020	Processed	11/09/2020	Donnellan, A.
58	EXHIBIT(S) Security benefit notice of default dated May 22, 2020	Processed	11/09/2020	Donnellan, A.
59	MEMORANDUM OF LAW IN OPPOSITION	Processed	11/09/2020	Donnellan, A.
60	AFFIRMATION/AFFIDAVIT OF SERVICE	Processed	11/11/2020	Donnellan, A.
61	ORDER TO SHOW CAUSE	Processed	11/12/2020	Court User
62	ORDER TO SHOW CAUSE - CONFORMED COPY	Processed	11/13/2020	Donnellan, A.
63	AFFIRMATION/AFFIDAVIT OF SERVICE	Processed	11/13/2020	Donnellan, A.
64	ANSWER	Processed	11/18/2020	Donnellan, A.



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 New York County Supreme Court

**Document List**  
**Index # 655549/2020**

Created on:07/20/2021 03:36 PM

Doc#	Document Type/Information	Status	Date Received	Filed By
65	MEMORANDUM OF LAW IN REPLY Plaintiff's Reply Memorandum in Support of Motion for a Preliminary Injunction	Processed	11/23/2020	Giardino, J.
66	AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP Affirmation of John Giardino in Support of Order to Show Cause	Processed	11/23/2020	Giardino, J.
67	EXHIBIT(S) Notification	Processed	11/23/2020	Giardino, J.
68	EXHIBIT(S) Collateral Assignment	Processed	11/23/2020	Giardino, J.
69	EXHIBIT(S) November 19 Email, Account Statement, and Signature Form	Processed	11/23/2020	Giardino, J.
70	EXHIBIT(S) August 10 Email	Processed	11/23/2020	Giardino, J.
71	EXHIBIT(S) August 16 Emails	Processed	11/23/2020	Giardino, J.
72	EXHIBIT(S) August 17 Email, Account Information Form, Resolution, and Account Holder Form	Processed	11/23/2020	Giardino, J.
73	EXHIBIT(S) Westchester Answer	Processed	11/23/2020	Giardino, J.
74	EXHIBIT(S) Certificate of Amendment	Processed	11/23/2020	Giardino, J.
75	EXHIBIT(S) 2020 Monthly Invoices	Processed	11/23/2020	Giardino, J.
76	EXHIBIT(S) September 11 Letter	Processed	11/23/2020	Giardino, J.
77	MEMORANDUM OF LAW IN OPPOSITION Memorandum of Law in Opposition to Defendants' Motion For a Change of Venue and To Consolidate	Processed	11/25/2020	Giardino, J.
78	AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE Affirmation of John Giardino In Opposition To Order To Show Cause	Processed	11/25/2020	Giardino, J.
79	EXHIBIT(S) Complaint dated October 22, 2020	Processed	11/25/2020	Giardino, J.
80	EXHIBIT(S) Complaint in Westchester Action dated September 18, 2020	Processed	11/25/2020	Giardino, J.
81	EXHIBIT(S) Answer in Westchester Action dated November 5, 2020	Processed	11/25/2020	Giardino, J.
82	AFFIDAVIT OR AFFIRMATION IN REPLY TO ORDER TO SHOW CAUSE Reply Affirmation of Alfred E. Donnellan	Processed	12/02/2020	Donnellan, A.
83	EXHIBIT(S) Verified Answer	Processed	12/02/2020	Donnellan, A.
84	EXHIBIT(S) Amended Complaint	Processed	12/02/2020	Donnellan, A.



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Document List  
 Index # 655549/2020

Created on:07/20/2021 03:36 PM

Doc#	Document Type/Information	Status	Date Received	Filed By
85	MEMORANDUM OF LAW IN REPLY	Processed	12/02/2020	Donnellan, A.
86	ORDER - INTERIM (MOTION RELATED)	Processed	12/14/2020	Court User
87	ORDER - INTERIM (MOTION RELATED)	Processed	12/14/2020	Court User
88	ANSWER WITH CROSS-CLAIM(S) Answer with Cross-claims	Processed	01/08/2021	Malatak, R.
89	LETTER / CORRESPONDENCE TO JUDGE	Processed	01/12/2021	Giardino, J.
90	STIPULATION - TIME TO ANSWER Stipulation to Extend Time to Answer Cross-Claims	Processed	01/27/2021	Lara-Garduno, N.
91	DECISION + ORDER ON MOTION	Processed	04/09/2021	Court User
92	DECISION + ORDER ON MOTION	Processed	04/09/2021	Court User
93	NOTICE OF ENTRY	Processed	04/15/2021	Lara-Garduno, N.
94	NOTICE OF ENTRY	Processed	04/15/2021	Lara-Garduno, N.
95	NOTICE TO COUNTY CLERK CPLR 8019(C)	Processed	04/15/2021	Lara-Garduno, N.

No. 1228149

**Certification**

**STATE OF NEW YORK, COUNTY OF NEW YORK, SS:**

**I, Milton Adair Tingling, County Clerk and Clerk of Supreme Court New York County,**

**do hereby certify that on July 20, 2021 I have compared**

**the document attached hereto,**

**Decision and Order Directing Transfer page(s) 5**

**with the originals filed in my office and the same is a correct transcript**

**therefrom and of the whole of such original in witness**

**whereto I have affixed my signature and seal.**



**MILTON ADAIR TINGLING  
NEW YORK COUNTY CLERK**

FILED: NEW YORK COUNTY CLERK 04/15/2021 08:56 AM

INDEX NO. 655549/2021

NYSCEF DOC. NO. 92

RECEIVED NYSCEF: 04/09/2021

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

-----X

INDEX NO. 655549/2020

LIZER JOZEFOVIC,  
Plaintiff,

MOTION DATE 01/04/2021,  
01/04/2021

- v -

MOTION SEQ. NO. 001 002

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 86 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 7, 8, 9, 10, 11, 12, 13, 61, 62, 63, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 89 were read on this motion to/for CHANGE VENUE.

In this action seeking a declaratory judgment and damages in connection with claims sounding in, *inter alia*, breach of contract, fraud, defamation, breach of fiduciary duty, and legal malpractice, the plaintiff moves pursuant to CPLR 6301 for a preliminary injunction enjoining the defendants and their agents from publishing and distributing false statements about the plaintiff and from taking any action to transfer, assign, convey, or sell the plaintiff's membership interest in Waterview Acquisition I, LLC ("Waterview") (SEQ 001). The defendants White Plains Healthcare Properties I, LLC ("WPH Properties"), and Howard Fensterman ("Fensterman") oppose the motion and separately move pursuant to CPLR 511 and 602 to transfer this action to Westchester County and consolidate it with an action pending there entitled White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020 (the "Westchester Action") (SEQ 002). The plaintiff opposes the moving defendants' application. For the following reasons, the moving defendants' motion is granted and the plaintiff's motion is denied without prejudice.

**FILED: NEW YORK COUNTY CLERK 04/15/2021 08:56 AM**

INDEX NO. 655549/202  
RECEIVED NYSCEF: 04/09/202

NYSCEF DOC. NO. 92

WPH Properties is the developer and owner of a new skilled nursing facility located in Westchester County, New York (the "Facility"). The Facility is operated by HBL SNF, LLC ("HBL"), an entity controlled by the plaintiff. WPH Properties and HBL are parties to an operating lease dated November 19, 2015 (the "Lease"), under which WPH Properties leases the Facility to HBL, as tenant. The plaintiff and nonparty Marc Neuman, as principals of HBL, are HBL's guarantors under the Lease.

Section 7.1(a)(iii) of the Lease provides that HBL was to pay an additional security deposit in the amount of \$1.6 Million 60 days prior to the start of the lease period. As security for that payment, the plaintiff and WPH Properties entered into a collateral assignment agreement (the "Collateral Assignment Agreement"). Pursuant to the Collateral Assignment Agreement, the plaintiff assigned to WPH Properties his 71% membership interest in Waterview, an entity that owns another skilled nursing home in Westchester County (the "Waterview Interest"). The plaintiff also agreed to list Howard Fensterman, attorney for WPH Properties, as a signatory to a Waterview account with JP Morgan (the "Waterview account") where the \$1.6 Million was currently being held. The Collateral Assignment Agreement provided that:

"[u]pon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the [Waterview account] in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the [Waterview Interest] assigned to [WPH Properties] ...shall be automatically reassigned by [WPH Properties] to [the plaintiff] without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect."

The "Landlords Rent Security Account" is not a defined term in the Lease or the Collateral Assignment Agreement. The Collateral Assignment Agreement further provides that the exercise of WPH Properties' rights to sell the Waterview Interest as assignee is authorized upon the plaintiff's violation of the "terms and provisions concerning the maintenance of the [Waterview account]..."

The plaintiff avers that he satisfied his obligations under the Collateral Assignment Agreement and that as a result, the assignment terminated. In 2019, the plaintiff assigned the Waterview Interest to defendant Metropolitan Commercial Bank ("MCB") in connection with a \$3 Million loan as part of a financing arrangement to provide working capital to benefit the Facility, including through the payment of rent to WPH Properties.

**FILED: NEW YORK COUNTY CLERK 04/15/2021 08:56 AM**

INDEX NO. 655549/202  
RECEIVED NYSCEF: 04/09/202

NYSCEF DOC. NO. 92

On September 18, 2020, WPH Properties commenced the Westchester Action, in which it contends, *inter alia*, that HBL breached the Lease by failing to pay rent, municipal and utility deposits, real estate taxes, and other fees associated with the Facility, including the \$1.6 Million security deposit required by Section 7.1(a)(iii). On October 6, 2020, WPH Properties noticed a public sale of the Waterview Interest based upon the plaintiff's alleged default under the Collateral Assignment Agreement. On October 22, 2020, this action ensued.

"Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, 'unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right.'" Raboy v McCrory Corp., 210 AD2d 145 (1<sup>st</sup> Dept. 1994) (quoting Amtorg Trading Corp. v Broadway & 56th St. Assoc., 191 AD2d 212, 213 [1<sup>st</sup> Dept. 1993]). The movants correctly argue that consolidation is warranted here because this action and the Westchester Action share common questions of law and fact. See CPLR 602; DeSilva v Plot Realty, LLC, 85 AD3d 422 (1<sup>st</sup> Dept. 2011); Kern v Shandell, Blitz, Blitz & Bookson, 58 AD3d 487 (1<sup>st</sup> Dept. 2009).

The plaintiff opposes consolidation, observing that while the Westchester Action involves claims regarding HBL's performance of its obligations under the Lease and the plaintiff's performance under the guarantee he signed, the instant action involves claims regarding ownership of the Waterview Interest pursuant to the separate Collateral Assignment Agreement. However, this characterization of the actions ignores the fact that both (a) WPH Properties' claim in the Westchester Action that the additional security was not paid and (b) the plaintiff's central claim in this action that the Collateral Assignment Agreement automatically terminated turn on the same question: whether Section 7.1(a)(iii) of the Lease was effectuated. Allowing this question to proceed in two separate courts risks inconsistent results. Moreover, WPH Properties avers in its moving papers that it has amended its complaint in the Westchester Action to include a claim sounding in violation of the Collateral Assignment Agreement against the plaintiff. Finally, the plaintiff, who is a resident of Westchester County and a party to the Westchester Action, which was commenced prior to the instant action, would not suffer prejudice to any substantial right as a result of consolidation and transfer.

The court notes that transfer is also appropriate because it appears that venue is improper in New York County. CPLR 503 provides that "[e]xcept where otherwise prescribed by

**FILED: NEW YORK COUNTY CLERK 04/15/2021 08:56 AM**

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NYSCEF DOC. NO. 92

law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff." Here, the only entity residing in New York County is MCB, which the plaintiff has included as a defendant but against which the plaintiff has not asserted any claim. Conversely, several parties, including the plaintiff, reside in Westchester County. Since venue properly lies in Westchester County, the court declines to retain venue on the basis of MCB, a nominal defendant against whom there is no claim. See Espinoza v Concordia Intl. Forwarding Corp., 39 AD3d 258 (1<sup>st</sup> Dept. 2007).

The plaintiff's motion for preliminary injunctive relief is denied without prejudice to renewal upon transfer and consolidation in Westchester County.

Accordingly, it is

ORDERED that the plaintiff's motion pursuant to CPLR 6301 for a preliminary injunction (SEQ 001) is denied without prejudice to renewal upon the transfer and consolidation of this action in Westchester County; and it is further

ORDERED that the motion of White Plains Healthcare Properties I, LLC, and Howard Fensterman pursuant to CPLR 511 and 602 to transfer this action to Westchester County and consolidate it with an action pending there entitled White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020, (SEQ 002) is granted; and it is further

ORDERED this action, Lizer Jozefovic v White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank, Index No. 655549/2020, pending in the Supreme Court, New York County, shall be consolidated in the Supreme Court, Westchester County, with White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020; and it is further,

ORDERED that the consolidation shall take place under Westchester County Index No. 60278/2020; and it is further,

**FILED: NEW YORK COUNTY CLERK 04/15/2021 08:56 AM**  
 NYSCEF DOC. NO. 92

INDEX NO. 655549/202-  
 RECEIVED NYSCEF: 04/09/202

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, Westchester County, for consolidation and shall mark his records to reflect such transfer; and it is further,

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Westchester County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

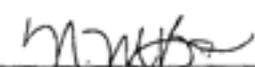
ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the moving defendants shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer and consolidation; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the Decision and Order of the court.

4/8/2021  
 DATE

  
 HON. NANCY M. BANNON

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
SEQ 001	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
SEQ 002	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	

**WISE & WIEDERKEHR, LLP**

COUNSELLORS AT LAW

THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601

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1111 SUMMER STREET  
STAMFORD, CT 06905  
(203) 298-0000

**Alfred E. Donnellan**  
**Partner**  
aed@ddw-law.com

August 10, 2021

**VIA ECF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King Blvd.  
White Plains, New York 10601

***Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC, et al  
Index No. 60278/2020***

Dear Justice Walsh:

This firm represents plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”) and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, “third-party defendants”) in the above consolidated action.

We are writing to request a pre-motion conference concerning a motion for summary judgment that we wish to make. The motion is based on the undisputed facts that HBL SNF, LLC defaulted even before it took occupancy by failing to provide the required security deposit 60 days in advance and has, in fact, never, to this day, provided any security deposit. The same failure to provide a security deposit was a default under the letter of intent by which WPH Properties agreed to sell the premises to an entity in which HBL and its principals had a majority interest. HBL has defaulted in multiple other respects, as well. The motion will seek judgment determining that HBL defaulted under the lease and letter of intent, that HBL, as well as Jozefovic and Neuman, as guarantors of HBL’s obligations, are liable for that default and money judgment against each of the defendants for the amount due WPH Properties as of July 31, 2021 by reason of HBL’s defaults.

Thank you for your consideration of this request.

Respectfully,

/s/ Alfred E. Donnellan  
Alfred E. Donnellan

cc: John Giardino, Esq. (via ECF)

**WISE & WIEDERKEHR, LLP**

COUNSELLORS AT LAW

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**Alfred E. Donnellan**  
**Partner**  
aed@ddw-law.com

August 13, 2021

**VIA ECF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King Blvd.  
White Plains, New York 10601

**Re: *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC, et al***  
***Index No. 60278/2020***

Dear Justice Walsh:

This firm represents plaintiff, White Plains Healthcare Properties I, LLC (“WPH Properties”) and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, “third-party defendants”) in the above consolidated action.

Yesterday afternoon we received a communication from Mr. Wintermute offering times for the pre-motion conference we requested with respect to our motion for summary judgment on August 24th, 25th and 26th. As the Court is aware, our clients will likely be sued by their construction lender on September 1, 2021. As the Court is, I believe, also aware, the defendants’ apparent strategy is to delay the resolution of this case sufficiently so that the construction lenders’ suit will put the plaintiffs in an impossible situation. Not being able to serve our summary judgment motion until August 24th, 25th or 26th is, therefore, seriously prejudicial to the plaintiffs.

We are writing to request, therefore, that we be permitted to serve the motion prior to the conference. We have no objection to attending the conference, and we would be willing to satisfy the purpose of the conference, as stated in Rule 24(a), by withdrawing or modifying our motion if the conference results in the Court successfully resolving any of the issues (although we see that as unlikely since multiple attempts to resolve this matter have been ineffective). But it is essential that we be permitted to start the summary judgment process.

Thank you for your consideration of this request.

Respectfully,

/s/ Alfred E. Donnellan  
Alfred E. Donnellan

cc: John Giardino, Esq. (via ECF)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

**NOTICE OF MOTION FOR  
SUMMARY JUDGMENT**

– against –

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

LIZER JOZEFOVIC,

Plaintiff,

New York County Index No.  
655549/2020

– against –

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.

Consolidated under Westchester  
County Index No. as per April 8,  
2021 Decision and Order.

PLEASE TAKE NOTICE that upon the annexed affirmation of Alfred E. Donnellan dated August 18, 2021, the annexed affidavit of William A. Nicholson, sworn to on August 18, 2021, the annexed affidavit of Edward O. Tabor, sworn to on August 18, 2021, the annexed affidavit of Howard Fensterman, sworn to on August 18, 2021, together with the annexed exhibits, and the accompanying memorandum of law, plaintiff White Plains Healthcare Properties I, LLC and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies,

Howard Fensterman and William Nicholson, will move this Court, at the Richard J. Daronco Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, in the Commercial Division, before the Honorable Gretchen Walsh, on September 10, 2021, at 9:30 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to CPLR 3212 granting summary judgment in favor of plaintiff White Plains Healthcare Properties I, LLC, and against defendants HBL SNF, LLC, Lizer Jozefovic and Mark Neuman:

(a) establishing and declaring the defendants' liability for breach of the lease for the premises at 116-120 Church Street, White Plains, New York, by reason of their failure to (i) post the required \$5,300,000 security deposit; (ii) pay fixed rent, additional rent, accelerated rent and increased rent as a month-to-month tenant; (iii) pay real estate taxes timely and utility charges; (iv) deliver certificates of insurance that satisfy the lease requirements; and (v) deliver the required credit line agreement, financial statements and financial reporting, operational overview, annual Medicare and Medicaid agreements, reimbursement rate sheets and new and revised rate sheets, all as required by the lease;

(b) establishing declaring the defendants' breach of a letter of intent dated November 20, 2019 by reason of their failure to provide \$1,000,000 toward the security deposit due under the lease, pay rent, pay municipal and utility payments and real estate taxes timely and close title to the property on April 1, 2020;

(c) by reason of the defendants' breaches awarding money damages to White Plains Healthcare Properties, LLC in the amount of \$111,420,213.50, consisting of (i) holdover rent and rent, \$20,574,253.03; (ii) real estate taxes, \$2,621.94; (iii) municipal and utility deposits, \$35,921.44; (iv) interest rate damages for failure to close by April 1, 2020 as required by the letter

of intent, \$3,181,612.87; (v) costs and professional fees, \$1,524,000; (vi) lender default and late charges, \$3,732,034.22, and (vii) accelerated rent \$82,369,770, plus interest and the costs and disbursements of this action;

(d) dismissing the counterclaims and third-party claims asserted by HBL SNF, LLC, Lizer Jozefovic and Mark Neuman; and

(e) granting such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2414(b) opposition papers must be served upon the attorneys for the moving parties at least seven days prior to the return date of this motion.

Dated: White Plains, New York  
August 18, 2021

**DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP**  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC and third-party defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson*

By: /s/ Alfred E. Donnellan  
Alfred E. Donnellan, Esq.  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Tel.: (914) 681-0200

**ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN,  
FORMATO, FERRARA, WOLF & CARONE, LLP**  
*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC and third-party defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
Tel.: (914) 607-7010

To: Michelman & Robinson, LLP  
*Attorneys for Defendants-Third-Party Plaintiffs*  
800 Third Avenue, 24<sup>th</sup> floor  
New York, New York 10022

Windels Marx Lane & Mittendorf, LLP  
*Attorneys for Metropolitan Commercial Bank*  
156 West 56th Street  
New York, NY 10019

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
– against –  
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants and Third-Party Plaintiff,  
- against -  
CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,  
Third-Party Defendants.

Index No. 60278/2020

**AFFIRMATION OF  
ALFRED E. DONNELLAN**

LIZER JOZEFOVIC  
Plaintiff,  
– against –  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,  
Defendants.

New York County Index No.  
655549/2020

Consolidated under Westchester  
County Index No. as per April 8,  
2021 Decision and Order.

Alfred E. Donnellan, an attorney duly admitted to practice in the courts of the State of New York, affirms the following to be true under the penalty of perjury:

1. I am a member of the law firm of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, lead counsel for plaintiff White Plains Healthcare Properties I, LLC (“WPH Properties”) and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The

Congress Companies, Howard Fensterman and William Nicholson (collectively, “third-party defendants”).

2. I submit this affirmation in support of the motion of WPH Properties and third-party defendants for an order granting summary judgment in favor of WPH Properties for the relief demanded in the complaint and dismissing the counterclaims and third-party claims (collectively, the “defendants’ claims”) asserted by defendants/third-party plaintiffs, HBL SNF, LLC (“HBL”), Lizer Jozefovic (“Jozefovic”) and Mark Neuman (“Neuman”) (collectively, “defendants”).

**Introduction**

3. WPH Properties commenced this action after HBL defaulted under its lease of a nursing home facility located at 116-120 Church Street, White Plains, New York, that was developed and financed by, and is owned by, WPH Properties. The action comes after six years of failures by HBL and its principals, Jozefovic and Neuman, to comply with their obligations, in each case using their default to re-negotiate more favorable terms for HBL and themselves. The bankruptcy of one of HBL’s members also caused significant delays. As detailed in the accompanying affidavit of William A. Nicholson, one of the managing members of WPH Properties, HBL did not comply with the lease that was negotiated in 2015 or the lease that was amended and restated in 2017. Specifically, and most important, HBL did not provide the \$5.3 million security deposit when it was required in 2019 and has, in fact, never deposited any security with WPH Properties. When HBL defaulted in November 2019, WPH Properties even agreed to transfer the property to a Delaware Statutory Trust in which WPH Properties and HBL would be the majority beneficiaries, provided that HBL provided a reduced initial payment toward the security deposit of \$1,000,000 within 10 days, by December 1, 2019, complied in all other respects with the terms of the lease pending the closing of title and closed by April 1, 2020. HBL failed in

every respect.

4. With respect to the security deposit, the lease required HBL to have delivered to WPH Properties “60 days prior to the anticipated Commencement Date,” a security deposit consisting of \$3.7 million in cash or letter of credit and an additional \$1.6 million from an identified bank account. Exhibit 12, Lease § 7.1(a)(ii) and (iii). HBL admits that it took occupancy of the property on September 30, 2019. Exhibit 11, Notice to Admit, No.1. The security deposit was due, therefore, in July 2019. HBL did not pay the security deposit then and has never paid the security deposit since – not even a penny. Failure to provide the security deposit is defined in the lease as a material default and is a material default as a matter of law.

5. HBL also defaulted by failing to pay rent, real estate taxes timely, municipal escrows and utility charges, by failing or refusing to deliver certificates of insurance timely, as well as all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the facility and by failing or refusing to deliver required financial reporting and written reporting providing an operational overview of significant events and circumstances at the facility during each month of the lease term, all as required by the lease. All of these defaults are detailed, with supporting documentation, in the accompanying affidavit of Edward O. Tabor.

6. HBL does not deny that it has defaulted. In fact, HBL has admitted its defaults by failing to respond to the notice to admit that was served on June 2, 2021.

7. WPH Properties commenced this action on September 18, 2020 seeking to recover the amounts due as a result of HBL’s defaults under the lease and the letter of intent and to enforce the guarantees of HBL’s obligations given by Jozefovic and Neuman. WPH Properties later filed an amended complaint adding a cause of action against Jozefovic to enforce a pledge agreement he gave as security for his obligations and HBL’s obligation under the lease. That interest has since

been sold at a public auction in accordance with its terms.

**A. Procedural History**

**(i) The Westchester County action**

8. On September 18, 2020, WPH Properties commenced this action by filing a summons and complaint in the Supreme Court, Westchester County, under Index No. 60278/2020 (the "Westchester County Action"). A copy of the summons and complaint is attached as exhibit 1.

9. On November 5, 2020, the defendants filed a verified answer including counterclaims, purporting to assert third-party claims. A copy of the verified answer is attached as exhibit 2.

10. On November 30, 2020, WPH Properties filed an amended verified complaint. A copy of the amended verified complaint filed on November 30, 2020 is attached as exhibit 3.

11. On December 11, 2020, WPH Properties filed a verified reply to the counterclaims and the third-party defendants filed a verified answer to third-party complaint. The third-party defendants' verified answer to third-party complaint is attached as exhibit 4. WPH Properties' verified reply to counterclaims is attached as exhibit 4.

12. By order dated March 18, 2021, the Court granted WPH Properties' motion for leave to file an amended complaint. On March 22, 2021, WPH Properties re-filed its amended verified complaint in accordance with the order. A copy of the amended verified complaint filed on March 22, 2020 is attached as exhibit 5.

**(ii) The New York County action**

13. On October 22, 2020, Jozefovic filed a summons and complaint in the Supreme Court, New York County, under Index No. 655549/2020 (the "New York County Action") commencing an action against WPH Properties, Fensterman and Metropolitan Commercial Bank

(“MCB”). Copies of the summons and complaint filed in the New York County Action are attached as exhibit 6. Jozefovic moved at the same time for a preliminary injunction prohibiting WPH Properties from, among other things, selling his membership interest in Waterview Hills Acquisition I, LLC, which he had pledged as collateral for HBL’s obligations under the lease.

14. By order to show cause signed on November 12, 2020, WPH Properties and Fensterman moved for an order changing the venue of the New York County Action to Westchester County and consolidating it with the Westchester County Action.

15. On November 18, 2020, WPH Properties and Fensterman filed a verified answer in the New York County Action. A copy of the verified answer filed by WPH Properties and Fensterman in the New York County Action is attached as exhibit 7.

16. On January 8, 2021, MCB filed an “answer with cross-claim” in the New York County Action. A copy of MCB’s answer with cross-claim filed in the New York County Action is attached as exhibit 8.

17. By order dated April 8, 2021, the Supreme Court, New York County (Nancy M. Bannon, J.), granted the motion made by WPH Properties and Fensterman to transfer the New York County Action to Westchester County and consolidate it with the Westchester County Action under Westchester County Index No. 60278/2020. A copy of the April 8, 2021 order is attached as exhibit 9.

**(iii) The Consolidated Action**

18. On May 21, 2021, the defendants filed a “first amended verified answer,” including counterclaims and purporting to assert third-party claims. A copy of the “first amended verified answer” is attached as exhibit 10.

19. On June 2, 2021, WPH Properties filed and served upon defendants a notice to admit.

A copy of the notice to admit, with proof of service, is attached as exhibit 11.

20. The defendants *did not respond* to the notice to admit within 20 days of the date on which it was served and *have not responded since*.

21. By failing to respond to the notice to admit, the defendants have admitted each of the alleged defaults. Specifically, the defendants have admitted that (i) HBL did not pay fixed rent when due for September 30, 2019 through December 31, 2019; (ii) HBL did not pay additional rent when due for January 1, 2020 through January 30, 2020; (iii) on and after January 13, 2020, HBL continued to occupy the facility; (iv) HBL has continuously occupied the facility during the period from January 13, 2020 through the date of the notice to admit [June 2, 2021]; (v) HBL did not pay accelerated rent at any time after January 13, 2020; (vi) HBL did not pay increased rent at any time after January 13, 2020; (vii) HBL did not pay real estate taxes when due for the period July 1, 2019 through December 1, 2019; (viii) HBL did not pay real estate taxes when due for the period January 1, 2020 through June 30, 2020; (ix) HBL did not pay charges for utilities when due; (x) HBL did not deliver the required certificates of insurance to WPH Properties; (xi) HBL did not deliver to WPH Properties 60 days before the commencement date the agreement with Capital Funding Group, required by § 7.1(a)(i) of the Lease, allowing HBL to draw down on its credit line and enabling Capital Funding Group to pay to WPH Properties directly the sum of \$506,096.50 per month commencing on the commencement date and on each day fixed rent is due under the lease for the following 11 months; (xi) HBL did not ever deliver to WPH Properties the agreement with Capital Funding Group required by § 7.1(a)(i) of the Lease; (xii) HBL did not deliver to WPH Properties 60 days prior to the commencement date the unconditional letter of credit in the amount of \$3,700,000 required by § 7.1(a)(ii) of the lease; (xii) HBL did not ever deliver to WPH Properties the unconditional letter of credit in the amount of \$3,700,000 required

by § 7.1(a)(ii) of the lease; (xiii) HBL did not deliver to WPH Properties 60 days prior to the commencement date the \$3,700,000 in cash as a security deposit, as required by § 7.1(a)(ii) of the Lease; (xiv) HBL did not ever deliver to WPH Properties the \$3,700,000 in cash as a security deposit, as required by § 7.1(a)(ii) of the Lease; (xv) HBL did not deliver to WPH Properties 60 days prior to the Commencement Date funds in the controlled account number \*\*\*\*\*7272 in JPMorgan Chase Bank, N.A. in the amount of not less than \$1,600,000 to be held by WPH Properties as the additional security deposit, as required by § 7.1(a)(ii) of the Lease; (xvi) HBL did not ever deliver to WPH Properties funds in the controlled account number \*\*\*\*\*7272 in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held by WPH Properties as the additional security deposit, as required by § 7.1(a)(ii) of the lease; (xvii) HBL did not keep and maintain the financial reporting, as required by § 7.4(a)(ii) of the lease; (xviii) HBL did not submit to WPH Properties unaudited monthly financial statements, census and revenue information, aged accounts receivable reports, unaudited quarterly financial statements, quarterly census revenue information, audited annual financial statements, audited schedule reconciling HBL's net operating income to net cash flow, all as required by § 7.4(a)(iii) of the lease; (xix) HBL did not submit to WPH Properties a written report providing an operational overview of significant events and circumstances at the facility, and a copy of all HBL's federal income tax returns, all as required by §7.4(a)(vi) of the lease; (xx) HBL did not deliver to WPH Properties the annual Medicaid and Medicare provider agreements for the facility, as required by § 7.4(g) of the lease; (xxi) HBL did not deliver to WPH Properties the annual Medicaid and Medicare reimbursement rate sheets for the facility, as required by § 7.4(g) of the lease; and (xii) HBL did not deliver to WPH Properties the new, revised or amended Medicaid and Medicare reimbursement rate sheets issued subsequent to the annual reimbursement rate sheets for the

facility, as required by § 7.4(j) of the lease.

**B. WPH Properties is entitled to summary judgment**

22. For the reasons set forth here, in the accompanying affidavits of Edward O. Tabor, William A. Nicholson and Howard Fensterman, and in the accompanying memorandum of law, WPH Properties is entitled to summary judgment granting judgment against HBL, Jozefovic and Neuman for liability and for damages, in the total amount of \$111,420,213.50, for breach of the lease and the letter of intent, as well as dismissing the cross-claims and counterclaims asserted by HBL, Jozefovic and Neuman in the Westchester County Action and dismissing the claims asserted by Jozefovic in the New York County Action.

23. The affidavit of Edward O. Tabor sets forth the terms of the lease and the evidence establishing that HBL breached the lease.

24. The affidavit of William A. Nicholson establishes the history of repeated defaults by HBL and Jozefovic. It demonstrates that even before the facility was constructed, and continuing thereafter, WPH Properties reacted to each of those defaults by renegotiating the terms to accommodate HBL and Jozefovic. It also demonstrates that immediately after taking possession of the premises on September 30, 2019, HBL failed to perform its obligations, constituting a material default under the lease by, among other things, failing to deliver security deposits, pay rent, real estate taxes, utility deposits, municipal maintenance escrows and utility charges, have and maintain the working capital account required by the lease. It further shows that even after HBL defaulted under the lease, WPH Properties gave HBL the opportunity to cure all of its defaults by purchasing a majority interest in the property, but it defaulted on that agreement, as well. The Nicholson affidavit also establishes that WPH Properties has fully performed all obligations required to be performed on its part with respect to the lease and HBL's month-to-month tenancy

after the termination of the lease.

25. Those same affidavits demonstrate as a matter of law that the defendants are barred by the lease and the guaranties from asserting counterclaims and, in those same agreements, waived or released all of those claims. But even if they had not, the affirmative defenses counterclaims are without merit and must be dismissed, either because they fail to state a cause of action upon which relief can be granted or because the undisputed facts establish the entitlement of WPH Properties and the third-party defendants to judgment as a matter of law.

26. The defendants' first cause of action demands an accounting. The evidence establishes, however, that there was never the fiduciary relationship between the parties that is necessary to an accounting claim. In fact, the lease specifically provides that the relationship between HBL and WPH Properties is solely that of landlord and tenant and there is no partnership, joint venture, agency or common interest in profits or income, or any sharing of liabilities, losses, costs or expenses among them. Exhibit 12, Lease, § 20.28.

27. The second cause of action, which seeks "imputed interest" on a purported loan of \$2.2 million made by HBL to WPH Properties, must also be dismissed on the basis of the accompanying affidavit of William A. Nicholson, which establishes that there was no loan and no agreement to pay interest.

28. The defendants' third cause of action alleges, in essence, that WPH Properties failed to satisfy its obligations under the development agreement and the lease with respect to development, financing and construction of the nursing home facility. The accompanying affidavit of William A. Nicholson establishes that the claim is false and that the defendants have admitted that it is false. The development agreement, in fact, expressly acknowledges that by taking occupancy of the property, which the defendants did in 2019, the defendants recognized that WPH

Properties had fulfilled all its obligations and responsibilities under the development agreement. The development agreement thus either waives or releases the claims against WPH Properties that the defendants assert in their first, second and third causes of action. The lease does the same thing. Under the lease, HBL, by taking occupancy, waived any claims it may have had against WPH Properties in law or equity with respect to any aspect of the nursing home facility.

29. The fourth, fifth and sixth causes of action alleging fraud in the inducement, bad faith and fraud must be dismissed, initially, because they are duplicative of the defendants' breach of contract claim. Further, the defendants' allegation that Nicholson and Fensterman misrepresented their intent to perform their obligations under the agreements is not true, as set forth in the accompanying affidavits of Nicholson and Fensterman. But even if the allegations were true, they do not constitute actionable fraud because they do not allege misrepresentations of present facts, as set forth in the accompanying memorandum of law.

30. For all of these reasons, each of which is addressed more fully in the accompanying memorandum of law and the affidavits of Edward O. Tabor, William A. Nicholson and Howard Fensterman, and the defendants' admissions, WPH Properties and the third-party defendants have established their entitlement to judgment as a matter of law against HBL for the relief demanded in the complaint.

31. The same proof establishes the liability of Jozefovic and Neuman for HBL's defaults. Jozefovic and Neuman admitted in their guaranties in their answer. By those guaranties, they absolutely and unconditionally guaranteed HBL's obligations under the lease. Their guaranties expressly apply to all rent, sums and charges of every type, including accelerated rent. WPH Properties is therefore entitled to judgment against them in the same amount as it is entitled to judgment against HBL.

32. WPH Properties is also entitled to judgment against HBL for the damages WPH Properties incurred as a result of HBL's default under the letter of intent. As set forth in the affidavit of Edward O. Tabor, HBL defaulted under the letter of intent by failing to pay the \$1,000,000 security deposit, failing to pay rent, failing to pay municipal and utility payments, failing to pay real estate taxes, failing to enter into the required "Deposit Account Control Agreement," failing to enter into an agreement with JP Morgan Chase Bank, failing to maintain an \$8,000,000 working capital credit line and failing to close on its purchase of the property by April 1, 2020. As a result, WPH Properties incurred substantial additional interest expense under its construction loan, as detailed in the accompanying affidavit of William A. Nicholson.

33. The claims Jozefovic asserts in the New York County Action are baseless and must be dismissed. As set forth in the accompanying affidavit of Howard Fensterman, Jozefovic never gave Fensterman access to the security deposit account that he had agreed to provide prior to HBL's occupancy of the property, but even if he had, HBL breached the lease by failing to deposit those funds into WPH Properties' lease security account 60 days prior to taking occupancy, as the lease required. Jozefovic's defamation claim is defeated by the fact that Jozefovic was a debtor, as stated in the original notice of sale of the interest in Waterview Hills Acquisition I, LLC, because he had guarantied HBL's obligations under the lease and HBL defaulted on those obligations. And, as set forth in the Fensterman affidavit, neither Fensterman nor his law firm has ever represented Jozefovic.

34. For all of these reasons, as more fully set forth in the accompanying affidavits of Edward O. Tabor, William A. Nicholson and Howard Fensterman, and the accompanying memorandum of law, WPH Properties is entitled to summary judgment establishing HBL's default under the lease and the letter of intent and the liability of Jozefovic and Neuman as

guarantors for those breaches, to a money judgment against HBL, Jozefovic and Neuman in the amount of \$111,420,213.50. WPH Properties and the third-party defendants are also entitled to judgment dismissing the counterclaims and third-party claims.

WHEREFORE, I respectfully request that this Court grant summary judgment for liability and damages in favor of WPH Properties and against HBL, Jozefovic and Neuman in the amount of \$111,420,213.50 and dismiss the defendants' counterclaims and third-party claims.

Dated: White Plains, New York  
August 18, 2021

  
\_\_\_\_\_  
Alfred E. Donnellan

**CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, ALFRED E. DONNELLAN, ESQ., an attorney at law licensed to practice in the State of New York, and counsel of record herein, certify that this document contains 3460 words, exclusive of the caption page, table of contents and table of authorities and signature block, as counted by the word count of the word-processing system used to prepare this document.

Dated: White Plains, New York  
August 18, 2021

/s/ Alfred E. Donnellan  
Alfred E. Donnellan

# Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,

- against -

HBL SNF, LLC, LIZER JOZEOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,  
Defendants.

Index No. 60278/2020

Date Purchased: 9/18/20

**SUMMONS**

**YOU ARE HEREBY SUMMONED** and required to serve upon plaintiff's attorney an answer to the Verified Complaint in this action within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Westchester County is designated as the place of trial. The venue designated is based upon Defendant's residence.

Dated: White Plains, New York  
September 16, 2020

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare  
Properties I, LLC*

By:   
Alfred E. Donnellan, Esq.  
Peter S. Dawson, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN,  
FORMATO, FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare  
Properties I, LLC*  
Robert A. Spolizino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

TO:

UBI SNF, LLC  
537 Route 22  
Purdys, New York 10578

Lizer Jozefovic a/k/a Lizer Jozefovic  
53 Mariner Way  
Monsey, New York 10952

Mark Neeman  
22 Lyncrest Drive  
Monsey, New York 10952

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
  
- against -  
  
HBL SNF, LLC, LIZER JOZEOVIC A/K/A LIZER  
JOZEOVIC and MARK NEUMAN,  
Defendants.

Index No. 60278/2020  
**VERIFIED COMPLAINT**

Plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties"), by its attorneys, DeBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Crono, LLP, for its complaint against defendants, HBL SNF, LLC ("HBL"), Lizer Jozefovic a/k/a Lizer Jozefovic ("Jozefovic") and Mark Neuman ("Neuman"), alleges:

**NATURE OF THE CASE**

1. This action concerns HBL's material default of its obligations under an amended and restated operating lease dated as of November 19, 2015 (the "Lease"), by which WPH Properties leased to HBL a brand new, state-of-the-art, 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York.

2. WPH Properties had constructed the nursing facility and entered into the Lease with HBL dated November 19, 2015. The Lease was amended and restated in 2017. It provided that HBL would operate the facility for 30 years, commencing September 30, 2019. HBL took possession of the facility on September 30, 2019. By the end of October 2019, HBL had defaulted.

3. On January 7, 2020, WPH Properties served notice of default and elected to terminate the Lease and accelerate all rents due. This action seeks to recover from HBL the Rent it owes and the other damages its defaults have caused and to enforce the unconditional guaranties of HBL's performance under the Lease given by Neuman and Jozefovic.

**PARTIES AND VENUE**

4. WPH Properties is a limited liability company duly organized and existing under the laws of the State of Massachusetts, with its principal place of business at 2 Bourbon Street, Suite 200, Peabody, Massachusetts. WPH Properties is duly authorized to do business in the State of New York.

5. HBL was and is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 537 Route 22, Purdys, New York.

6. Jozefovic is an individual residing at 53 Mariner Way, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

7. Neuman is an individual residing at 22 Lyncrest Drive, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

8. Pursuant to CPLR § 503(a), venue is properly designated in Westchester County based on the residences of WPH Properties and HBL, because a substantial part of the events giving rise to the claim occurred in Westchester County and because HBL agreed in the Lease that any action or proceeding arising out of the Lease be brought in Westchester County. Lease § 20.1(b).

**FACTS**

9. WPH Properties is and was at all relevant times the owner of the real property known as 116-120 Church Street, White Plains, New York (the "Real Property").

10. WPH Properties constructed a brand new, state-of-the-art, 160-bed skilled nursing facility on the Real Property.

**The Lease**

11. In 2017, WPH Properties, as landlord, and HBL, as tenant, entered into the amended and restated Lease, dated as of November 19, 2015, under which WPH Properties leased to HBL the Real Property and the improvements to be constructed on the Real Property, together with other assets, all as defined in Section 2.1 of the Lease (the "Facility"). A true and accurate copy of the Lease is annexed to this complaint as Exhibit 1 and is incorporated into this complaint by reference.

12. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019.

13. HBL entered into possession of the Facility on September 30, 2019.

14. The lease provided for a term of 30 years, with three 10 year options to the tenant, unless sooner terminated. Exhibit 1, Lease, § 3.1.

15. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 (the "Fixed Rent"). Exhibit 1, Lease, § 3.2.

16. The Lease also obligated HBL to pay WPH Properties other amounts which are defined as "Additional Rent." Fixed Rent and Additional Rent are referred to collectively as "Rent."

17. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Premises during the Term. Exhibit 1, Lease, § 4.1.

18. The Lease obligated HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit 1, Lease, § 4.2.

19. The Lease obligated HBL to keep the Premises in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses relating to the Premises. Exhibit 1, Lease, § 5.2.

20. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit 1, Lease, § 7.1.

21. A true and accurate copy of the Jozefovic Guaranty is annexed to this complaint as Exhibit 2.

22. A true and accurate copy of the Neuman Guaranty is annexed to this complaint as Exhibit 3.

23. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

24. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Jozefovic without the necessity of any notice of

nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Jozefovic expressly waived.

25. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

26. The Neuman Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

27. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an agreement by Capital Funding Group by which Capital Funding Group agreed to allow HBL to draw down on its credit line each month so as to enable Capital Funding Group to pay the Fixed Rent each month directly to WPH Properties on the commencement date and for the following 11 months. Exhibit 1, Lease, § 7.1.

28. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease. Exhibit 1, Lease, § 7.1.

29. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, \$1,600,000 as an additional security deposit. Exhibit 1, Lease, § 7.1.

30. The Lease obligated HBL to provide WPH Properties all reports, statements and

inspections as defined in the Lease, including all Medicare, Medicaid and other provider agreements and reimbursement rates for the Facility, updated reimbursement rates, financial reporting and written reports providing an operational overview of significant events and circumstances on a monthly basis. Exhibit 1, Lease, § 7.4.

31. The Lease obligated HBL to maintain working capital accounts in specified amounts. Exhibit 1, Lease, § 7.7.

32. The Lease provides that HBL will be in default of the Lease if, among other things, (i) HBL fails to pay any installment of Rent within five days of the date when Rent was due; (ii) HBL defaults in the prompt and full performance of any other of its obligations and fails to correct that failure within 30 days of receipt of written notice from WPH Properties of the default; (iii) HBL fails to give WPH Properties timely notice or timely deliver copies of documents as required by section 7.4 of the Lease; (iv) HBL defaults or breaches the provisions of section 7.4(b); (v) a Guarantor defaults beyond expiration of any applicable cure period; or (vi) any governmental authority assesses a fine or penalty against HBL in an amount in excess of \$75,000. Exhibit 1, Lease, § 16.1.

33. WPH Properties performed all of the conditions on its part required by the Lease.

34. The Lease provides in section 16.1 that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent.

35. Section 16.1 of the Lease also provides that upon the occurrence of a default, and in addition to all of the other remedies provided for in the Lease, WPH Properties is immediately

entitled to retain the security deposit required by section 7.1 of the Lease and HBL has no further claim, right, title or interest therein to the extent of WPH Properties' claims.

36. Section 16.1 of the Lease also provides that upon the occurrence of a default and the commencement of an action for Rent or for any other amount due under the Lease, HBL must pay to WPH Properties all of the expenses, including reasonable attorneys' fees, incurred by WPH Properties to enforce the Lease.

37. In addition, under the terms of the Lease, HBL's continuation in occupancy after termination (does not constitute a renewal) of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 201.13.

**HBL breached its obligations under the Lease**

38. HBL failed to perform its obligations, materially defaulting under the Lease, almost immediately after taking possession of the Premises.

39. HBL failed to pay Rent as required by the Lease.

40. HBL failed to pay real estate taxes as required by the Lease.

41. HBL failed to pay utility deposits as required by the Lease.

42. HBL failed to pay municipal maintenance escrows as required by the Lease.

43. HBL failed to pay utility charges as required by the Lease.

44. HBL failed or refused to deliver certificates of insurance as required by the Lease.

45. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility, as required by the Lease.

46. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider

updated rate sheets, as required by the Lease.

47. HBL failed to deliver to WPH Properties the required financial reporting, as required by the Lease.

48. HBL failed to deliver to WPH Properties the required written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease, as required by the Lease.

49. HBL failed or refused to deliver to WPH Properties the security deposits, as required by the Lease.

50. HBL failed to deliver and maintain the required credit line in an amount equal to 12 months rent, as required by the Lease.

51. HBL failed to have and maintain the working capital account required by the Lease.

52. HBL failed to pay late fees and costs, as required by the Lease.

#### The Letter of Intent

53. After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease, despite HBL's default.

54. On November 20, 2019, WPH Properties and HBL entered into a Letter of Intent (the "LOI") in which WPH Properties and HBL agreed that WPH Properties would sell the Facility for \$73,000,000 to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties or its designees would have a 22.5 percent interest.

55. A true and accurate copy of the LOI is annexed to this complaint as exhibit 4.

56. The LOI provides for the Lease to be amended to require that HBL pay the November 2019 rent by November 18, 2019, the December rent by December 5, 2019 and all real

estate taxes and utility payments by December 1, 2019, that by December 5, 2019 HBL reimburse WPH Properties for \$65,856 in municipal and utility deposits, that HBL enter into a Deposit Account Control Agreement with MNB requiring MNB to draw on the account first to pay the rent.

57. The LOI further provides for the Lease to be amended so that the \$3,700,000 security deposit required by section 7.1(a)(ii) is reduced to \$2,000,000, \$1,000,000 of which was required to be paid by HBL on or before December 1, 2019 or the date on which WPH Properties obtained a certificate of occupancy for the Facility, whichever was later, and the balance of which was required to be paid upon the closing of title on April 1, 2020.

58. In addition, the LOI provides for the Lease to be amended so that in lieu of providing the additional \$1,600,000 in security required by section 7.1(a)(iii) of the Lease, HBL would be required to enter into an agreement with JP Morgan Chase Bank prohibiting liquidation of that account until the second \$1,000,000 in security required by the LOI had been paid.

59. The LOI also provides for the Lease to be amended to require HBL to obtain a single working capital line of credit in the amount of \$8,000,000 by December 1, 2019.

60. HBL defaulted and breached its obligations under the LOI by failing to pay rent, failing to pay the municipal and utility payments to WPH Properties, failing to pay the real estate taxes and utility payments, failing to enter into the Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank, by failing to pay the first \$1,000,000 security deposit as required by the LOI and by failing to obtain the \$8,000,000 working capital credit line.

61. WPH Properties performed all conditions on its part required by the LOI.

62. Solely as a result of HBL's breach of the LOI, WPH Properties did not sell the

property to the Delaware Statutory Trust, causing damage to WPH Properties, and WPH Properties incurred interest and late charges on its loans, all of which are the direct result of HBL's breach of the LOI.

**Notice of default, termination of the Lease and acceleration of Rent**

63. On January 7, 2020, while the LOI was in effect, WPH Properties served a "Notice of Default And Landlord's Election To Terminate Lease And Accelerate All Rents Due For The Balance of the Lease Term" upon HBL (the "Notice of Default").

64. A true and accurate copy of the Notice of Default is annexed to this complaint as Exhibit 5 and incorporated into this complaint by reference.

65. The Notice of Default contains a true and accurate accounting of the amounts then due and owing under the Lease and LOI.

66. The Notice of Default gave HBL notice that by reason of HBL's defaults under the Lease, WPH Properties had exercised its right under section 16.1 of the Lease to terminate the Lease, effective January 13, 2020.

67. The Notice of Default further gave HBL notice that pursuant to section 16.1 of the Lease all Rent for the balance of the Term was accelerated and HBL became obligated to pay WPH Properties the present value of the accelerated rent, discounted at a rate of 6% per annua.

68. HBL continued, and still continues, to occupy the Premises, despite WPH Properties' termination of the Lease.

69. Because HBL has held over after its default resulted in termination of the Lease, HBL is a tenant month-to-month at a rent equal to 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

70. HBL has failed to perform its obligations as a tenant month-to-month by failing to pay rent in the amount of 300% of the most recent Rent payable by HBL under the Lease, remitting only the base rent which had been payable before WPH Properties terminated the Lease.

71. HBL is in default with respect to its obligations under the Lease and its obligations as a month-to-month tenant following termination of the Lease effective January 13, 2020.

**Amounts Due**

72. As a result of HBL's defaults, HBL is obligated to pay to WPH Properties, as of August 25, 2020, the sum of \$113,832,987.54 (the "Amounts Due"), as follows: (i) holdover rent and rent, \$7,056,182.79; (ii) municipal and utility deposits, \$26,725.35; (iii) security and working capital deposits, \$9,800,000.00; (iv) late fees, default fees, costs and professional fees, \$1,948,753.00; and (v) accelerated rent, \$94,961,326.40.

73. HBL is obligated to pay to WPH Properties the Amounts Due in full, plus any amounts that have accrued since August 25, 2020.

74. HBL has failed or refused to pay the Amounts Due.

75. WPH Properties has fully performed all obligations required to be performed on its part with respect to the Lease, the LOI, HBL's month-to-month tenancy after the termination of the Lease, the Jozefovic Guaranty, the Neuman Guaranty, the HBL Security Agreement, the Jozefovic HBL Security Agreement and the Neuman HBL Security Agreement.

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

76. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "75" with the same force and effect as if fully set forth here.

77. By reason of HBL's material default and breach of its obligations pursuant to the

Lease and its obligations as a month-to-month tenant after termination of the lease, WPH Properties is entitled to judgment against HBL for the Amounts Due, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law.

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

78. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "77" with the same force and effect as if fully set forth here.

79. By reason of HBL's material default and breach of its obligations pursuant to the LOI, WPH Properties is entitled to judgment against HBL in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

80. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "79" with the same force and effect as if fully set forth here.

81. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic for the Amounts Due pursuant to the terms of the Jozefovic Guaranty.

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

82. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "81" with the same force and effect as if fully set forth here.

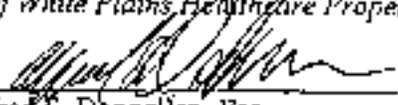
83. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Neuman for the Amounts Due pursuant to the terms of the Neuman Guaranty.

WHEREFORE, WPH Properties demands judgment as follows:

1. On its first cause of action, against HBL in the amount of \$113,832,987.54, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and
2. On its Second Cause of Action, against HBL, in an amount to be determined at trial; and
3. On its Third Cause of Action, against Jozefovic in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and
4. On its Fourth Cause of Action, against Neuman in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and
5. On all causes of action, awarding costs, disbursements and attorneys' fees against HBL pursuant to the provisions of the Lease and against Jozefovic and Neuman pursuant to the provisions of the Jozefovic Guaranty and the Neuman Guaranty; and
6. Awarding such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
September 16, 2020

DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

By:   
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(914) 607-7010



# Exhibit 1 to Verified Complaint

**AMENDED AND RESTATED OPERATING LEASE**

By and Between

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,**  
a Massachusetts limited liability company  
("Landlord")

and

**HBL SNF, LLC,**  
a New York limited liability company ("Tenant")

Dated as of November 19, 2015

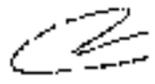


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EXHIBIT "A"

Legal Description

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of White Plains, County of Westchester, and State of New York. Said parcel being more particularly described as follows:

BEGINNING at a point in the easterly line of Church Street where the same is intersected by the southerly line of Barker Avenue;

THENCE from said point North 70 degrees 40 minutes 10 seconds East a distance of 173.57 feet along the southerly line of Barker Avenue to a point where the same is intersected by the division line herein described parcel on the West and lands now or formerly of Koepffel & Mohr Equities on the East;

THENCE from said point and along said division line South 17 degrees 59 minutes 50 seconds East a distance of 200.51 feet to a point in the division line between the herein described parcel on the north and lands now or formerly of Hamilton Plaza Company, Inc. on the south;

THENCE from said point and along said line South 71 degrees 01 minutes 50 seconds West a distance of 173.24 feet to the easterly line of Church Street; and

THENCE from said point and along said line North 18 degrees 05 minutes 04 seconds West a distance of 199.41 feet to the point and place of BEGINNING.

EXHIBIT A

3375449 v 5/11057-6

EXHIBIT "B"

GUARANTY

See Attached

EXHIBIT

202108191236



SCHEDULE 3.1

Definition of Material Default

Material Default shall mean the occurrence of any of the following:

(a) Any Lease Default except 16.1 (a) (xxv) and (xxxx), provided that the following Lease Defaults shall not be deemed a Material Default unless they occur two or more times within such period: 16.1 (a) (ix), (xvii), (xxx), (xxxii), and the following Lease Defaults shall not be deemed a Material Default unless they occur three or more times within such period: 16.1 (a) (i), (ii), (xvii).

(b) Any Lease Default during such period constitutes an "Event of Default" by Lendlord under any Loan Document between Lendlord and its Mortgagee(s) evidencing or documenting a loan secured by the Facility;

EXHIBIT 7.1(a)  
See Attached

EXHIBIT 7.1(b)  
See Attached

EXHIBIT 7.1(c)  
See Attached

SCHEDULE 7.4

<u>PERIOD</u>	<u>EBITDAR TARGET</u>
Quarter 1 (____, 20____ through _____, 20____)	\$ _____
Quarter 2	\$ _____
Quarter 3	\$ _____
Quarter 4	\$ _____
Quarter 5	\$ _____
Quarter 6 and thereafter	\$ _____

"EBITDAR" means with respect to any quarterly period for the Facility an amount determined on a consolidated basis equal to the sum of the following amounts for the Facility for a trailing twelve month period: (a) earnings/(net income or net loss) (including, as an expense an actual or theoretical management expense of five percent (5%) of gross receipts) from operations before (b) interest expense, (c) income tax expense, (d) depreciation expense, (e) amortization expense, and (f) Fixed Rent, defined in accordance with GAAP for such quarterly period. EBITDAR is not considered a measure of financial performance under GAAP. In calculating earnings for the trailing twelve months that encompasses any month prior to the Commencement Date, for the months prior to the Commencement Date, revenue shall be calculated using current rates of reimbursement, meaning reimbursement rates in effect as of the start of the applicable quarterly period.

**OPERATING LEASE**

THIS AMENDED AND RESTATED OPERATING LEASE ("Lease") is entered into as of November 19, 2015 (the "Effective Date"), by and between WHITE PLAINS HEALTHCARE PROPERTIES I, LLC a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 200, Peabody, MA 01960 ("WPHCP") or (the "Landlord") and HBL SNF, LLC a New York Limited Liability Company having an office at 537 Route 22, Parsippany, New York 10578 (the "Tenant"), and amends and restates in its entirety the lease between the Parties dated as of November 19, 2015.

**RECITALS**

A. WHEREAS, Landlord is the owner of the real property, improvements, and personal property constituting the long-term care facility commonly known as 116-120 Church Street, White Plains, New York and more particularly described on Exhibit A, attached hereto and made a part hereof, (the "Real Property"), and following execution of this Lease, upon which certain buildings and improvements shall be erected (the "Facility"); and

B. WHEREAS, Landlord desires to lease the entire Leased Premises (defined herein) to Tenant and Tenant desires to lease the Leased Premises from Landlord pursuant to the terms, conditions and covenants set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, promises, representations and warranties set forth herein and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

**ARTICLE I**

**INCORPORATION OF RECITALS; PRINCIPLES OF CONSTRUCTION, DEFINITIONS**

Section 1.1 Incorporation of Recitals. The aforesaid Recitals A through B are hereby incorporated into this Lease as if fully set forth herein. Landlord and Tenant are hereinafter sometimes individually referred to as a "Party" and collectively referred to as "Parties".

Section 1.2 Principles of Construction. All references to articles, sections, schedules and exhibits are to articles, sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Landlord" shall mean

"Landlord and its successors and assigns"; the words "Leased Premises" shall include any portion of the Leased Premises and any interest therein, and the phrases "attorneys' fees", "legal fees" and "court fees" shall include any and all reasonable attorneys', paralegal, legal assistant and law clerk fees and disbursements, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise, and, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Landlord in protecting its interest in the Leased Premises and its rights hereunder. Wherever pursuant to this Lease it is provided that Landlord shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees as defined above. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The words "includes", "including" and similar terms shall be construed as if followed by the words "without limitation". Whenever in this Lease any consent, approval, determination or decision of Landlord is to be made by Landlord, or any matter is to be satisfactory to Landlord, then unless expressly provided to the contrary, such provision shall be deemed to mean that such consent, approval, determination or decision of Landlord or determination whether a matter is satisfactory shall be made by Landlord in its sole and absolute discretion for any or no reason and shall be final and conclusive. Any reference in this Lease shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease shall be deemed to be a reference to this Lease (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease or in the Guaranty shall be deemed to be a reference to the Guaranty (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time.

Section 1.3 Definitions.

"Additional Rent" as defined in Section 3.2

"Affiliate" as defined in Section 20.31.

"Change of Ownership" means

"Commencement Date" as defined in Section 3.1.

"Commissioner" means the Federal Housing Commissioner also called the Assistant Secretary for Housing in the United States Department of Housing and Urban Development.

"DOH" means New York State Department of Health.

"Effective Date" as defined in introductory paragraph.

"Eligible Institution" as defined in Section 4.3.

"Extension Term" as defined in Section 3.1(b).

"Facility" as defined in Recital A.

"First Refinance" means the replacement or refinancing of the Original Mortgage and/or original Junior Debt, in whole or part, in an amount not less than \$42,200,000.

"First Refinance Date" means the date of the First Refinance.

"Fixed Rent" as defined in Section 3.2.

"Governmental Authority" as defined in Section 5.2.

"Guarantors" means Lizar Josefowic and Mark Neuman.

"Hazardous Materials" as defined in Section 10.3

"Hazardous Waste" as defined in Section 10.3.

"Health Care Authority or Authorities" means any Governmental Authority (including HUD) having responsibility for the approval, licensing, certification, payment, issuance of guarantees and insurance for, and/or otherwise setting standards for the operation and occupancy of skilled nursing facilities.

"Health Care Licenses" means all Medicare and Medicaid certifications and provider agreements, all public third party payor certifications and provider agreements, and all certifications, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses and certificates of need required by Health Care Authorities for the legal use, occupancy and operation of the Facility.

"HUD" means the United States Department of Housing and Urban Development.

"Junior Debt" means a mortgage on the Premises junior to the first Mortgage, and/or debt relating to the development and construction of the Premises.

"Landlord" as defined in introductory paragraph, and Section 3.2.

"Landlord's Indemnitees" as defined in Section 9.1

"Landlord's Work" as defined in Section 5.1.

"Laws" as defined in Section 5.1.

"Lease Default" as defined in Section 16.1.

"Leased Premises" as defined in Section 2.1.

"Lease Year" as defined in Section 3.1.

"Letter of Credit" as defined in Section 7.1.

"Material Default" as defined in Schedule 3.1.

"Mortgages" shall refer to the first and second priority mortgages secured by fee simple interest in the Real Property as amended, restated, extended or replaced from time to time in Landlord's discretion.

"Original Mortgage" means the original Mortgage placed on the Premises by Landlord.

"Overdue Rate" as defined in Section 9.1(b).

"Primary Market of the Facility" means a fifteen mile radius of the Leased Premises.

"Prime Rate" as defined in Section 9.1.

"Prospective Mortgagee" means any Person chosen by Landlord as a Mortgagee prior to a closing of a Mortgage to be held by such Person.

"Real Property" as defined in Recital A.

"Refinance" means the replacement or refinance of the Mortgage, or Junior Debt, or any debt in replacement thereof, in whole or part, including the First Refinance.

"Refinance Date" means the date of any Refinance including the First Refinance.

"Rent" as defined in Section 3.2.

"Security Deposit" as defined in Section 7.2.

"Special Purpose Entity" as defined in Schedule 19.2.

"Substantial Completion Date" means the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Landlord's architect, that the Facility was substantially completed and in substantial compliance with the plans and specifications for the Facility, and (ii) the date Landlord delivers a Temporary Certificate of Occupancy (the "TCO") for the Facility, provided, however, if the Landlord is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOJ approvals then delivery of the TCO shall not be a condition under this clause (ii).

"Tenant's Lease Coverage Ratio" means EBITDAR divided by Fixed Rent.

"Term" as defined in Section 3.1 (including all exercised Extension Terms).

"Total Project Cost or "TPC" is the actual cost of purchasing, developing, constructing, and equipping the Facility, including without limitation, the cost of the Real Property and improvements, development costs, financing costs, and the cost of Landlord's Work and all equipment.

"Utilities" as defined in Section 4.1.

ARTICLE II

LEASED PREMISES

Section 2.1 Leased Premises. Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions set forth in this Lease, the following assets:

(a) all of Landlord's right, title, and interest in and to the Real Property, including, without limitation, all buildings, structures, erections, improvements, appurtenances, easements and fixtures, including fixed machinery and fixed equipment situated thereon or forming a part thereof; and

(b) all of Landlord's right, title and interest in and to all machinery, trade equipment, trade fixtures, furniture, furnishings, beds, and accessories of all kinds used in connection with the Facility located on the Real Property.

All of the items described in Sections 2.1(a) and 2.1(b) herein are collectively referred to as the "Leased Premises." Landlord and Tenant acknowledge and understand that all of the items which comprise the Leased Premises, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, shall be transferred back to Landlord in accordance with the terms and conditions set forth herein upon the expiration or earlier termination of this Lease.

Section 2.2 In connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein, and each successor in interest, shall have the right to transfer all amounts deposited pursuant to Section 4.3 with respect to the Facility, less any amount used pursuant to Section 4.3, to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, Landlord or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto. If Landlord's interest in the Leased Premises is sold or conveyed as provided above or otherwise or by operation of law: (i) at the new owner's option, Tenant shall attempt to and recognize the new owner as Tenant's Landlord under this Lease and Tenant shall take such actions to confirm the foregoing within ten (10) days after request.

ARTICLE III

TERM AND RENT

Section 3.1 Term of Lease

(a) The term (the "Term") of this Lease shall be for a period of thirty (30) years commencing on the later to occur of (i) the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility and (ii) the date that New York State Department of Health (hereinafter sometimes, "DOH") determines that the Landlord's Work is sufficiently complete as constructed (but not necessarily the Tenant's operations) to accept patients, provided, however, if the Landlord is unable to obtain a permanent or temporary Certificate of Occupancy because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of a permanent or temporary Certificate of Occupancy shall not be a condition under clause (i) (the "Commencement Date"), and ending at 11:59:59 P.M. on the day preceding the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date (the "Expiration Date"). Under any and all circumstances, Landlord shall not be liable to Tenant, in damages or otherwise, for any delay in delivering the Leased Premises to Tenant and Tenant shall have no right to terminate or rescind this Lease on account thereof. Notwithstanding the Commencement Date, certain of the rights and obligations of the parties shall commence on the Effective Date, but not including Tenant's obligations to pay Fixed Rent and Impositions prior to the Commencement Date, or to maintain the Leased Premises, insure the Leased Premises or restore the Leased Premises after a casualty or condemnation prior to the Commencement Date, or any other rights and obligations, which by their terms are intended to commence as of the Commencement Date, which rights and obligations shall commence on the Commencement Date.

As used herein with respect to the Term and the periods for payment of Rent (unless the context otherwise requires) the term "Lease Year" shall mean a 365 day period (or 366 day period in the case of a leap year), first commencing on the Commencement Date and thereafter on successive anniversaries thereof, and ending on the day prior to the next succeeding anniversary of the Commencement Date.

Landlord and Tenant hereby acknowledge that the Commencement Date is presently indeterminate and shall occur only as hereinabove provided in this Section. Except for the rights of Tenant expressly stated herein, Tenant hereby waives any right to rescind this Lease under the provisions of Section 223-a of the Real Property Law of the State of New York, and agrees that the provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of said Section 223-a. Landlord and Tenant shall execute a memo specifying the Commencement Date immediately following its occurrence.

(b) Provided a Lease Default has not occurred and is then continuing either at the time of the exercise of the options provided below or at the end of the Term or Extension Term, or there has not been any Lease Default listed in Schedule 3.1 attached hereto (a "Material Default"), whether or not cured, within two years of the end of the Term or Extension Term, Tenant shall have the option to extend the Term of this Lease for three (3) additional periods of ten (10) years each (each a "Extension Term"), by giving written notice to Landlord

not less than five forty-five (545) days nor more than seven hundred (700) days prior to the expiration of the Term (or Extension Term as the case may be) of this Lease, TIME BEING OF THE ESSENCE to these time periods. These options may be exercised by Tenant serving written notice upon Landlord stating that Tenant is exercising the option to extend. If Tenant fails to give such notice in writing to Landlord within the time period specified herein, all rights and privileges granted to Tenant to extend this Lease shall lapse and become null and void. No later option may be exercised if Tenant has failed to exercise a prior option. If Tenant has validly exercised its option(s) to extend the Term, references herein to the "Term" shall be deemed to include an Extension Term.

Section 3.2 Rent

(a) Beginning in the first (1st) Lease Year of the Term and for each succeeding Lease Year thereafter, including during any and all Extension Terms, until the First Refinance Date, Tenant shall pay Landlord an annual amount of Six Million Seventy Three Thousand One Hundred Fifty Eight (\$6,073,158; Dollars ("Fixed Rent") in monthly installments of \$506,096.50.

(b) Tenant shall pay the Rent to Landlord during the term without deduction or setoff and without demand.

(c) The terms "Additional Rent" or "additional rent" means all sums, amounts, fees, expenses and costs (including, without limitation, legal fees and disbursements) payable or reimbursable to Landlord under this Lease other than Fixed Rent, and all of same shall be and constitute Additional Rent hereunder. The terms "Fixed Rent" and "Additional Rent" shall be collectively referred to as "Rent." Landlord shall have the same rights and remedies hereunder consequent upon a failure of Tenant to pay any item of Additional Rent as upon a failure of Tenant to pay any item of Fixed Rent.

(d) Rent shall be due and payable in advance in equal monthly installments during each year on the first (1st) day of each calendar month thereof (or in the event the first day of the calendar month is not a business day, on the first business day following the first day of each calendar month) throughout the Term. Rent for any period which is less than a full calendar month or full year, as the case may be, during the Term, shall be pro-rated on a daily basis. Rent shall not be paid more than one (1) month in advance. Rent shall be paid to Landlord at Landlord's address set forth in Section 1.3 or at such other place as Landlord designates from time to time by written notice to Tenant. Tenant agrees to pay Rent, at Landlord's direction, by electronic transfer or wire, as directed by Mortgagee in writing.

(e) TENANT HEREBY ACKNOWLEDGES THAT LATE PAYMENT BY TENANT TO LANDLORD OF RENT WILL CAUSE LANDLORD TO INCUR COSTS NOT CONTEMPLATED HEREUNDER, THE EXACT AMOUNT OF WHICH IS PRESENTLY ANTICIPATED TO BE EXTREMELY DIFFICULT TO ASCERTAIN. SUCH COSTS MAY INCLUDE PROCESSING AND ACCOUNTING CHARGES AND LATE CHARGES WHICH MAY BE IMPOSED ON LANDLORD BY THE TERMS OF ANY LOAN AGREEMENT AND OTHER EXPENSES OF A SIMILAR OR DISSIMILAR NATURE. ACCORDINGLY, IF ANY INSTALLMENT OF RENT THAT IS PAYABLE TO LANDLORD



OR ITS DESIGNEE SHALL NOT BE PAID WITHIN FIVE (5) DAYS OF THE DATE WHEN DUE, TENANT WILL PAY LANDLORD ON DEMAND A LATE CHARGE EQUAL TO FIVE PERCENT (5%) OF THE UNPAID PORTION OF THE AMOUNT OF SUCH INSTALLMENT. THE PARTIES AGREE THAT THIS LATE CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE COSTS THAT LANDLORD WILL INCUR BY REASON OF LATE PAYMENT BY TENANT. THE PARTIES FURTHER AGREE THAT SUCH LATE CHARGE IS RENT AND NOT INTEREST AND SUCH ASSESSMENT DOES NOT CONSTITUTE A LENDER OR BORROWER/CREDITOR RELATIONSHIP BETWEEN LANDLORD AND TENANT. IN ADDITION, THE AMOUNT UNPAID, INCLUDING ANY LATE CHARGES, SHALL BEAR INTEREST AT THE OVERDUE RATE FROM THE DUE DATE OF SUCH INSTALLMENT TO THE DATE OF PAYMENT THEREOF, AND TENANT SHALL PAY SUCH INTEREST TO LANDLORD ON DEMAND. THE PAYMENT OF SUCH LATE CHARGE AND/OR SUCH INTEREST SHALL NOT CONSTITUTE A WAIVER OF, NOR EXCUSE OR CURE, ANY DEFAULT UNDER THIS LEASE, NOR PREVENT LANDLORD FROM EXERCISING ANY OTHER RIGHTS AND/OR REMEDIES AVAILABLE TO LANDLORD.

(j) If a default is declared by the Commissioner under the provisions of the Regulatory Agreement, provided a copy of Notice of Default is given to Tenant, Tenant shall thereafter make all future payments under this Lease to the Commissioner.

Section 3.3 Net Lease Provisions. Landlord and Tenant intend that the Rent herein specified shall be net to Landlord in each year during the Term, and that all costs, expenses and obligations of every kind and nature, (known or unknown, general or special, ordinary or extraordinary, foreseen or unforeseen, direct or indirect, contingent or otherwise) relating to the operation, repair and maintenance of the Leased Premises (except Landlord's income taxes) which may arise or become due during the Term shall be timely paid by Tenant and that Landlord shall be indemnified by Tenant against such costs, expenses and obligations. Tenant's obligation to pay Rent is independent of all, and is in no manner conditioned upon any, other covenants, conditions and obligations of Landlord or Tenant under this Lease. There shall be no abatement of Rent payments for any reason nor shall Tenant be entitled to any offsets or deductions from Rent payments due hereunder.

Section 3.4 Rent Tax. If any governmental taxing authority levies, assesses, or imposes any tax, sales or use tax, privilege tax, excise or assessment (other than income or franchise taxes) upon or against the Rent payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise or assessment, or, if Landlord pays same, Tenant shall reimburse Landlord for the amount thereof within ten (10) days after written demand by Landlord.

It is the intent of this Section 3.4 and all other provisions of this Lease to insure that the Rent (including Additional Rent) paid to Landlord by Tenant will be received by Landlord without diminution by any tax, assessment, charge or levy of any nature whatsoever, except United States, State of New York and local net income taxes, and the terms and conditions of this Lease shall be liberally construed to effect such purpose. Without limiting the generality of the foregoing, if any tax is assessed or based on gross income actually or



constructively received by Landlord pursuant to this Lease, Tenant shall pay such amount which, when added to said gross income, shall yield to Landlord, after deduction of all such tax payable by Landlord with respect thereto, a net amount equal to that which Landlord would have realized therefrom had no such tax been imposed.

Section 3.5 Assignment of Lease to Mortgagee. Tenant acknowledges that all of the interest of Landlord in and to this Lease has been or will be assigned to Mortgagee pursuant to the Loan Documents.

Tenant agrees to promptly execute and deliver to Landlord from time to time any and all documents required by a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender, or any successor, commercial, agency or private lender, including, without limitation, a lease addendum, regulatory agreement, subordination agreement, non-disturbance and attornment agreement, and/or estoppel certificate, in order to finance or refinance the Facility or otherwise.

Tenant will on request at any time or from time to time by Landlord or any Mortgagee or Prospective Mortgagee subordinate this lease and all of Tenant's rights and estate hereunder to such Person's Mortgage and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, or declare such Mortgage to be prior to this lease and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, and agree with such holder that Tenant will assent thereto in the event of foreclosure. Landlord agrees to use reasonable efforts (except that Landlord shall not be obligated to expend money for any such agreement) to obtain a written agreement from any such holder in the form typically used by such holder which consents to this lease and provides that, notwithstanding such mortgage or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting said Mortgage, Tenant shall not be disturbed in peaceful enjoyment of the Leased Premises or this lease terminated or canceled at any time, except in the event Landlord shall have the right to terminate this lease under the terms and provisions set forth herein.

Section 3.6 True Lease. It is the intent of Landlord and Tenant and the parties agree that this Lease is a true lease and that this Lease does not represent a financing agreement. Each party shall reflect the transaction represented hereby in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

Section 3.7 Right of First Refusal/ Buyout. (a) Landlord shall not sell, transfer or convey the Leased Premises to a third person or entity unless Tenant first is given the opportunity to purchase the Leased Premises pursuant to the terms and conditions set forth in this Section 3.7(a). If at any time during the first eleven years of Term Landlord receives from any third person or entity an Offer (as hereinafter defined) to purchase the Leased Premises which Landlord desires to accept, Landlord shall notify Tenant of such Offer by delivering written notice to Tenant, which notification (the "Offer Notice") shall contain a copy of the written Offer or, at Landlord's election, a written summary of the terms of the Offer. For purposes of this Lease, an "Offer" shall mean any bona fide written instrument or verbal communication setting forth the terms pursuant to which Landlord will convey the Leased Premises. Tenant shall have ten (10) Business Days after receipt of the Offer Notice in which to elect by written



notice delivered to Landlord (the "Acceptance Notice") to enter into a formal agreement on the same terms and conditions as those contained in the Offer ("Tenant's Purchase Right"). Such election shall be effective only if within ten (10) Business Days after delivery of the Acceptance Notice the parties enter into a written purchase agreement on terms reasonably acceptable to Landlord in good faith for the sale of the Leased Premises to Tenant containing all terms of the Offer. If Tenant fails to timely deliver the Acceptance Notice, or if Tenant fails to timely enter into said purchase agreement as provided herein, Landlord shall have the right to accept the Offer or any modification thereof on terms substantially similar as those set forth in the Offer. Tenant's right to purchase the Leased Premises identified in the Offer Notice shall not apply to (i) transfers of less than one hundred percent of the ownership interests in Landlord, (ii) a public offering of ownership interests in Landlord, (iii) a recapitalization transaction of any kind involving Landlord, (iv) condemnation, eminent domain or similar proceedings, or (v), rights exercised by Mortgagees in foreclosure or in lieu thereof pursuant to Mortgage or other documents executed by Landlord in connection therewith, including the subsequent disposition of the Premises by Mortgagee or its affiliate or designee that acquires the Leased Premises in connection therewith.

(b) Notwithstanding anything to the contrary, if Landlord's Offer Notice states that it is purchasing from Tenant Tenant's Purchase Right, then (i) Tenant shall have no further rights under Section 3.7(a), and Section 3.7(a) shall be null and void without further effect, and (ii) upon the closing of the purchase and sale of the Leased Premises pursuant to the Offer, Landlord shall pay Tenant ten percent (10%) of the excess of the sales price agreed to pursuant to the Offer (less costs and fees, including broker's fees) over the TPC, the "Offer Fee", and (iii) the Rent shall be the greater of the amount as determined by Section 3.2(a) or fair market value, as shall be determined by an independent third party appraiser jointly appointed by Landlord or and Tenant, and absent their agreement appointed by the then chairman or similar officer of the Westchester County Society of Real Estate Appraisers. For purposes of classification, Tenant shall not be entitled to the receipt of the Offer Fee if Tenant exercises Tenant's Purchase Right as set forth in Section 3.7(a) above.

(c) Upon expiration of the eleventh Lease Year, Tenant's Right of First Refusal as set forth in in Section 3.7(a) shall lapse and become null and void.

Section 3.8. Option to Purchase. Commencing on the later of (i) the first day after the Commencement Date and (ii) 24 months from the date of the closing of the Original Mortgage, and ending on the last day of the fifteenth Lease Year of the Lease, Tenant shall have the option to purchase the Leased Premises from Landlord for a purchase price of \$65,055,000 by giving written notice of its exercise of the Option to Purchase including a proposed closing date, provided if Tenant does not exercise the Option to Purchase prior to receiving an Offer Notice pursuant to Section 3.7, Tenant's Option to Purchase under this Section 3.8 shall lapse unless and until the conveyance of the Leased Premises contemplated under Section 3.7 does not occur. Upon expiration of the fifteenth Lease Year, Tenant's the right to purchase the Leased Premises from Landlord, all as set forth above, shall lapse, become null and void, and Tenant shall have deemed to waived all such rights hereinafter.

ARTICLE IV



UTILITIES AND TAXES

Section 4.1 Utilities. From and after the Commencement Date, Tenant shall pay or cause to be paid all charges next coming due and payable for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Leased Premises (the "Utilities") during the Term. Tenant covenants to place all Utilities in Tenant's name as of the Commencement Date. Adjustment shall be made for Utilities applicable to any period prior to the Commencement Date. In the event Landlord is billed directly by any service provider or utility company for any Utilities or services supplied to Tenant during the Term, Landlord shall send Tenant the bill and Tenant shall promptly pay the same. Landlord shall have no obligation or liability with respect to any interruption or failure in the supply of any such Utilities. If Landlord elects to or shall be required to pay for any Utilities to preserve and/or protect the Leased Premises, Tenant shall reimburse Landlord for the cost and expense thereof plus interest at the Prime Rate.

Section 4.2 Taxes. Tenant shall be solely responsible for the payment, prior to the date when penalties would attach, of all general and special real estate taxes and assessments (together with any excise taxes on such real estate taxes and assessments levied or imposed by any governmental taxing authority), fire district taxes, liens, impositions, including capital stock, franchise, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes; personal property taxes, assessments including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; ground rents; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Premises, and all interest and penalties thereon attributable to any failure in payment by Lessee which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon the Leased Premises (collectively, the "Impositions") that accrue from the Commencement Date through the Term. Adjustment shall be made for Impositions applicable to any period prior to the Commencement Date. Tenant shall pay all of the Impositions directly to the applicable taxing authorities and Tenant shall promptly forward proof of payment to Landlord in such form as shall be reasonably acceptable to Landlord unless Landlord elects to require escrow deposits in accordance with Section 4.3 hereof. Landlord shall promptly forward any tax bills which it may receive to Tenant. Landlord shall only bill Tenant for any of the Impositions if Tenant does not pay any of the Impositions before delinquency and Landlord is obligated or elects (in Landlord's sole and absolute discretion) to pay any of the Impositions directly to remain current with all taxing authorities. Tenant shall pay the full amount of any increases in any of the Impositions resulting from alterations or improvements made by or for the benefit of Tenant. After the expiration or termination of this Lease, Tenant shall pay all bills for any of the Impositions which become due and payable after the expiration or termination of the Lease covering any period through the expiration or earlier termination of the Lease. If any governmental taxing authority acting under any present or future ordinance or regulation, shall levy, assess or impose a tax, excise and/or assessment (other than any net income or franchise tax) upon Landlord or Tenant for rental payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise and/or assessment

or shall reimburse Landlord for the cost and expense thereof, as the case may be. Provided that Tenant shall have deposited a sufficient amount of funds to pay the Impositions pursuant to Section 4.3 and Tenant has done nothing to prevent payment by Landlord or its lender of the Impositions, then Tenant shall not be responsible for any and all late payment fees and/or penalties, including interest, imposed by any applicable taxing authorities with respect to the untimely payment of Impositions.

Section 4.3 Escrow Deposits.

(a) Escrow. At the option of Landlord, which may be exercised at any time by Landlord in its sole and absolute discretion Tenant shall, on the first day of the first calendar month commencing after notice from Landlord, and on the first day of each calendar month thereafter during the Term (each of which dates is referred to as a "Monthly Deposit Date"), pay to and deposit with Landlord a sum equal to one-twelfth (1/12th) of the Impositions to be levied, charged, filed, assessed or imposed upon or against the Leased Premises within one (1) year after said Monthly Deposit Date and a sum equal to one-twelfth (1/12th) of the premiums for the property insurance policies required pursuant to Article VI which are payable within one (1) year after said Monthly Deposit Date. If the amount of the Impositions to be levied, charged, assessed or imposed or insurance premiums to be paid within the ensuing one (1) year period shall not be fixed upon any Monthly Deposit Date, such amount for the purpose of computing the deposit to be made by Tenant hereunder shall be reasonably estimated by Landlord with an appropriate adjustment to be promptly made between Landlord and Tenant as soon as such amount becomes determinable. In addition, Landlord may, at its option, from time to time require that any particular deposit be greater than one-twelfth (1/12th) of the estimated amount payable within one (1) year after said Monthly Deposit Date, if such additional deposit is required in order to provide to Landlord sufficient funds from which to make payment of all Impositions on or before the next due date of any installment thereof, or to make payment of any required insurance premiums not later than the due date thereof. If any Mortgagee or the Commissioner requires Landlord to impound insurance premiums on a periodic basis during the term, Tenant, on notice from Landlord indicating this requirement, shall pay a sum of money towards its liability under this Lease to Landlord on a periodic basis in accordance with Landlord's requirements. Landlord shall impound the premium payments received from Tenant in accordance with the requirements of Mortgagee and shall utilize such funds to timely pay insurance premiums.

(b) Use of Deposits. The sums deposited by Tenant under this Section 4.3 shall be held by Landlord or Mortgagee and shall be applied in payment of the Impositions or insurance premiums, as the case may be, when due. Any such deposits may be commingled with other assets of Landlord or such Mortgagee, and shall be deposited by Landlord or such Mortgagee in an Eligible Institution in such account or accounts as Landlord or the Mortgagee may, from time to time select, and Landlord shall not be liable to Tenant or any other person (i) based on Landlord's or the Mortgagee's (or any bank's) choice of investment vehicles, (ii) for any consequent loss of principal or interest or (iii) for any unavailability of funds based on such choice of investment. Furthermore, subject to the foregoing regarding the use of depositories and accounts, Landlord and its Mortgagee shall bear no responsibility for the financial condition of, nor any act or omission by the depository bank. No income, if any, from such investment or interest on such deposits shall be paid to Tenant. To the extent that Landlord does not have at

invoice or bill specifying the due date for payment, Tenant shall give not less than thirty (30) days prior written notice to Landlord in each instance when an Imposition or insurance premium is due, specifying the Imposition or premium to be paid and the amount thereof, the place of payment, and the last day on which the same may be paid in order to comply with the requirements of this Lease. If Landlord, in violation of its obligations under this Lease, does not pay any Imposition or insurance premium when due, for which a sufficient deposit exists, Tenant shall not be in default hereunder by virtue of the failure to pay such Imposition or such insurance premium and Tenant shall not be liable for any late payment fees and/or penalties, including interest imposed as a result of such failure to pay. The term "Eligible Institution" shall mean a depository institution or trust company, the short term unsecured debt obligations of commercial paper of which are rated at least "A-1+" by S&P, "P-1" by Moody's and "P-1+" by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's).

(c) Deficit. If for any reason any deposit made by Tenant or held by Landlord under this Section 4.3 shall not be sufficient to pay any Imposition or insurance premium within the time specified therefor in this Lease, then, within ten (10) days after demand by Landlord, Tenant shall deposit an additional amount with Landlord, increasing the deposit held by Landlord so that Landlord holds sufficient funds to pay such Imposition or premium in full (or in installments as otherwise provided for herein), together with any penalty or interest thereon. Landlord may change its estimate of any Imposition or insurance premium for any period on the basis of a change in an assessment or tax rate or on the basis of a prior miscalculation or for any other good faith reason; in which event, within ten (10) days after demand by Landlord, Tenant shall deposit with Landlord the amount in excess of the sums previously deposited with Landlord for the applicable period which would therefore have been payable under the revised estimate.

(d) Transfers. Consistent with Section 2.2, in connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein and each successor in interest shall have the right to transfer all amounts deposited pursuant to the provisions of this Section 4.3 and not used pursuant to this Section 4.3 to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, the original Landlord named herein or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto.

(e) Security. All amounts deposited with Landlord pursuant to the provisions of this Section 4.3 shall be held by Landlord as additional security for the payment and performance of Tenant's obligations under this Lease and, upon the occurrence and during the continuance of any Lease Default, Landlord may, in its sole and absolute discretion, apply such amounts towards payment or performance of such obligations.

(f) Return. Upon the expiration or earlier termination of this Lease, as long as all of the Rent and any and all other obligations due under this Lease have been fully paid and performed, any sums then held by Landlord under this Section 4.3 shall be refunded to Tenant.

and subject to the rights of a Mortgagee, together with all interest, if any, earned thereon and all income, if any, earned therefrom; provided, however, that if a Lease Default has occurred and is continuing, all of such sums may be applied by Landlord towards any amounts owed to Landlord pursuant to this Lease.

(g) Receipts. Tenant shall deliver to Landlord copies of all claims and bills in relation to the Impositions and Insurance premiums promptly upon receipt thereof by Tenant.

This Article and the obligations herein shall survive expiration or earlier termination of this Lease.

#### ARTICLE V

#### LANDLORD'S WORK, MAINTENANCE AND REPAIR; IMPROVEMENTS

Section 5.1 Landlord's Work. (a) Landlord shall cause the Facility to be constructed ("Landlord's Work").

(b) Landlord will give Tenant thirty (30) days' notice of the date Landlord expects to be the Substantial Completion Date. On or prior to the Substantial Completion Date, Landlord and Tenant shall jointly prepare a list of the items for the Facility that remain to be completed or corrected, set a dollar value for the cost to complete the work, and fix time for their completion or correction (collectively the "Punchlist").

(c) Notwithstanding anything in this lease to the contrary, on and after the Substantial Completion Date Tenant shall be deemed to have agreed Landlord has completed Landlord's Work to Tenant's complete satisfaction, except for (i) the Punchlist, (ii) such items of decoration or mechanical adjustment of which Tenant gives Landlord written notice within thirty (30) days after the Substantial Completion Date (the "Initial Correction Items") or (iii) any defects in the Facility which were not known or reasonably discoverable by Tenant in the time period specified in the immediately prior clause (ii) ("Latent Defects"); provided that, as to Latent Defects, Landlord will have no responsibility or liability therefor, or for the correction thereof, unless (A) Tenant conducts at least one inspection of the Facility with a qualified engineer or other expert, within one year from the Substantial Completion Date, and (B) Tenant gives Landlord notice of such Latent Defects within thirty (30) days after discovery thereof and in any event not later than one year after the Substantial Completion Date, which notice will be accompanied by the certification of such engineer or other experts, specifying, in detail, such Latent Defects in the Facility.

(d) At its sole expense, Landlord shall complete the Punchlist, and remedy the Initial Correction Items, and the Latent Defects provided with respect to Latent Defects that the conditions set out in clause (iii) of section (c) are satisfied.

(e) To the extent assignable at no cost to Landlord, Landlord assigns to Tenant all manufacturer warranties on materials and equipment. Tenant shall have the benefit and right to enforce such warranties at its sole cost and expense.

Section 5.2 Maintenance and Repair. Except as provided in Section 5.1, Tenant, at Tenant's sole cost and expense, shall keep the Leased Premises, including all buildings, fixtures, trade equipment, trade fixtures, furniture, beds and other personal property leased to Tenant pursuant to this Lease, including, without limitation, all structural and non-structural components, the roof, foundation, all outer walls, plumbing, sprinklers, electrical, mechanical, heating, ventilation, utility service, air conditioning, vertical transport, telephone, communications, cable, computer, fire-life-safety, nursing call, and all other systems of the Leased Premises in good condition and repair and in compliance with all Laws. Landlord shall not be responsible to make any improvements, repairs, maintenance or replacements whether occasioned by the act, omission, active negligence, or passive negligence of Landlord or Tenant and/or its agents, employees, invitees or licensees or otherwise, and Tenant shall pay for all improvements, repairs, replacements, maintenance and expenditures relating to the Leased Premises, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the commencement of the Lease, by Tenant's use or by a change in applicable Laws. The Leased Premises and its appurtenances shall at all times be kept clean, safe and sanitary and in good order, condition, replacement and repair by Tenant, at Tenant's sole cost and expense, except for ordinary wear and tear (provided, however, that, without limiting the generality of this Section 5.2, Tenant shall be obligated to replace any portion of the Leased Premises upon any obsolescence thereof or if proper repair is impractical). Tenant shall provide (if not currently a part of the Leased Premises) and maintain, repair and replace, as necessary, all furniture, fixtures, equipment and/or other personal property required by any Governmental Authority (other than furniture, fixtures, equipment and/or other personal property owned by contractors providing ancillary services at the Facility) necessary for the operation of the Facility and to comply with all Laws. All such property provided by Tenant shall immediately become the property of Landlord and Tenant shall execute such documentation as Landlord may reasonably require vesting title in such property in Landlord. Landlord shall have no liability or obligation with respect to such property or any of Tenant's operations relating thereto. All replacements made by Tenant hereunder shall be made in a good and workmanlike manner in accordance with Laws using the same, similar or better quality of materials as being replaced and shall immediately become the property of Landlord. Tenant acknowledges that title and ownership of all repaired and replaced furniture, fixtures, equipment and/or other personal property made hereunder shall belong to and is for the benefit of Landlord. Tenant shall not enter into any equipment lease or conditional sales contracts for any furniture, fixtures, equipment and/or other personal property relating to the Facility without Landlord's consent which it may grant or withhold in its sole discretion. The term "Laws" means, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Leased Premises or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Tenant, at any time in force affecting the Leased Premises or any part thereof. The term "Governmental Authority" means any court, board, agency, arbitrator, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, districts, municipal, city or otherwise) whether new or hereafter in existence.

**Section 5.3 Improvements, Renovation, Alterations and Additions.** Tenant shall have the right during the Term to make such non-structural interior alterations, changes and improvements to the Leased Premises as may be proper and necessary for the conduct of Tenant's business, to cause the Leased Premises to conform to all Laws, for patient comfort and safety, or for the full beneficial use of the Leased Premises, so long as such improvements do not (i) exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) in any given calendar year, (ii) interfere with any of the purposes for which the Facility was leased or affect the roof or structure, (iii) decrease the value of the Leased Premises, (iv) affect any building system, including, heating, ventilation, air conditioning, mechanical, electrical, plumbing or vertical transport systems, or (v) affect the exterior appearance of the Leased Premises. Tenant shall not make any other alterations, changes, or improvements without the express written approval in each instance by Landlord, which consent shall not be unreasonably withheld; ~~provided, however,~~ that the granting or withholding of consent shall not result in any liability to Landlord. Furthermore, Tenant may make all repairs or replacements required by a Governmental Authority without obtaining Landlord's consent, provided, however, Tenant shall give Landlord no less than ten (10) days prior written notice of such government mandated repairs or replacements prior to making or implementing same, unless emergency factors necessitate the making of such repairs before Tenant can reasonably give notice to Landlord, in which event Tenant shall give notice to Landlord as soon as reasonably possible. Tenant shall pay for all costs, fees and penalties imposed by the applicable state agencies or the Center for Medicare and Medicaid Services ("CMS") or other Governmental Authority in connection with any survey or the Change of Ownership. Tenant shall notify Landlord of any alterations, changes or improvements required and/or permitted by the applicable state agencies or the CMS or other Governmental Authority prior to the commencement thereof. Tenant shall pay all costs and expenses of any required and/or permitted alterations, changes, and improvements, shall make the same in a good and workmanlike manner, and in accordance with all Laws, having obtained all necessary permits and approvals from Governmental Authorities having jurisdiction over the Facility and work performed thereon or therein, and shall assure Landlord, in form reasonably satisfactory to Landlord, all necessary permits and authorizations have been received and that payment for the work and materials will be made by Tenant. Tenant hereby completely and fully indemnifies Landlord against any mechanic's liens or other liens or claims in connection with the making of any alterations, changes, and/or improvements. Any liens arising out of any required and/or permitted alterations, changes, and/or improvements shall be discharged of record by Tenant within the earlier of thirty (30) days after the same have been filed by payment, bonding or otherwise, as permitted by law, or five (5) days after commencement of a foreclosure or enforcement action. Notwithstanding any provision of this Lease to the contrary, Tenant shall not undertake any alterations, renovations, or improvements to the Facility or otherwise commence any project or activity with respect to the Facility, which may result in any bed being taken out of service for more than seven (7) days without Landlord's and/or Mortgagee's prior written consent, which Landlord's consent shall not be unreasonably withheld. Tenant shall give Landlord written notice ten (10) days prior to commencing repairs, construction, or alterations whose costs exceed One Hundred Thousand Dollars (\$100,000.00).

**Section 5.4 Signage.** All signs installed by Tenant at the Facility shall comply with all Laws, and all necessary permits or licenses shall be obtained by Tenant. Tenant shall maintain all signs in good condition and repair, and/or replace as may be required by applicable law, at all times at Tenant's sole cost and expense. Upon vacating the Leased

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Premises, Tenant shall remove all signs and supporting material or installations so installed by Tenant, but only if Landlord shall request such removal, and Tenant shall repair all damage caused by such removal. Landlord acknowledges and agrees that neither Landlord nor any subsequent tenant of Landlord shall be authorized to use any company or registered trade name of Tenant or any of Tenant's affiliates or subtenants.

Section 5.5 Surrender. (a) Subject to applicable law and to receipt of any necessary DOH approval, Tenant shall deliver up and surrender to Landlord possession of the Leased Premises and all improvements and replacements thereof, including all of Tenant's alterations, improvements work (and all replacements thereof) and all fixtures permanently attached to the Leased Premises by Tenant during the Term, upon the expiration of this Lease or its termination in any manner whatsoever, in as good condition and repair and in substantially similar form, character and manner as the same shall be on the Commencement Date, reasonable wear and tear excepted (without compensation to Tenant), with permitted changes, improvements and additions made during the Term as authorized herein, subject to no liens, encumbrances, charges, restrictions, conditions, limitations or claims whatsoever to the extent not encumbering the Leased Premises as of the Commencement Date, and deliver the Keys and/or operational security cards to the Leased Premises to Landlord or Landlord's designated agent.

(b) Licenses and Transfer of Operations. Upon the expiration of the Term or earlier termination of the Lease, Tenant shall and shall cause its subtenants to, (i) transfer to Landlord or Landlord's nominee a fully operational, licensed and certified, and staffed facility and shall cooperate with Landlord or Landlord's designee or nominee in connection with the processing by Landlord or Landlord's designee or nominee of any applications for all licenses, operating permits and other governmental authorization, all contracts, including contracts with all Governmental Authorities or quasi governmental entities (provided that except following a Lease Default, the reasonable costs and expenses of the processing of any such application shall be paid by Landlord or Landlord's designee or nominee), (ii) transfer to Landlord or Landlord's nominee all tangible personal property of Tenant, including financial and accounting records, business records, data, employee and/or personnel records, patient and resident records, and all records held in electronic form, (all subject to the laws requiring confidentiality), all equipment and small ware and all inventory used in connection with the Facility, (iii) transfer to Landlord or Landlord's nominee all intangible property except accounts receivable of Tenant, and (iv) transfer to Landlord or Landlord's nominee all residents in the Facility. With respect to resident funds, Tenant shall transfer to Landlord or its designee, all patient and resident trust accounts, and shall cause its subtenant to prepare and submit to Landlord or its designee a true, correct, and complete accounting and inventory (properly reconciled) of any patient trust funds and resident property to be transferred to Landlord, or its designee. Tenant shall, and shall cause its subtenant, not to commit any act or be remiss in the undertaking of any act that would jeopardize the licensure or certification of the Facility, and Tenant shall and shall cause its subtenant to comply with all requests for an orderly transfer of the same upon the expiration or early termination of the Term, including, but not limited to, upon the request of Landlord or its designee, the transitioning of employees in compliance with applicable laws. Without limiting the generality of the foregoing, if requested by Landlord or a proposed replacement operator for the Facility, Tenant hereby agrees to enter into a reasonable operations transfer agreement with such replacement operator. Tenant shall not unreasonably withhold, condition or delay its

consent to entering into any interim subleases or management agreements as may be necessary to effectuate an early transfer of the operations of the Facility prior to the time that such replacement operator holds all licenses and permits from all applicable Governmental Authorities with jurisdiction necessary to operate the Facility for its intended use. In addition, upon request, Tenant shall and shall cause sublicensee, to promptly deliver copies to Landlord or Landlord's designee of all books and records relating to the Leased Premises and operations thereon (including inventories, employee lists and personnel records, and policies and procedures manuals). Tenant shall allow Landlord or a proposed replacement operator for the Facility to utilize Tenant's, sublicensee's computer hardware and software for a minimum of ninety (90) days to facilitate the transfer of operations, the collection of accounts receivables, the billing of providers, and the provision of patient care. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any loss, damage, cost or expense incurred by Landlord or Landlord's designee or nominee in connection with the correction of any and all deficiencies of a physical nature identified by any Governmental Authority responsible for licensing the Leased Premises in the course of any change of ownership inspection and audit. Tenant shall be responsible for any alterations or renovations necessitated by, or imposed in connection with, a change of ownership inspection survey for the transfer of operation of the Leased Premises to Landlord or its designee. Tenant shall not commence to wind up and terminate the operations of the Facility or relocate the patients or occupants of the Facility to any other health care facility. In addition, Tenant shall not terminate the employees of the Facility except in connection with and upon the transfer of operations of the Facility to Landlord or its designee.

(c) If Landlord notifies Tenant in writing that it intends to transfer the operations of the Facility to a new operator and desires to have Tenant continue to operate the Facility after the Expiration Date or earlier termination of the Lease, then Tenant shall continue to operate the Facility until the earliest to occur of (i) the date on which such successor operator shall assume operation of the Facility, or (ii) the date that is 180 days after the applicable Expiration Date or termination date (the "Reimbursement Period"). During the Reimbursement Period (x) Landlord shall provide Tenant with an operating budget, (y) Landlord shall include in the aforesaid operating budget, and Tenant shall continue to pay during the Reimbursement Period, all Rent that would have been owing under this Lease as to the Leased Premises if this Lease had not expired or terminated as to and/or Tenant had not been dispossessed from, such Leased Premises, and (z) provided that this Lease was not terminated with respect to, and Tenant was not dispossessed from, such the Lease Premises due to a Lease Default, Landlord shall reimburse Tenant for any operating deficits with respect to the Facility that Tenant may be required to fund out-of-pocket on account of operating losses and expenses incurred by Tenant by reason of, or arising out of compliance with, such budget with respect to the Reimbursement Period. Any such reimbursement shall be due from Landlord to Tenant within 60 days after request by Tenant, provided that Tenant shall furnish such documentation of any operating deficits, losses and expenses as Landlord may reasonably request. The terms of this Section 5.5(c) shall survive the expiration or earlier termination of this Lease and/or any dispossession of Tenant from the Lease Premises.

(d) Use of Legacy Tradename. Without limitation of the other provisions of this Section 5.5 and notwithstanding anything to the contrary contained in this Lease, Tenant agrees to allow Landlord or its designee operator, at its option and at no cost to Landlord or any such designee, to continue to use, in its signage, marketing and advertising materials, operations

and otherwise, any or all name(s) (including trademarks) associated with the operation of the Facility as a going concern for up to 180 days following (i) the expiration or termination of this Lease and (ii) the vacation from, and surrender of, the Leased Premises and Facility by Tenant. At the end of such 180 day period, or upon sooner written notice from Landlord to Tenant, Tenant shall, promptly and at its expense, remove its aforesaid name(s) from all signs on the Facility and repair any damage to such signs caused by such removal. Landlord acknowledges and agrees that Tenant, not Landlord, owns the aforesaid names and that neither Landlord nor any designee of Landlord may use the same except as described in this Section 5.5(d) or as otherwise agreed in writing by Tenant.

(c) Management of Terminated/Dispossessed Premises. Commencing on the applicable Termination/Dispossession Date as to any Terminated/Dispossessed Premises, Landlord or its designee, upon notice to Tenant, may elect to assume the responsibilities and obligations for the management and operation of the Business at such Terminated/Dispossessed Premises, and Tenant agrees to cooperate fully to accomplish the transfer of such management and operation without interrupting the operation of such Business to the extent allowable by Law. Tenant shall permit Landlord or its designee to operate the Facility under Tenant's licenses, certifications and other authorizations pending the issuance of new licenses, certifications and other authorizations Landlord or its designee. Tenant shall not commit any act or be remiss in the undertaking of any act that would jeopardize any licenses, certifications and other authorizations related to the Facility, and Tenant shall comply with all requests for an orderly transfer of all licenses, certifications and other authorizations related to the Facility and any payor's certifications.

(d) In addition, upon any expiration or termination of this Lease, Tenant covenants and agrees to do such things and to take such action as may, from time to time, be necessary or appropriate to permanently surrender and withdraw from possession and operation (including but not limited to licensure and certification) of the Leased Premises, and shall thereafter be fully and permanently relieved of all powers, duties, responsibilities and obligations that are conferred or imposed upon Tenant under this Lease (except those continuing obligations, including but not limited to the obligation to pay all Rent due and owing under this Lease, and the obligation to pay all amounts owed by Tenant to the Medicare, Medicaid, third party payor programs and residents for the period of the Term, which survive the termination hereof as provided herein) and to restore and place Landlord or its designee in possession and operation of the Leased Premises, or any portion thereof, and Tenant covenants and agrees to execute and deliver to Landlord or Landlord's designee (each subject to the approval of DOH) all assignments, operation transfer agreements, consents, consents to assignments (including Medicare and Medicaid provider agreements, if requested by Landlord) documents and other instruments, to the reasonable satisfaction of Landlord in order to effectuate the provisions hereof.

Section 5.6 Condition of Leased Premises. (b) Subject to Section 5.1, Tenant shall accept and take possession of the Leased Premises in its "AS IS," "WHERE IS," "WITH ALL FAULTS" condition, and acceptance of possession of the Leased Premises on the Commencement Date shall be deemed an acknowledgment by Tenant of Tenant's acceptance of the condition of the Leased Premises. Tenant acknowledges and agrees that Landlord is not making any representation, warranty or covenant whatsoever with respect to the condition of the

Leased Premises, or any portion thereof, or its suitability for any particular purpose, and Tenant shall be relying solely on its inspection of the Leased Premises and due diligence investigations with respect thereto.

(b) LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND FOR COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. EFFECTIVE AS OF THE DATE OF THIS LEASE, TENANT SHALL RELEASE LANDLORD FROM ALL CLAIMS WHICH TENANT OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MANAGER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTING ON TENANT'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH TENANT ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES, INCLUDING THE INFORMATION AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS, AND TENANT SHALL NOT LOOK TO LANDLORD IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS LEASE: (A) TENANT WILL ACQUIRE THE LEASED PREMISES SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS, AND (B) WITHOUT LIMITING THE FOREGOING, WAIVES ANY RIGHT IF OTHERWISE MAY HAVE AT LAW OR IN EQUITY AGAINST LANDLORD WITH RESPECT TO ANY ASPECT OF LEASED PREMISES.

ARTICLE VI

INSURANCE

Section 6.1 Insurance. (a) Tenant shall obtain and maintain, or cause to be maintained, insurance for Tenant and the Facility providing at least the following coverages or as required from time to time by any Mortgagee:

(i) comprehensive "all risk" insurance on the Facility and the Personal Property, including Building Ordinance Coverage from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation (except with respect to the insurance pursuant to clauses (D), (x), (y) and (z) below); (B) containing an agreed amount

endorsement with respect to the Facility and Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Ten Thousand Dollars (\$10,000.00) for all such insurance coverage (except as stated in the penultimate sentence of this subsection); and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if the Facility or the use of the Facility shall at any time constitute legal non-conforming structures or uses and covering the increased cost of construction, demolition cost, value of the undamaged portion of the structure and any increased expenses to rebuild due to the enforcement of building or zoning laws or requirements following a covered loss of the Leased Premises. In addition, Tenant shall obtain: (x) if any portion of any of the Leased Premises is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of any loan encumbering the Leased Premises or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or successor legislation, or such greater amount as Landlord and/or Mortgagee shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in an area with a high degree of seismic activity and (z) coastal windstorm insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in a coastal region; provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive insurance policy required under this Subsection (i); and further provided that the earthquake insurance pursuant to clause (y) may provide for a deductible of up to the greater of One Hundred Thousand Dollars (\$100,000.00) and two percent (2%) of the amount of such coverage, (iii) the flood insurance pursuant to clause (x) may provide for a deductible of up to One Hundred Thousand Dollars (\$100,000.00), and (iv) the ordinance and law coverage pursuant to clause (D) may have a sub-limit of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in, or about the Facility, such insurance (A) with a combined limit of not less than Five Million Dollars (\$5,000,000.00) in the aggregate and Two Million Dollars (\$2,000,000.00) per claim, (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) to continue at not less than the aforesaid limit until required to be changed by Landlord and Mortgagee in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability; and (5) contractual liability covering the indemnities contained in Section 9.1 of the Lease to the extent the same is available;

(iii) business income with extra expense insurance (A) with loss payable to Landlord and Mortgagee; (B) covering all risks required to be covered by the insurance provided for in Subsection (i) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Facility and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Facility is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred

percent (100%) of the projected net profit and extra expense with respect to the Facility for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire at the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Tenant's reasonable estimate of the gross income from the Facility for the succeeding twelve (12) month period. Nothing herein contained shall be deemed to relieve Tenant of its obligations to pay the Rent when due except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Facility, and only if the Facility coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above and (3) with an agreed amount endorsement waiving co-insurance provisions;

(v) worker's compensation insurance with respect to any employees of Tenant, as required by any Governmental Authority, Health Care Authority, Legal Requirement or Health Care Requirement;

(vi) boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lardlord and Mortgagee on terms consistent with the commercial property insurance policy required under Subsection (i) above;

(vii) intentionally omitted;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million Dollars (\$1,000,000.00);

(ix) if the Facility is or becomes a legal "non-conforming" use, ordinance or law coverage and insurance coverage to compensate for the cost of (upon a Casualty) demolition or rebuilding of the undamaged portion of the Facility along with any reduced value and the increased cost of construction in amounts as requested by Lardlord and Mortgagee;

(x) the commercial property and business income insurance required under Sections 6.1(a)(i) and (ii) above shall cover perils of terrorism and acts of terrorism and Tenant shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i) and (ii) above at all times during the Term;

(xi) professional liability and malpractice insurance with limits of at least Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate. Tenant shall also require each medical director for the Facility and the associated nurse practitioner at the Facility to carry professional liability and malpractice insurance with

limits of not less than Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate; and

(xii) notwithstanding anything to the contrary in the foregoing, all insurance coverage required by any mortgagee of Lendlord shall be met by Tenant, from time to time as necessary;

(xiii) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Lendlord and/or Mortgagee from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Facility located in or around the region in which the Facility is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or, in the singular, the "Policy"), and shall be subject to the approval of Lendlord and Mortgagee as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State of New York and having a claims paying ability rating of "A" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the companies (one of which shall be S&P if they are rating the securities and one of which will be Moody's if they are rating the companies), or if only one Rating Agency is rating the companies, then only by such Rating Agency and shall specifically name Lendlord and Mortgagee as loss payees and additional insureds, as applicable. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Lendlord and Mortgagee, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Lendlord and Mortgagee of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Tenant to Lendlord and Mortgagee.

(c) Any blanket insurance Policy shall specifically allocate to the Facility the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Facility in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Tenant as the insured and Lendlord and Mortgagee as the additional insured, as their interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called lender's loss payee endorsement in favor of Mortgagee providing that the loss thereunder shall be payable to Mortgagee.

(e) All Policies provided for in Section 6.1 shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Tenant, or anyone acting for Tenant, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lendlord and Mortgagee are concerned;

(ii) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' written notice to Landlord and Mortgagee and any other party named therein, as an additional insured,

(iii) the issuers thereof shall give notice to Landlord and Mortgagee if the Policies have not been renewed fifteen (15) days prior to its expiration; and

(iv) Neither Landlord nor Mortgagee shall be liable for any insurance premiums thereon or subject to any assessments due thereunder.

(f) If at any time Landlord and Mortgagee is not in receipt of written evidence that all Policies are in full force and effect, either shall have the right, without notice to Tenant, to take such action as either deems necessary to protect its interest in the Leased Premises, including, without limitation, the obtaining of such insurance coverage as either in its sole discretion deems appropriate. All premiums incurred by Landlord and/or Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Tenant to Landlord and/or Mortgagee, as the case may be, upon demand and, until paid, shall be secured by the Mortgagee and shall bear interest at the Overdue Rate.

(g) Tenants Insurance. If Tenant has claims made insurance coverage of any type, upon expiration or earlier termination of this Lease, Tenant shall purchase so-called "roll" insurance for a period of three years in an amount not less than its existing coverages in order to assure Tenant is covered by insurance after the expiration or earlier termination of this Lease for all claims arising or relating to the period prior to the expiration or earlier termination of this Lease, and Landlord and Mortgagee shall be named as additional insured thereunder.

Section 6.2 Certificates of Insurance. Upon the Commencement Date of this Lease, Tenant shall furnish Landlord, Mortgagee and other third parties which Landlord shall designate with appropriate certificates of insurance on acceptable Acond forms, together with an additional insurance endorsement showing that each type of insurance required under this Article VI is in full force and effect and not cancelable or modifiable without thirty (30) days prior written notice to Landlord, and upon request of Landlord or one or more of such additional insureds, deliver copies of such insurance policies. Tenant will provide Landlord with acceptable certificates of insurance pursuant to this Section 6.2 evidencing the renewal of such Policies ten (10) Business Days prior to the Policies' expiration date. Tenant acknowledges that all such certificates shall name Landlord, its successors and assigns, and Mortgagee, its successors and assigns, as additional insureds on the general liability and umbrella policies and as a loss payee/mortgagee, as their interests may appear, on the property and boiler and machinery policies.

Section 6.3 Waiver of Subrogation. Landlord and Tenant hereby waive all rights of recovery for causes of action which either has or may have or which may arise hereafter against the other for any damage to the Leased Premises or the property or business of either of them or of anyone claiming through either of them, by way of subrogation or otherwise, caused by any of the perils covered by a special form policy of property insurance or contents insurance or by any other insurance for damage to property owned by the party whose property was damaged; provided, however, that the foregoing waiver shall apply only if and to the extent that

a waiver of subrogation for property damage is not prohibited in the State of New York, has been consented to by the applicable insurance carrier, and only to the extent of such insurance coverage.

ARTICLE VII

SECURITY, ACCESS AND REPORTING OBLIGATIONS, WORKING CAPITAL,

Section 7.1 Security Deposit/Guaranty

(a) Contemporaneously with the execution of this Lease, Tenant shall deliver a guarantee of this Lease (the "Guaranty") from Lizer Josefovich and Mark Neuman (collectively, the "Guarantors") in the form of Exhibit "B" attached hereto, or in form and amount as may be otherwise required by the Landlord and Landlord's first and second Mortgages. The Guaranty shall set forth that the Guarantors will be required to cooperate in turning the license over to the Landlord's designee or be personally liable for all costs, expenses and damages or deficiencies. The Guarantors shall ensure that the Tenant shall deliver all of the documents required to transfer the license in escrow to Peiser, Blackstein & Lund, or such other party as Landlord designates. As further security for the Tenant's performance under the Lease, the Tenant hereby agrees as follows:

(i) Tenant agrees that it shall deliver to Landlord 60 days prior to the Commencement Date, an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached hereto as Exhibit 7.1(a) or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,056.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months.

(ii) Tenant agrees that it shall deliver 60 days prior to the anticipated Commencement Date either (i) an unconditional Letter of Credit, in accordance with the Letter of Credit Agreement attached hereto as Exhibit 7.1(b) (which shall be executed simultaneously herewith), in the amount of \$3,700,000, or (ii) \$3,700,000 in cash ("Security Deposit") to secure the full and timely payment and performance of Tenant's obligations under this Lease. Tenant's failure to deliver the Letter of Credit or timely pay to Landlord the Security Deposit shall be deemed a Lease Default by Tenant. Landlord may retain the Security Deposit in such accounts as Landlord elects in its sole discretion and Landlord may commingle the Security Deposit with other funds of Landlord or its affiliates. Tenant shall have no right or interest in the funds comprising the Security Deposit that it delivers to Landlord.

(iii) Sixty days prior to the anticipated Commencement Date, the funds in the controlled account number [REDACTED] in JPMorgan Chase Bank, N.A. (the "Bank") in the amount not less than \$1,500,000 shall be delivered by Tenant to Landlord and released by Tenant to Landlord to be held as an additional Security



Deposit by Landlord. The letter to Bank implementing the Tenant's obligations pursuant to the preceding sentence, attached hereto as Exhibit 7.1(c), which shall be held in escrow by Posternak, Blankstein, & Lund, shall be delivered by it to the Bank sixty days prior to the anticipated Commencement Date upon notice from Landlord.

(b) The term "Letter of Credit" shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit in favor of Landlord in form and content reasonably satisfactory to Landlord and entitling Landlord to draw thereon without the payment of any fees or charges in New York, New York, issued by a domestic banking institution or the U.S. agency or branch of a foreign banking institution; provided, that such banking institution has a long term senior unsecured debt obligation rating of at least "AA" by S&P. The Letter of Credit shall have an expiration date of the date that is the first anniversary of the date hereof. The Letter of Credit shall provide that it shall be deemed automatically renewed (without amendment) for consecutive periods of one year each thereafter during the Term unless the issuing bank sends written notice to Landlord and Tenant by certified mail, return receipt requested, not less than thirty (30) days preceding the then expiration date of the Letter of Credit that it elects not to have such Letter of Credit renewed. If such notice is sent, then at least twenty (20) days prior to the expiration of the Letter of Credit (and each subsequent or replacement Letter of Credit), Tenant shall deliver to Landlord a new Letter of Credit in the same amount and a failure to do so shall entitle Landlord to draw upon the existing Letter of Credit and to receive the proceeds therefrom and hold such proceeds as a cash Security Deposit pursuant to this Section 7.1 pending delivery of a new Letter of Credit.

(c) Upon a Lease Default, Landlord shall have the right, but not the obligation, in Landlord's sole and absolute discretion, to draw upon the Security Deposit and/or Letter of Credit and apply some or all of the funds to remedy such default or occurrence and to compensate Landlord for any loss or damage resulting therefrom, without prejudice to any other rights or remedies of Landlord under this Lease or at law or in equity. Upon any such application by Landlord, Tenant shall promptly deposit with Landlord an amount in cash equal to the amount from the Security Deposit so utilized by Landlord. Landlord shall at all times have, no security hereunder, Letter of Credit and cash Security Deposit in the amounts stated in Section 7.1(a). Upon the termination or expiration of this Lease, as long as Tenant has performed all of its obligations pursuant to this Lease and no Lease Default has occurred which is continuing, the remaining amount of the Security Deposit shall be returned or refunded to Tenant, without interest, subject in all events to Landlord's right to apply the Security Deposit as provided herein.

(d) Upon the occurrence of a Lease Default, Landlord may use, apply or retain the whole or any part of the Security Deposit or draw under a Letter of Credit to the extent required for the payment of any Rent or any other sums as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the relating of all or any portion of the Leased Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the Security Deposit, Tenant shall upon demand immediately deposit with Landlord a sum equal to the amount so used, applied or retained. In the event of any sale or financing of Landlord's interest in the Leased Premises, Landlord shall have the right to assign its interests in the

Security Deposit to the transferee, assignee or mortgagee, as the case may be, and if Landlord has given notice to Tenant of the assignment of Landlord's interest in the Security Deposit and if assignee or transferee of the Security Deposit has accepted liability for the Security Deposit, Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof; and Tenant shall look solely to the new landlord or mortgagee for the return or payment of the same. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit and neither Landlord, nor its successors or assigns, shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Section 7.2 Access to Leased Premises. Tenant shall permit Landlord, Mortgagee and their agents to enter upon the Leased Premises at all reasonable times during ordinary business hours and upon at least twenty-four (24) hours advance oral notice (except that in the case of emergency, Landlord may enter at any time and without prior notice) to inspect and examine the Leased Premises, to perform repairs as to Landlord's Work pursuant to Section 5.1, and to inspect and copy any operating manuals, procedures manuals, training manuals, and other books and records concerning unemployment, workers' compensation, insurance, tax, and any other business issues pertaining to the Leased Premises (subject to applicable laws and regulations governing patient confidentiality and privacy and the confidentiality of medical records) and any information necessary for audit relating to cost reimbursement, collections, general financial matters, litigation, inquiries and related activities (as may be necessary in connection with the Lease or the Leased Premises or any matters relating to periods prior to the Commencement Date). Any access by Landlord to patient records or medical records shall be strictly governed by Laws governing patient confidentiality and privacy and the confidentiality of medical records and all appropriate consents and/or waivers from residents or their guardians or representatives shall have been obtained before access to such records shall be granted. Landlord shall make reasonable efforts not to materially interfere with or materially disrupt Tenant's business and use and enjoyment of the Leased Premises during any such inspection or examination. Landlord shall also have the right but not the obligation to conduct a physical inspection of the Facility and from time to time and within thirty (30) days prior to the expiration of the Term or earlier termination of the Lease, upon twenty-four (24) hours advance oral notice. If Landlord reasonably determines based on this inspection that the Facility, or any portion of the Facility, requires repairs or maintenance so that the condition of the Facility is in compliance with this Lease and all Laws, then within thirty (30) days of notification by Landlord, Tenant shall commence making said repairs and diligently pursue such repairs to completion. Should Tenant fail to do so, within seven (7) days of notification by Landlord, Tenant shall pay to Landlord a deposit of funds in an amount equal to Landlord's reasonable estimate of the costs of such repairs or maintenance, which funds shall be released to Tenant from time to time during the progress of such repairs and maintenance based on submission by Tenant of evidence reasonably satisfactory to Landlord that such work is complete and all costs and expenses incurred to date have been paid in full. Tenant and Landlord acknowledge that the operations of the Facility and its maintenance are the sole and absolute responsibility of Tenant. Landlord shall have no liabilities or obligations with respect to the Facility, including no liabilities or obligations with respect to inspections of the Facility or the failure by Landlord to inspect the Facility.

Notwithstanding anything to the contrary in this Lease, Landlord and Tenant agree that all information, records and data collected or maintained regarding Facility

residents shall be confidential). Landlord, Tenant, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable New York and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) and the regulations issued in connection therewith (collectively, "HIPAA"). No employee or agent of Landlord or Tenant shall discuss, transmit or narrate in any manner the Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility's assets, or otherwise fulfilling its obligations under this Lease or under law. The obligations under this Section 7.2 shall survive the termination of this Lease, whether by rescission or otherwise.

Section 7.3 Changes in Licensure and Certification Status. As of the Commencement Date, Tenant represents and warrants that the number of beds licensed or certified for the Facility is one hundred sixty (160). Tenant shall not increase or decrease the licensed or certified number of beds, or change the licensure or certification thereof, without the consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; Tenant may increase the number of licensed or certified beds of the Facility upon thirty (30) days prior written notice to Landlord, but without the prior written consent of Landlord. If required, Tenant shall not increase the number of beds without the consent of the Commissioner and/or the DOH and Tenant agrees to return to Landlord upon the expiration of the Lease, the Leased Premises. Should Tenant increase the number of licensed beds at the Facility, the Fixed Rent payable for the Facility shall be increased proportionately for such additional beds. In no event shall the Fixed Rent be reduced in the event the number of Licensed Beds at the Facility is reduced. Landlord and Tenant acknowledge that the Leased Premises are, and at all times under the Term of this Lease are, the sole and absolute property of Landlord. Upon any termination of this Lease or any Lease Default by Tenant hereunder (which breach or default is not cured within any applicable grace period), and subject to the approval of the DOH, Landlord shall have the right to cause the Facility's licenses to be reissued in Landlord's name or in the name of Landlord's designee upon application therefor to, and the receipt of approval from, the DOH and to further have the right to have any and all Medicare, Medicaid and any other provider and/or third party payor agreements issued in Landlord's name or in the name of Landlord's designee. In the event Landlord exercises its rights pursuant to this Section 7.3, Tenant and Guarantors shall cooperate with Landlord in transferring the aforementioned items to Landlord's name or for the benefit of Landlord or as Landlord may direct pursuant to the terms of this Lease.

Section 7.4 Reporting and Other Obligations.

(a) During the Term, Tenant shall and shall cause all Subtenants, sub-subtenants and any operators of the Facility to provide (without duplication) Landlord and Mortgagee with the following reports, statements, and inspections:

(i) Annual Budget. Within 60 days prior to the projected Substantial Completion Date, and no later than thirty (30) days prior to the end of each calendar year thereafter, Tenant shall submit to Landlord an annual budget (each an "Annual Budget") covering the operations of and proposed capital expenditures to be made with respect to the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Annual Budget).

(A) Capital Expenditures. The Annual Budget shall include a capital budget (the "Capital Budget") outlining a program of capital expenditures as may be required by Law, any lender to Landlord, or Tenant's reasonable business judgment during the next calendar year (or the remainder of the current calendar year, in the case of the initial Capital Budget), in which each proposed capital expenditure will be designated as either mandatory, highly recommended or desirable. Tenant shall be responsible for designating as a "mandatory capital expenditure" any expenditure which, if not made would, in Tenant's reasonable judgment: (a) cause the Facility to lose or put at risk its License; (b) place at risk the safety of a patient or resident or employee of the Facility; (c) cause the ineligibility of the Facility under any third party payor program applicable to the Facility; (d) cause the issuance of a formal notice that any of the operating licenses for the Facility or any substantial portion of the Facility will be revoked or suspended or qualified in any material adverse respect; or (e) subject Landlord or Tenant to criminal prosecution. Tenant shall make during the calendar year, or calendar quarter for which they are budgeted, all capital expenditures approved by Landlord. On and after the Commencement Date, Tenant shall expend at least Five Hundred Twenty-Three Dollars (\$523.00) per bed per annum for capital expenditures at the Facility, including amounts expended to comply with the licensure and other expenditures required by any Governmental Authority or such other amounts as may be required by Mortgagee from time to time. If Mortgagee requires Landlord to deposit sums for capital expenditures, replacements and/or refurbishments relating to furniture, fixtures, equipment and/or improvements to the Facility, then Tenant shall pay to Landlord, as Additional Rent hereunder, all reserve or escrow amounts, sums and/or deposits which Landlord is required to pay to such Mortgagee with respect to such capital expenditures, replacements and/or refurbishments. Tenant shall pay any and all of such amounts and sums to or as directed by Landlord as Additional Rent hereunder together with each payment of Fixed Rent hereunder. Tenant acknowledges that as of the date hereof, Mortgagee requires a monthly deposit of Five Hundred Twenty-Three Dollars (\$523.00) per bed with respect to the Facility. In the event that such deposits are made by Tenant hereunder, Landlord shall use its reasonable efforts, subject to the terms and conditions of the loan agreements with Mortgagee, to obtain disbursements of such funds to be used for the payment of or reimbursement for the costs of such capital expenditures, replacements and/or refurbishments.

(B) Operating Budget. The Annual Budget shall include an operating budget (the "Operating Budget") setting forth an estimate of operating revenues and expenses for the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Operating Budget), together with an explanation of anticipated changes in the Facility. Tenant shall provide to Landlord upon written request such other reports, including a cost comparison report, and all appropriate Medicare and Medicaid reports, as may be required under these programs, as are normally provided by Tenant to the owners of other similar rehabilitation hospitals, psychiatric hospitals, and skilled nursing facilities leased by Tenant.

(ii) Financial Reporting. Tenant will keep and maintain or will cause to be kept and maintained on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Tenant and all items of income and expense in connection with the operation on an individual basis of the Facility. Notwithstanding the foregoing, Tenant's interim unaudited financial statements shall be prepared in accordance GAAP for interim financial information, but may not include all information or notes required by GAAP for a complete set of financial statements; such financial statements

shall include all adjustments and reclassifications of a normal recurring nature considered necessary for a fair and comparable presentation; all such interim financial statements shall be read in conjunction with most recent audited financial statements. Landlord and Mortgagee shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Tenant or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Landlord and/or Mortgagee shall desire. After the occurrence of a Lease Default, Tenant shall pay any costs and expenses incurred by Landlord and/or Mortgagee to examine Tenant's accounting records with respect to the Facility, as Landlord and/or Mortgagee shall reasonably determine to be necessary or appropriate in the protection of Landlord and/or Mortgagee's interest.

(iii) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, as soon as available, and in any event (A) within thirty (30) days after each calendar month's end, unaudited monthly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the month then-ended and year to date, prepared on a basis consistent with the annual statements; monthly census and revenue information of the Facility as of the end of such month and year to date in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average monthly census of the Facility and year to date; an aged accounts receivable report from the Facility in sufficient detail to show amounts due from each class of patient-mix by the account age classifications of 30 days, 60 days, 90 days, 120 days, and over 120 days; (B) within forty-five (45) days after the end of each calendar quarter, unaudited quarterly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the quarter then-ended, prepared on a basis consistent with the annual statements; quarterly census and revenue information of the Facility as of the end of such quarter in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average quarterly census of the Facility; (C) no later than 120 days after the end of each calendar year of Tenant, audited annual financial statements of Tenant, prepared by an independent certified public accounting firm reasonably acceptable to Landlord, prepared in accordance with generally accepted accounting principles, with an unqualified opinion, and including a balance sheet, a statement of income and expenses for the year then ended, a statement of cash flow, and a schedule audited by such independent certified public accountant reconciling Tenant's net operating income to net cash flow, which shall itemize all adjustments made to net operating income to arrive at net cash flow deemed material by such independent certified public accountant.

(iv) Each financial report provided by Tenant shall reconcile and show variances between the actual experience incurred during each such reporting period with respect to each metric to the metric shown on the Operating Budget and Capital Budget for such period.

(v) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, any other reports and certificates reasonably requested by Landlord or Mortgagee from time to time.

(vi) In addition, Tenant shall prepare and deliver to Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, a written report providing an operational overview of significant events and circumstances at the Facility during the prior month, during the first six months of the Term and then quarterly thereafter, including, but not limited to, clinical events, employee relations and staffing matters and provide such other information as Mortgagee may require from time to time. Tenant shall provide Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, with a copy of all federal income tax returns of Tenant and its Subsidiaries within fifteen (15) days after filing thereof. Whenever practicable, all reports shall be delivered to Landlord electronically in a format usable by Landlord.

(b) All unaudited financial reports from Tenant shall include an Officer's Certificate certifying that such financial statements present fairly the financial condition and the results of the operations of Tenant and the properties being reported upon and that such financial statements have been prepared in accordance with the Tenant's customary accounting procedures. The Officer's Certificate accompanying the annual audited financial statements of Tenant shall also include a statement that they have been prepared in accordance with GAAP and whether there exists an event or circumstance which constitutes a default or an event of default under the Lease, the nature thereof, the period of time it has existed, and the action then being taken to remedy the same.

(c) Tenant shall furnish Landlord and Mortgagee, within five (5) days of the receipt by Tenant, any and all notices (regardless of form) from any Health Care Authority that Tenant's license, Medicare or Medicaid certification, or VA or other governmental program participation is being, or could be revoked or suspended, that action is pending, being considered or being taken to revoke or suspend the Tenant's license or certification or to fine or penalize the Tenant, or that action is pending, being considered, or being taken, to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Tenant or related to the operation of the Facility other than in the ordinary course of business related to billing adjustments.

(d) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the receipt by Tenant, any and all notices (regardless of form) from any Governmental Authority or third party payor (i) alleging that the Facility has three or more deficiency(ies) of a scope and severity of "G" or hire, or one or more deficiency(ies) of a scope and severity of "J" or higher, (ii) alleging that the residents of the Facility are in jeopardy, (iii) freezing admissions to the Facility or (iv) denying reimbursement for any class of residents by any third party payor.

(e) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the sending or receipt by Tenant of any communication copies thereof, including a plan of correction, with respect to the matters referenced in Section 7.4(d).

(f) Tenant shall file all required reports, including without limitation, Medicare or Medicaid cost reports, on or prior to the date such reports are due (such due date to include approved regulatory extensions allowed by the applicable Governmental Authority for the filing of such reports) and shall furnish Landlord and Mortgagee, within thirty (30) days of the date of filing, a complete and accurate copy of the annual Medicare or Medicaid cost report

for Tenant, which will be prepared by Tenant and accompanied by an Officer's Certificate of Tenant certifying as of the date thereof that such report is accurate, complete and not misleading, and promptly furnish Landlord and Mortgagee any amendments filed with respect to such reports and all notices, responses, audit reports or inquiries with respect to such reports.

(g) Tenant shall furnish Landlord and Mortgagee, within thirty (30) days of the receipt by Tenant, the annual Medicaid and Medicare provider agreement(s) and the annual Medicaid and Medicare reimbursement rate sheets for the Facility.

(h) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt but at least five (5) days prior to the earliest date on which Tenant is required to take any action with respect thereto or would suffer any adverse consequence, a copy of any Medicare, Medicaid or other licensing or accreditation or rating agency or entity survey, report, warning letter, or notice, and any statement of deficiencies, and within the time period required by the particular agency for furnishing a plan of correction also furnish or cause to be furnished to Landlord and Mortgagee a copy of the plan of correction generated from such survey, report, warning letter, or notice to Tenant and any subsequent correspondence related thereto, and correct or cause to be corrected any deficiency, the curing of which is a condition of continued licensure or of full participation in Medicare or Medicaid or a care program offered by an insurance company, managed care company, or other third-party payor by the date required for cure by such agency or entity (plus extensions granted by such agency or entity).

(i) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any other notices or charges issued relating to the non-compliance by Tenant with any Governmental Authority, insurance company, managed care company, or other third-party payor laws, regulations, requirements, licenses, permits, certificates, authorizations or approvals, but only such matters which could reasonably be expected to have a material adverse effect on the financial condition of such Person or the operation of the Facility.

(j) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any new, revised or amended Medicare or Medicaid reimbursement rate sheets which may be issued subsequent to the annual reimbursement rate sheets.

(k) Tenant shall notify Landlord within five (5) days of any condition or event that constitutes a breach of any term, condition, warranty, representation or provision of this Lease or any other agreement between Landlord or its Affiliates and any Tenant, any Guarantor or any of their Affiliates, and of any adverse change in the financial condition of any Tenant, any Guarantor or any Affiliate of any Tenant or any Guarantor and of any Event of Default. Additionally, Tenant shall notify Landlord within seven (7) days after receipt of any formal or informal written notice or advice from its insurance carrier, reinsurance provider, accountants, actuary, any Governmental Authority, or any third party payor program provider of any actual, pending, threatened or contemplated increase in Tenant's reserves for expenses relating to malpractice or professional liability claims or any material increase in the premium costs for malpractice or professional liability insurance.

(l) To the extent performed, Tenant shall furnish Landlord and Mortgagee, a copy of written external consultant reports (including environmental, operations,



quality assurance, physical plant, property inspection, etc.) (which shall be delivered promptly upon receipt from the consultant).

(m) Tenant shall furnish Landlord and Mortgagee, a copy of cost reports as filed by Tenant.

(n) Any supporting documents or data requested by Landlord in connection with the items in this Section 7.4.

(o) Within 10 days of event of any of the following, Tenant shall deliver to Landlord, notice of:

(i) any rate appeal brought before any Governmental Authority or any administrator of any third party payor program or referral source;

(ii) any reimbursement appeals or recoupment claims made or contests pending or threatened as a result of any audits by any third party payor; and

(iii) any claim, requirement or demand (excluding all claims, requirements, and demands, if any, that have been waived) of any Governmental Authority, third party payor or insurance body or carrier having or claiming any licensing, certifying, supervising, evaluating or accrediting authority over the Leased Premises to rework or redesign the Leased Premises, its professional staff or its professional services, procedures or practices in any material respect or to make any of the Leased Premises conform to or comply with a legal requirement.

(p) The receipt by Landlord of any reports, statements, financial information, surveys or otherwise from Tenant or its Affiliates shall not in any way impose any obligation or liability upon Landlord to act or take any action upon any information, facts or circumstances which may be disclosed or shown therein and Landlord shall have no liability for its failure to act thereon or as a result thereof.

(q) **Financial Covenants.** Tenant covenants and agrees to the following, as may be amended time to time as required by Landlord's 1st or 2nd Mortgagee:

(i) Commencing the third full quarter of the Term Tenant's Current Ratio shall not be less than 1.1 to 1.0. The term "Current Ratio" means the current assets of Tenant divided by the current liabilities of Tenant determined in accordance with GAAP.

(ii) For each quarter of the Lease Term commencing the third full quarter following the Commencement Date, Tenant's Lease Coverage Ratio shall be not less than 1.25 to 1.0.

(iii) For each quarter of the Lease Term commencing the second full quarter following the Commencement Date, the Facility shall have achieved the EBITDAR benchmarks as described on Schedule 7.4, attached hereto. The term "EBITDAR" is defined in Schedule 7.4.

Section 7.5 Payment in the Ordinary Course. Tenant shall pay in full: (i) prior in each case to the date when penalties would attach, all Impositions (except only those so long as and to the extent that the same shall be contested in good faith by appropriate and timely proceedings and for which adequate reserves have been established in accordance with GAAP), provided that (i) Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) for which Tenant may be or become liable; (ii) no Lease Default has occurred and remains uncured; (iii) such proceeding shall suspend the collection of such Impositions or the Impositions shall have been paid; (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Tenant is subject and shall not constitute a default thereunder; (v) no part of or interest in the Leased Premises will be in danger of being sold, forfeited, terminated, canceled or lost; (vi) Tenant shall have furnished such security as may be required in the proceeding, or as may be requested by Landlord or Mortgagee, to insure the payment of any such Impositions, together with all interest and penalties thereon, which shall not be less than 125% of the unpaid Impositions being contested and (vii) Tenant shall promptly upon final determination thereof pay the amount of such Impositions, together with all costs, interest and penalties; (b) all of Tenant's wage obligations to Tenant's employees in compliance with the Fair Labor Standards Act (29 U.S.C. §§ 206-207) or any comparable provisions under federal, state or local law; (c) all obligations owed in connection with any claim, demand or notice of any overpayment received from Medicare, Medicaid or other third party payor; and (d) all of Tenant's obligations calling for the payment of money (except only those so long as and to the extent that the same shall be contested in good faith and for which adequate reserves have been established in accordance with GAAP, provided that Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) before such payment becomes overdue.

Section 7.6 Security Agreement. In order to secure the payment and performance of all of Tenant's obligations under this Lease and all of Tenant's obligations to Landlord, and all and all other documents contemplated thereby, Tenant hereby grants to Landlord a first priority security interest in and lien upon, all of the assets of Tenant including, without limitation, (i) all trade fixtures, equipment, furniture, merchandise, inventory and other personal property located from time to time on or upon the Leased Premises (including the proceeds thereof), and (ii) to the fullest extent permitted by applicable law, all accounts, accounts receivable, licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, certificates of need, and other authorizations issued to or held by Tenant with respect to the operation of the Facility skilled nursing facility and Tenant's interest in and rights under all third party payor provider agreements with respect to the Facility (the items listed in clauses (i) and (ii), together with the proceeds of same, are collectively, "Collateral"). The security interest granted to Landlord with respect to Tenant's tangible personal property is intended to be subordinate to any purchase money security interest or capital lease on any of Tenant's tangible personal property provided that Tenant has notified Landlord of the creation of such security interest or capital lease prior to the creation thereof and Landlord has approved same. Landlord agrees to subordinate its lien on Tenant's accounts receivable in favor of Tenant's accounts receivable lender, which shall be a nationally recognized nursing home accounts receivable lender with experience acceptable to HUD or Mortgagee on at least 20 nursing homes, securing up to a \$2,000,000.00 accounts receivable loan, provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord; Should

Mortgagee require a subordination of the priority of Landlord's security interest in the Collateral, Landlord and Tenant shall execute such documents as Mortgagee may request to subordinate Landlord's lien to the Mortgagee's security interest in the collateral. In addition, Tenant's members shall grant to Landlord a first lien pledge (subject to the following sentence) of the membership interests of Tenant. To the extent required by Tenant's accounts receivable lender, Landlord agrees to subordinate its lien on Tenant's membership interests to a lien in favor of such lender securing up to a \$2,000,000.00 accounts receivable loan; provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. On or before the Commencement Date, Tenant shall provide Landlord with a detailed list and description of all the Collateral. Upon a Lease Default by Tenant, Landlord shall have all the rights and remedies of a secured party under the laws of the State of New York. Tenant, as Debtor, shall cause to be executed (if appropriate or necessary) and delivered to Landlord, as the secured party, upon execution of this Lease by Tenant, UCC-1 Financing Statements in proper form, and thereafter, from time to time, deliver to Landlord such extensions and/or updates of such financing statements as are required for the purpose of perfecting and maintaining the priority of the security interest granted to Landlord herein, and to perform any other acts reasonably necessary to the perfection of such security interest. Tenant and Tenant's members consent to Landlord's preparation of and the filing of such financing statements by Landlord and agrees that the provisions of this Section 7.6 shall constitute a security agreement for the purposes contemplated hereby. The security interest granted by this Section 7.6 shall be in addition to any lien of Landlord that may now or at any time hereafter be provided by law. In the event Landlord exercises its remedies to foreclose the security interest created under this Section 7.6, or elsewhere in this Lease, Tenant shall cooperate with Landlord in transferring all of the aforementioned items promptly as requested by Landlord in Landlord's or its designee's name or for the benefit of Landlord. Tenant covenants and agrees that it shall not sell, move, surrender, cancel, modify, transfer, assign, relocate, pledge, grant a security interest in, convey or in any other manner encumber any assets of Tenant including, without limitation, the personal property, the certificate of need approval or any of the licensed or Medicare- and/or Medicaid-certified beds at the Facility, or any licenses for the Facility, or attempt at any time to do same, except as expressly provided hereunder and with the written consent of Landlord. This Section 7.6 and Landlord's rights and remedies hereunder shall survive the termination of the Lease.

Section 7.7 Working Capital. As of the Effective Date, Tenant shall have and maintain until the Commencement Date in accounts, acceptable to Landlord in its sole and complete discretion, an amount of funds equal to the greater of ("Working Capital") (i) any debt service reserve required by Mortgagee, (ii) the aggregate negative net operating income of Tenant for the period of months from the Commencement Date to the first day of the first two month period in which aggregate net income from operations exceeds zero, all as reflected in the projections attached hereto as Schedule 2.7 ("Cash Requirement"); for the purpose of this calculation net operating income shall be determined on a cash basis, and (iii) 4.5 million dollars. Working Capital shall not include any accounts or reserves established to satisfy the requirements of Section 7.1(a) (i) and (ii). From and after the Commencement Date, the Working Capital, subject to any requirement of the Mortgagee, may be used by Tenant only to fund the Cash Requirement.

7.8 Refinancing. Tenant shall fully cooperate with Landlord in its efforts to Refinance from time to time, including without limitation, providing all information and executing all

documents required by Lender or its lender(s). On and after each Refinance Date the Fixed Rent for each twelve month period shall equal the sum of the amounts provided for in clauses (a) through (e): (a) the annual debt service payments (principal, interest, and mortgage insurance premiums, if any) that Lender is required to pay to Lender pursuant to the first Mortgage (the "Mortgage Debt"), plus such additional amounts as Lender may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations; (b) the annual aggregate debt service payments or preferred equity payments that the Lender is required to pay pursuant to the Junior Debt (or replacement thereof) (with the Mortgage Debt, the "New Debt Service"); plus such additional amounts as Lender may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations under the Junior Debt (or replacement thereof); (c) an annual amount equal to \$1,390,115; (d) an additional amount of \$250,000 per year prior to the fourth year of the Term; \$350,000 per year during Lease Years 4 and 5; and \$400,000.00 per Lease Year thereafter until the end of the Term, including all Extension Terms; and (e) an additional amount equal to one-half of the amount that (i) a sum equal to the last 12 months interest payment on the original Mortgage and Junior Debt exceeds (ii) New Debt Service.

ARTICLE VIII

PERSONAL PROPERTY

Section 8.1 Landlord's Personal Property. Upon the expiration or termination of this Lease, Tenant shall leave all personal property leased to Tenant hereunder, as required, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, in or on the Leased Premises, except for ordinary wear and tear. Any and all restorations, alterations or replacements of, or repairs, reconstructions or additions to, the personal property at the Facility made by Tenant shall become part of Landlord's personal property, and any and all security interests (except in favor of Landlord) in Tenant's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Tenant shall pay off in full the remaining payments due on all personal property leased by Tenant and such personal property shall become part of Landlord's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Any of Tenant's software, software licenses, proprietary information, and policies, and procedures of Tenant ("Retained Assets") shall not become part of Landlord's personal property except in the event of the termination of this Lease as a result of a Lease Default, in which case the Retained Assets shall become the personal property of Landlord; provided, however, upon request of Landlord, in consideration of a payment by Landlord or its designee of Ten Dollars (\$10.00) and any applicable lease, rent, or license fees owed to any third parties during the Transition Period (hereinafter defined), Tenant shall license Landlord or its designee(s) (at Tenant's cost with no mark-up) to utilize the Retained Assets for a period of one hundred twenty (120) days (the "Transition Period") in connection with the transition of operations from Tenant and Landlord's new operator(s). To the extent Tenant or any Subtenants are obligated under license agreements with third party vendors supplying software (and/or computer hardware which Tenant does not own or lease) to such Tenant, Tenant shall use its best

efforts to arrange for Landlord or Landlord to enter into licensing agreements with such third party vendors to allow Landlord or its designee to utilize such software and computer hardware supplied by such third party vendors for the duration of the Transition Period.

Section 8.2 Tenant's Retained Assets. At the termination of the Lease, Landlord shall have the right to purchase all or a portion of Tenant's Retained Assets located at the Facility at the lower of its fair market value or book value. To the extent any of Tenant's Retained Assets is subject to a license, Landlord shall have the right but not the obligation to assume some or all of such license Landlord's sole cost and expense and at no additional liability to Tenant.

ARTICLE IX

INDEMNIFICATION

Section 9.1 Tenant's Indemnification (a) During the Term of this Lease and after the surrender of the Leased Premises in accordance with Section 5.5 of this Lease, Tenant shall protect, defend (at Landlord's request), indemnify and hold harmless Landlord, Landlord's members, managers, officers, owners, directors, employees, agents, representatives, and Mortgagee and their respective agents, executors, heirs, representatives and assigns, and any entity providing financing which is secured by the Leased Premises (collectively the "Landlord's Indemnitees"), from and against any claims, losses, costs, penalties, damages, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) imposed or resulting from, arising out of or attributable in whole or in part to any of the following: (i) any violation of any Law, order of Governmental Authority, whether occasioned by the intentional act, omission, or negligence of Tenant or those holding under Tenant, (ii) any accident or other occurrence on or about the Leased Premises on or after the Commencement Date causing injury to any person or property whatsoever or whatsoever, including but not limited to patient care claims or elder abuse, (iii) any failure of Tenant in any respect to comply with or perform any term, condition, covenant, requirement and/or provision of this Lease, or a breach of this Lease by Tenant, including, but not limited to, a breach of any of Tenant's representations and warranties under Section 19.1 of this Lease, (iv) in any way relating to Tenant's use, operation and/or maintenance of the Facility (including, without limitation, third-party claims, whether by the State of New York, the United States, private insurers, private parties, for reimbursement, false claims, or any other claims, assumption of and use by Tenant of Landlord's permits, variances, waivers, and certificate of need approval or its possession of the Leased Premises and/or (v) any liability under Section 20.14. The indemnity provided for herein shall survive the expiration of this Lease or the surrender of the Leased Premises for the period of the relevant statute of limitations.

(b) Any amounts which become payable by Tenant under this Article IX shall be paid within ten (10) days after liability therefor is determined by litigation or otherwise, and if not timely paid shall bear interest at the Prime Rate plus 5% (the "Overdue Rate") from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or may compromise or otherwise dispose of the same as Tenant sees fit provided that Landlord receives a full and complete release with respect to such claim, action or proceeding. Any legal

counsel selected by Tenant to defend Landlord shall be reasonably satisfactory to Landlord. All indemnification covenants are intended to apply to losses, damages, injuries, claims, costs, penalties, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) incurred directly or indirectly by the indemnified parties and their property, as well as by the indemnifying party or third party, and their property. For purposes of this Article IX, any acts or omissions of Tenant, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant. It is understood and agreed that payment shall not be a condition precedent to enforcement of the foregoing indemnification obligations. The "Prime Rate" shall mean on any date, a rate equal to the annual rate on such date publicly announced by Citibank, N.A., as its prime, base or reference rate. Such rate need not be the lowest rate charged by Citibank, N.A. If Citibank, N.A. discontinues its use of such prime, base or reference rate or ceases to exist, Landlord shall designate the prime, base or reference rate of another state or federally chartered bank with offices in New York, N.Y. to be used for the purpose of calculating the Prime Rate hereunder.

ARTICLE X

USE OF LEASED PREMISES

Section 10.1 Compliance with Laws and Regulations. Tenant shall use the Leased Premises solely as a licensed Medicare- and Medicaid-certified skilled nursing facility with at least the number of licensed and certified beds existing at the Facility on the Commencement Date, and for no other purpose (the "Intended Use"). On or before the Commencement Date, Tenant shall have acquired, and thereafter Tenant shall maintain all licenses, certificates, accreditations, approvals, permits, variances, waivers, provider agreements and other authorizations needed to operate the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility. Tenant hereby covenants, warrants and represents to Landlord that as of the Commencement Date and throughout the Term: (a) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be validly licensed and Medicare and Medicaid certified to operate a skilled nursing facility in accordance with the applicable rules and regulations of the DOJ, federal governmental authorities and accrediting bodies, including, but not limited to, the United States Department of Health and Human Services ("DHHS"), CMS, and the DOH; (b) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be, certified by and the holder of valid provider agreements with Medicare and Medicaid issued by DHHS, DOH and/or CMS and shall remain to certified and shall remain such a holder in connection with its operation of the Leased Premises as a licensed and Medicare and Medicaid certified skilled nursing facility; (c) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be in compliance with and shall remain in compliance with all applicable Laws with regard to the operation of the Facility, including, without limitation, compliance under Laws governing patient confidentiality and privacy and the confidentiality of medical records; (d) Tenant (and any subtenant, operator or manager of Tenant) shall operate the Facility in a manner consistent with high quality skilled nursing services and sound reimbursement principles under the Medicare and Medicaid programs and as required under Laws; and (e) Tenant (and any subtenant, operator or manager of Tenant) shall not abandon, terminate, vacate or fail to renew any licenses,

certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or any other authorization which relates to the operation of the skilled nursing facility business or other permitted operations on the Leased Premises or in any way commit any act which will or may cause any such licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or other authorization to be revoked by any Governmental Authority or accrediting body having jurisdiction thereof.

Section 10.2 No Waste. Tenant shall not commit or suffer to be committed any waste on the Leased Premises nor shall Tenant cause or permit any nuisance thereon.

Section 10.3 Hazardous Materials and Hazardous Waste. (a) Tenant shall not place or hold any Hazardous Materials on or at the Leased Premises, except as is necessary for the ordinary course of its business as a skilled nursing facility in compliance with Section 10.1. If Tenant's business requires the use of any Hazardous Materials, other than such cleaning materials as are typically found in skilled nursing facilities in compliance with Section 10.1, Tenant shall notify Landlord in writing and shall comply with hazard communication and notification requirements of the Occupational Safety and Health Act ("OSHA") and all Laws which require notification of employees, the community or any governmental agency of the hazardous properties of such Hazardous Materials. For purposes of this Lease, "Hazardous Materials" means and includes any hazardous substance defined as such in OSHA, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous substance or material, as now or at any time hereafter in effect.

(c) Tenant shall not cause or allow any asbestos or any asbestos containing materials to be incorporated into any improvements or alterations which it makes or causes to be made on or to the Leased Premises. Tenant shall obtain and maintain O&M Programs for the Facility is if the Facility is determined to contain asbestos or asbestos containing materials and upon Landlord's request, shall furnish copies of same to Landlord, Mortgagee or their designee(s).

(d) Tenant shall not place, hold or dispose of any Hazardous Waste on, under or at the Leased Premises except as specifically allowed in this Section 10.3. Tenant further agrees that it shall not use the Leased Premises as a treatment, storage, or disposal (whether permanent or temporary) facility for Hazardous Waste. If Tenant, in the ordinary course of its business as a skilled nursing facility generates Hazardous Waste, then Tenant shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to the appropriate use, storage, transportation and disposal of Hazardous Waste. For the purposes of this Lease, "Hazardous Waste" means and includes any hazardous material that has entered the waste stream or any contaminant or pollutant as defined as such in the Resource Conservation and Recovery Act, CERCLA, as amended, any so-called "Superfund" or "Superfund" law, the TSCA, or any other Law, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste. Tenant further agrees that it shall properly dispose in accordance with Laws of all "infectious waste" such as laboratory waste, pathological waste, blood specimens or products, patient or resident waste including, without

limitation, bandages and disposable gowns, sharp waste and any material generated by the production or testing of biological agents. Immediately upon receipt of any Environmental Notice (as hereinafter defined) from any Person, Tenant shall deliver to Landlord a true, correct and complete copy of same. "Environmental Notice" shall mean any note, notice, or report of any suit, proceeding, investigation, order, consent order, injunction, writ, award, or action related to or affecting or indicating the treatment, storage, handling, disposal, generation, spill, release or discharge of any Hazardous Waste or Hazardous Materials in, upon, under, from or affecting the Leased Premises. All of the terms, covenants, warranties and indemnifications contained in this Section 10.3 shall survive the expiration or termination of this Lease.

(e) Without in any way limiting Tenant's obligation to indemnify Landlord and Landlord's Indemnitees under Section 9.1 of this Lease, Tenant shall indemnify, defend (at Landlord's request) and hold harmless Landlord and Landlord's Indemnitees from and against any claims, losses, costs, damages or expenses of any and every kind whatsoever (including reasonable attorney's fees and expenses and consultant's and expert's fees and expenses) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord and/or Landlord's Indemnitees for, with respect to, or as a direct or indirect result of: (a) a breach by Tenant of the covenants set forth in Section 10.3 or, (b) caused, permitted or allowed by Tenant or any agent, employee, invitee, or licensee of Tenant, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, onto, or into the Leased Premises, the atmosphere, or any watercourse, body of water, or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, as amended, any so-called "Superfund" or "Superfund" law, or any other Law, relating to or imposing liability or standards of conduct concerning, any Hazardous Material) occurring from and after the Commencement Date; and the provisions of and undertakings and indemnification set out in this Section 10.3(d) shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever. If required by Mortgagee, Tenant shall enter into an agreement to indemnify, defend and hold harmless Mortgagee with respect to matters contained in this Section 10.3, and other similar matters pursuant to a form of agreement reasonably acceptable to Mortgagee. In no event however shall Tenant have any liability to Landlord or Landlord's Indemnitees for Hazardous Materials located at or under the Leased Premises prior to the Commencement Date or for the remediation of same.

(f) If Tenant or its employees, agents, or contractors violate the provisions of this Section 10.3, then, in addition to any other duty or obligation of Tenant hereunder, at law or in equity, Tenant shall be obligated to clean up, remove, and dispose of the material causing the violation, in compliance with all applicable environmental laws and repair any damage to and remediate the Leased Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord; provided that such work shall commence no later than thirty (30) days from the date of such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time and procedure for any clean-up, remediation or removal of material causing the violation under this provision, and Landlord shall have the right to require reasonable changes in such method, time or procedure.

(g) Landlord reserves the right from time to time, but not more than once a year, except in the event of an emergency or during the occurrence and continuation of an uncured Lease Default during the Term hereof, at Landlord's cost and expense (except that, in the event of a continuing and uncured Lease Default, at Tenant's sole cost and expense), to have the Leased Premises inspected by environmental engineers and/or specialists for the purpose of determining compliance by Tenant with any environmental laws, rules and regulations applicable to Tenant's operations in or about the Leased Premises and with the terms and conditions of this Lease dealing with environmental matters, including without limitation, the provisions of this Section 10.3. If the environmental assessment or report resulting from such inspection discloses any non-compliance with Laws, Tenant shall immediately, following receipt of the environmental assessment, take all such steps as are necessary to put the Leased Premises into compliance, including without limitation, cleaning up any spills or other emissions of Hazardous Wastes or Hazardous Materials, and reimburse Landlord for the costs of its inspection.

(h) Upon the expiration of the Term, or the earlier termination thereof, subject to the last sentence of Section 10.3(d) above, Tenant shall forthwith remove all Hazardous Materials and Hazardous Waste from the Leased Premises or any portion thereof in accordance with applicable Law. Landlord shall have the right to inspect the Leased Premises with regard to the management and disposal of Hazardous Materials and Hazardous Waste at all reasonable times during the Term.

ARTICLE XI

DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction. Tenant shall immediately notify Landlord of any casualty, fire, damage, destruction or injury ("Casualty") affecting the Facility, including a description of the Casualty, and whether the Casualty is such as to cause the Leased Premises to be unusable, in whole or in part, for the intended Use. Tenant shall proceed with reasonable diligence to repair or reconstruct the Leased Premises and Tenant shall be liable for any costs of repair or replacement to the Leased Premises, whether or not such Casualty, or the costs of repairing such Casualty, are fully covered by the proceeds of Tenant's insurance required to be carried hereunder. If such Casualty renders the Facility unusable for the purpose of this Lease and if Landlord's Mortgagee so requires, Landlord, upon notice to Tenant, Landlord may terminate this Lease and Landlord and Tenant shall be released from any further liability hereunder thereafter according with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance to the extent such difference results from Tenant's breach of Article VI. Notwithstanding the foregoing, if Landlord's obligations to its Mortgagee have been satisfied in full and the DOH approves and agrees to reimburse the costs of rebuilding the Facility, Landlord shall not so terminate this Lease with respect to the Facility, and Tenant shall repair or reconstruct the Leased Premises in substantially the same condition as just prior to the incident with the proceeds of the property casualty insurance carried by Tenant, as required hereunder (if not otherwise paid to the Mortgagee), and/or with funds of Tenant. Regardless of any Casualty, except as provided above, this Lease shall continue in full force and effect without any abatement of Rent, and Tenant shall

not be entitled to surrender possession of the Leased Premises as a result of such casualty. Landlord's receipt of Rent from Tenant's rental interruption insurance shall be credited against Rent payments due from Tenant hereunder. If Tenant fails to commence such repair or reconstruction within thirty (30) days of the Casualty, Landlord shall have the option, subject to the approval of the DOH if required by Laws, to either terminate this Lease upon written notice to Tenant or repair and reconstruct the Leased Premises in substantially the same condition just prior to the incident and costs and expenses incurred as a result thereof shall be deemed Additional Rent hereunder and shall be payable to Landlord by Tenant, upon demand. Upon payment of all such sums demanded by Landlord, Tenant may re-enter and resume possession of the Leased Premises pursuant to the terms of this Lease. All insurance proceeds collected under the Policies shall be paid to Landlord, and made available to Tenant to pay for or reimburse Tenant for the costs and expenses for such repairs and reconstruction subject to the terms, conditions and provisions of any mortgage or other loan documents encumbering the Leased Premises. If Mortgagee does not make the insurance proceeds available to Landlord, then Landlord may terminate this Lease upon thirty (30) days' notice to Tenant, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance.

Section 11.2 Precedence of Rights of Mortgagee. All provisions contained in the loan documents between Landlord and Mortgagee, or any other document in connection therewith which concern or pertain to the restoration of the Leased Premises, the application of insurance proceeds and any and all matters concerning a casualty, shall take precedence over and be in lieu of any contrary provision provided for in this Lease, and in all respects are binding upon Tenant who agrees to and acknowledges the same.

Section 11.3 Tenant hereby waives the provisions of Section 227 of the Real Property Law of the State of New York and acknowledges that the terms of this Article XI shall govern in lieu thereof.

ARTICLE XII  
EMINENT DOMAIN

Section 12.1 Eminent Domain. (a) In the event that all or substantially all of the Leased Premises, or such portion of the Real Property which renders the balance of the Facility unsuitable for the purpose of this Lease, shall be taken by condemnation or right of eminent domain, this Lease shall terminate as of the day the taking authority takes possession of the Leased Premises, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except as otherwise expressly provided in this Lease. In the event only a portion (and less than substantially all) of the Leased Premises is taken by condemnation or right of eminent domain and the portion so taken does not render the balance of the Leased Premises unsuitable for the purposes of this Lease, as determined by Landlord, this Lease shall not terminate. In such an event, Tenant shall restore the Leased Premises with reasonable diligence with its own funds and with the proceeds of any award from the applicable public or quasi-public authority, or private corporation or individual having the



power of condemnation ("Award") to an architectural unit as nearly like its condition prior to such taking as shall be practicable. Notwithstanding anything to the contrary herein, this Section 12.1(a) is subject to the terms, conditions and provisions of any mortgage and other loan documents encumbering the Leased Premises.

(i) Notwithstanding anything to the contrary contained in Section 12.1(e), Landlord may cancel this Lease with no further liability to Tenant, in the event that following a taking by condemnation or right of eminent domain, Mortgagee elects to require Landlord to repay the mortgage on the Leased Premises.

(j) Tenant shall not be entitled to any part of any award or settlement of damages representing the value of land and buildings appropriated, the value of this Lease or any estate therein, or damage to the residue of the Leased Premises or other property of Landlord; it being agreed as between Landlord and Tenant any such award shall be the sole property of Landlord. No appropriation of part or all of the Leased Premises or cancellation of this Lease pursuant to this Article XII shall be deemed an eviction of Tenant or a breach of any covenants of Landlord hereunder.

ARTICLE XIII

NOTICES

Section 13.1 Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if (a) hand delivered or sent by (b) certified or registered United States mail, postage prepaid, return receipt requested or (c) Federal Express or other nationally recognized overnight next business day courier service at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 13.1:

If to Tenant:

MBL SNP, LLC  
1280 Albany Post Road  
Croton-on-Hudson, New York 10520

with a copy to:

Michelman & Robinson  
800 Third Avenue, 24th Floor  
New York, NY 10022  
Attn: Mark Zefrin, Esq.  
Telephone: 212.730.7700

If to Landlord:

White Plains Healthcare Properties I, LLC,

2 Bourbon Street, Suite 200  
Peabody, Ma 01960

with a copy to:  
Gerald J. Billow, Esq.  
Postrema Blankstein & Lund LLP  
800 Boylston Street, Suite 3200  
Boston, Massachusetts 02199

-and-

Howard Fensterman, Esq.  
Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042

The effective date of such notices shall be as follows: (a) upon delivery or refusal of delivery if sent by personal delivery, (b) two (2) Business Days after mailing (or upon actual receipt, if earlier), if sent by certified or registered mail, (c) one (1) Business Day after deposit with the courier for next business day delivery, if sent by overnight courier. The term "Business Day" means any day other than (i) a Saturday or a Sunday, and (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

Section 13.2 Notice to Mortgagee. (a) Tenant hereby agrees, upon request of Mortgagee, to give to Mortgagee copies of all notices given by Tenant of default by Landlord under this Lease at the same time and in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord. Such Mortgagee shall have the right to remedy any default under this Lease, or to cause any default of Landlord under this Lease to be remedied, and for such purpose Tenant hereby grants such Mortgagee such period of time as may be reasonable to enable such Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default which is a default. Tenant shall accept performance by such Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No default by Landlord under the Lease shall exist or shall be deemed to exist (i) as long as such Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (ii) if possession of the Leased Premises is required in order to cure such default, or if such default is not susceptible of being cured by such Mortgagee, as long as such Mortgagee, in good faith, shall have notified Tenant that such Mortgagee intends to institute proceedings under the mortgage and, thereafter, as long as such proceedings shall have been instituted and shall prosecute the same with reasonable diligence and, after having obtained possession, prosecutes the cure to completion with reasonable diligence. This Lease shall not be assigned by Tenant or modified, amended or terminated without Mortgagee's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed. In the event of the termination of this Lease by reason of any default thereunder or for any other reason whatsoever except the expiration thereof, upon such Mortgagee's written request, given

within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Mortgagee or its designee or nominee a new lease of the Leased Premises for the remainder of the Term of the Lease upon, at a minimum, all of the terms, covenants and conditions of this Lease. Neither such Mortgagee or its designee or nominee shall become liable under this Lease unless and until such Mortgagee or its designee or nominee becomes, and then only for so long as such Mortgagee or its designee or nominee remains, the fee owner of the Leased Premises or the owner of the leasehold interest of Landlord under this Lease. Such Mortgagee shall have the right, without Tenant's consent, to, as the case may be, foreclose its mortgage or to accept a deed in lieu of foreclosure of such mortgage.

(b) In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Mortgagee, and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such Mortgagee within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Mortgagee shall have become entitled under its loan documents with Landlord in connection therewith, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy).

#### ARTICLE XIV

#### QUIET ENJOYMENT

Section 14.1 Quiet Enjoyment. Landlord covenants, warrants and represents to Tenant that, provided no Lease Default exists under this Lease, Tenant shall at all times during the Term peacefully and quietly have, hold, occupy and enjoy the Leased Premises, subject to the terms and conditions of this Lease, without any hindrance, interference or molestation by Landlord or by, under or through Landlord.

#### ARTICLE XV

#### SUBLETTING AND ASSIGNMENT

Section 15.1 Subletting and Assignment. (a) Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in the Landlord's sole and absolute discretion (and, if required by law, without the prior written consent of the Commissioner, which consent may be withheld in the Commissioner's sole and absolute discretion), transfer or assign this Lease or Tenant's interest in the Leased Premises or any part thereof or sublease all or any part of the Leased Premises. In all events of assignment, transfers or subletting, the prior approval of the DOH shall be required. Tenant shall not at any time, without the prior written consent of Landlord, which consent may be withheld or given in the sole and absolute discretion

of Landlord, pledge, mortgage, or hypothecate the leasehold estate hereby created or any interest of Tenant therein. The issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant aggregating to forty-nine percent (49%) or more of the stock, membership or ownership interest in Tenant or any subtenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; notwithstanding anything to the contrary, any change in the management or control of Tenant such that Lizer Josefovic does not control all of the decisions of Tenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof. Notwithstanding anything to the contrary, the issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant resulting in the aggregate interest of Lizer Josefovic, Marc Neuman, and their spouse or issue, or a trust for their benefit, equaling less than seventy-five percent (75%) of the stock, membership or ownership interest in Tenant or any subtenant to any person or entity shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; provided that any assignment by Lizer Josefovic to Joseph Josefovic made after five years after the Commencement date shall not be unreasonably denied by Landlord taking into account, among other things, the experience, performance record, and financial strength of Joseph Josefovic. The consent by Landlord to my transfer shall not constitute consent to any subsequent transfer or to any successive transfer. Further, subject to the provisions of Section 2.2, and without in any way limiting or otherwise affecting the provisions of this Lease, Landlord shall be permitted to assign this Lease and all agreements, duties, obligations and rights incidental thereto to any entity related to, or affiliated with Landlord, without any consent from Tenant. The term "transfer" shall mean: any direct or indirect sale, conveyance, transfer, lease (including any amendment, extension, modification, waiver or renewal (hereof)), sublease, sub-sublease, assignment, mortgage, pledge, grant of a security interest or hypothecation, whether by operation of law or otherwise, whether voluntary or not, of or in (i) all or part of the Leased Premises (including any legal or beneficial direct or indirect interest therein) or (ii) any direct or indirect interest in Tenant. Notwithstanding anything to the contrary contained herein, Tenant may assign this Lease to, or enter into a sublease with, or transfer interests in an entity comprising Tenant to, an affiliate under common control with Tenant, or owned by Lizer Josefovic, Marc Neuman, or their spouse or issue, or a Trust for their benefit, without Landlord's consent, provided (x) Landlord is given thirty (30) days prior written notice of such intended transfer, assignment or sublease with copies of the organizational documents of the assignee, transferee or sublessee, (y) after such transfer, assignment or sublease, Lizer Josefovic controls all of the decisions of the assignee, transferee or sublessee, and (z) all required consents from the Mortgagee, the DOH and/or the Commissioner (if required), have been obtained by Tenant. Notwithstanding the foregoing and any other provision contained herein to the contrary, no transfer or series of transfers of legal, economic, beneficial or equitable (direct or indirect) interest in the Lease or in Tenant's membership interest that requires DOH's consent shall occur without the prior written consent of Landlord and DOH. Tenant shall enter into such subordination agreements or subordination, non-disturbance agreements ("SNDAs") as Mortgagee may request from time to time.

Section 15.2 Assignment and Related Matters. Any sublease shall be expressly subject and subordinate to all applicable terms and conditions of this Lease and provide that upon the expiration or earlier termination of this Lease, Landlord, at its option and without any

obligation to do so, may require any subtenant to whom Landlord, its successors and assigns, in which event Landlord shall undertake the obligations of Tenant, under such sublease from the time of the exercise of such option to the termination of such sublease; provided, however, that in such case Landlord shall not be liable for any prepaid rents, fees or other charges or for any prepaid security deposits paid by such subtenant to Tenant or for any other prior defaults of Tenant under such sublease. In the event that Landlord shall not require such attornment with respect to any sublease, then such sublease shall automatically terminate upon the expiration or earlier termination of this Lease, including any early termination by mutual agreement of Landlord and Tenant. In addition, any such sublease shall provide that in the event that the subtenant or other transferee receives a written notice from Landlord stating that a Lease Default has occurred or that an event or circumstance has occurred which with notice and/or passage of time would constitute a Lease Default, such subtenant or other transferee thereafter shall without further consent or instruction of Tenant pay all rentals accruing under such sublease directly to Landlord or as Landlord may direct; provided, however, that (a) as and to the extent that the amounts so paid to Landlord, together with other amounts paid to or received by Landlord on account of this Lease, exceed the amounts then due Landlord from Tenant under this Lease, the excess shall be promptly remitted to Tenant, and (b) at such time as the Lease Default has been cured and this Lease reinsured (if ever), Landlord shall notify and direct the subtenant(s) in writing to resume making payments of rentals under their sublease(s) directly to Tenant, or as Tenant may direct. Any such rentals collected from such subtenant or other transferee by Landlord shall be credited against the amounts owing by Tenant under this Lease in such order of priority as Landlord shall reasonably determine. Furthermore, any sublease or other agreement regarding a transfer shall expressly provide that the subtenant, assignee, manager or other transferee shall furnish Landlord, its lender, the Mortgagee, if applicable, the HUD Mortgagee, and/or the Commissioner, and /or DOH, if applicable, with such financial, operational and other information about the Facility and subtenant, etc., as Landlord may request from time to time.

Section 15.3 Assignment of Subleases. To secure the prompt and full payment by Tenant of the Rent and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to the conditions hereinafter set forth and any required consent(s) from DOH, all of Tenant's right, title and interest in and to all permitted subleases, assignments, licenses and occupancy agreements, to the extent permitted by law, involving the Facility, as set forth on Schedule 15.3 attached hereto (the "Sublease", and the subtenant under a Sublease herein referred to as a "Subtenant") and hereby confers upon Landlord, its agents and representatives, a right of entry (subject to prior notice) in, and sufficient possession of, the Leased Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Sublease, and further agrees that the exercise of said right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Leased Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever; provided, however, that such assignment shall become operative and effective only if (a) a Lease Default shall occur and be continuing or (b) this Lease and the Term shall be canceled or terminated pursuant to the terms, covenants and conditions hereof or (c) there occurs a repossession under a dispossessory warrant

or other re-entry or repossession by Landlord under the provisions hereof or (d) a receiver for all or a portion of the Leased Premises is appointed, and then only as to such of the Subleases that Landlord may elect to take over and assume. At any time and from time to time within ten (10) days after Landlord's written demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants, with a photostatic copy of each of the Subleases. Upon request of Landlord, Tenant shall permit Landlord and its agents and representatives, and Mortgagee, its agents and representatives, to inspect all Subleases affecting the Leased Premises. Tenant covenants that each Sublease shall provide that the Subtenant thereunder shall be required from time to time, upon request of Landlord or Tenant, to execute, acknowledge and deliver, to and for the benefit of Landlord, an estoppel certificate confirming with respect to such Sublease the information set forth in Section 20.11 hereof.

Section 15.4 Additional Sublease Requirements. Tenant covenants and agrees that all Subleases hereafter entered into affecting the Leased Premises shall provide that (a) they are subject to this Lease and that the principals of the Subtenant acknowledge that they have read this Lease and accept the terms hereof, (b) the term hereof shall not end less than one (1) day prior to the Expiration Date hereof, unless Landlord shall consent otherwise, which consent may be withheld in Landlord's sole and absolute discretion, (c) the Subtenants will not do, authorize or execute any act, deed or thing whatsoever or fail to take any such action which will or may cause Tenant to be in violation of any of its obligations under this Lease, (d) the Subtenants will not pay rent or other sums under the Subleases with Tenant for more than one (1) month in advance, (e) the Subtenants shall give to Landlord at the address and otherwise in the manner specified in Section 13.1 hereof, a copy of any notice of default by Tenant as the landlord under the Subleases at the same time as, and wherever, any such notice of default shall be given by the Subtenants to Tenant; and (f) all of the representations, warranties and covenants given by Tenant to Landlord in this Lease, including but not limited to all reporting requirements and covenants set forth in Section 7.4 above, shall be made and given by each Subtenant for the benefit of Landlord, Mortgagee, and their respective successors and assigns.

Section 15.5 Transfers in Bankruptcy. (a) In the event of a transfer pursuant to the provisions of Title 11 of the United States Code or any statute of similar purpose or nature (the "Bankruptcy Code"), all consideration payable or otherwise to be delivered in connection with such transfer shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any consideration constituting Landlord's property pursuant to the immediately preceding sentence and not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. For purposes of this Section 15.5, the term "consideration" shall mean and include money, services, property and any other thing of value such as payment of costs, cancellation or forgiveness of indebtedness, discounts, rebates, barter and the like. If any such consideration is in a form other than cash (such as in kind, equity interests, indebtedness pay-outs, or other deferred payments, consulting or management fees, etc.), Landlord shall be entitled to receive in cash the then present fair market value of such consideration. If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment shall be given to Landlord by Tenant no later than fifteen (15) days after receipt of such offer by Tenant, but in any event no

later than ten (10) days prior to the date that Tenant shall file any application or motion with a court of competent jurisdiction for authority and approval to enter into such assumption and assignment. Such notice shall set forth (a) the name and address of the assignee, (b) all of the terms and conditions of such offer, and (c) the proposal for providing adequate assurance of future performance by such person under the Lease, including, without limitation, the assurance referred to in Section 365 of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease from and after the date of such assignment. Any such assignee shall execute and deliver to Landlord upon demand an instrument confirming such assumption.

(b) The term "adequate assurance of future performance" as used in this Lease shall mean (in addition to the assurances called for in Bankruptcy Code Section 365(4)) that any proposed assignee shall, among other things, (i) deposit with Landlord on the assumption of this Lease an amount equal to the greater of (x) two (2) times the then monthly Fixed Rent and Additional Rent or (y) such other amount deemed by the Bankruptcy Court to be reasonably necessary for the adequate protection of Landlord under the circumstances, as security for the faithful performance and observance by such assignee of the terms and obligations of this Lease, (ii) furnish Landlord with financial statements of such assignee for the prior three (3) calendar years, as finally determined after an audit and certified as correct by a certified public accountant, which financial statements shall show a net worth at least equal to the amount of the deposit referenced in (i) above, (iii) if determined by the Bankruptcy Court to be appropriate under the circumstances, grant to Landlord a security interest in such property of the proposed assignee as Landlord shall deem necessary to secure such assignee's future performance under this Lease, and (iv) provide such other information or take such action as Landlord, in its reasonable judgment, shall determine is necessary to provide adequate assurance of the performance by such assignee of its obligations under the Lease.

(c) If, at any time after Tenant may have assigned Tenant's interest in this Lease in a proceeding of the type described in Section 16.1 (iv) through (vii), this Lease shall be disaffirmed or rejected in any proceeding of the types described in Section 16.1 (iv) through (vii) hereof, or in any similar proceeding, or in the event of termination of this Lease by reason of any such proceeding or by reason of lapse of time following notice of termination given pursuant to Article XVI based upon any of the Lease Defaults set forth in said Section 16.1 (iv) through (vii) Tenant, upon request of Landlord given within thirty (30) days next following any such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord); shall (a) pay to Landlord all Rent due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant", enter into a new lease with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the expiration date of the term, unless sooner terminated as in such lease provided, at the same Fixed Rent and Additional Rent upon the then executory terms, covenants and conditions as are contained in this Lease, except that (i) Tenant's rights under the new lease shall be subject to the possessory rights, if any, of the assignee under this Lease and the possessory rights of any person claiming through or under such assignee or by virtue of any applicable Law, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant with due diligence, and (iii) such new lease shall require Tenant to

pay all Rent reserved in this Lease which, had this Lease not been so disaffirmed, rejected or terminated, would have accrued under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant shall default in its obligation to enter into said new lease for a period of ten (10) days next following Landlord's request therefor, then in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant as if Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 15.6 Management Agreement. Tenant agrees and acknowledges that it will not enter into any management agreements during the Term with regard to the Facility except with an entity (i) owned wholly by a an individual principal of Tenant which entity has been received establishment approval from the New York State Department of Health Public Health and Health Planning Council in compliance with 10 NYCRR 600.9(c)(1) and (ii) approved by HUD if the Facility is, or is about to be financed by a HUD program, and/or Mortgagee. Any such management agreement shall be subordinate to Landlord's rights hereunder, to the rights of Mortgagee and to the rights of the Commissioner. Tenant shall cause such manager to execute such documents as are required by Landlord or Mortgagee or by the Commissioner to effect such subordination.

Section 15.7 Memorandum of Lease. This Lease shall not be recorded, but either party may record a memorandum of lease in which shall describe the parties to this Lease, a description of the Leased Premises and a recitation of the Term. The party requesting that the memorandum of lease be recorded shall prepare and pay all costs of recording the memorandum of lease, and the other party agrees to execute at any and all times such instruments as may be reasonably required for such recording. Upon the expiration or earlier termination of this Lease, Landlord may release the memorandum of lease. For this purpose Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to execute a release of such memoranda in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. To the extent any transfer tax, conveyance tax, excise tax, or similar tax is imposed by any Governmental Authority as a result of the recording of such Memorandum of Lease, or is otherwise due and payable as to Tenant's leasehold interest granted pursuant to this Lease, Tenant shall pay same to the applicable Governmental Authority.

ARTICLE XVI

DEFAULT

Section 16.1 Default by Tenant and Remedies of Landlord. (A) Tenant shall be in default under this Lease upon the occurrence of any of the following events referred to herein individually or collectively as a "Lease Default" (any reference to such event occurring or involving Tenant shall be deemed to include any such event occurring or involving any of Tenant's Subtenants):



(i) if Tenant fails to pay any installment of Rent within five (5) days after the date when due;

(ii) if Tenant defaults in the prompt and full performance of any other of Tenant's covenants, obligations or agreements hereunder which are not specifically enumerated herein as a Lease Default and fails to correct such failure within thirty (30) days of receipt of written notice from Landlord of such default (unless such default cannot reasonably be cured within thirty (30) days, in which event such period shall be extended, provided Tenant shall have commenced in good faith to cure such default within the first such thirty (30) day period and shall proceed with all due diligence to correct such default thereafter but in no event more than ninety (90) days of receipt of such written notice);

(iii) if the leasehold interest of Tenant shall be levied upon under execution or be fined or attached and such levy, fine or attachment is not removed within sixty (60) days of the date Tenant receives notice of it;

(iv) in the event of a filing by or against Tenant of a petition under federal or state law pertaining to bankruptcy or insolvency or for a reorganization or other relief;

(v) if Tenant shall admit in writing its inability to pay its debts generally as they become due;

(vi) if Tenant is adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, with or without the consent of Tenant, a receiver or trustee of Tenant or of the whole or substantially all of its property;

(vii) if Tenant makes any general assignment for the benefit of creditors;

(A) if Tenant abandons the Leased Premises or if, except as a result of damage, destruction or a partial or complete condemnation, Tenant ceases operations of the Facility, or Tenant closes any portion of the Facility;

(viii) if Tenant receives a state or federal notice of termination of license or de-certification and such notice has not been suspended, extended, withdrawn or terminated prior to 30 days before the effective date of such termination or de-certification by any Governmental Authority;

(ix) if Tenant fails to maintain its qualifications for licensure as required by this Lease if failure to do so would result in an inability to operate the Facility or would result in the appointment of a receiver with respect to the Facility;

(x) if any transfer or assignment of this Lease or Tenant's direct or indirect interest therein or a transfer of Tenant's direct or indirect equity ownership interests occurs in violation of this Lease;

(xi) if any malpractice award or judgment exceeding any applicable malpractice insurance coverage and any applicable umbrella coverage by more than One Million

Dollars (\$1,000,000.00) shall be rendered against Tenant or any subtenant, and either (A) enforcement proceedings shall have been commenced by any creditor upon such award or judgment or (B) such award or judgment shall continue unsatisfied and in effect for a period of sixty (60) consecutive days without an insurance company reasonably satisfactory to Landlord having agreed to fund such award or judgment in a manner reasonably satisfactory to Landlord, or (C) such award or judgment has been appealed and without a bond having been posted to cover such amount that cancels any insurance coverage, and in any case such award or judgment shall, in the reasonable opinion of Landlord, have a material adverse effect on the ability of Tenant or any subtenant to operate the Facility.

(xii) upon the denial, refusal to issue, or loss of any licenses, certifications, certificates, approvals, permits, variances, waivers, provider agreements and other authorizations necessary or required for Tenant to operate the Facility in accordance with the requirements of this Lease;

(xiii) if any of the representations or warranties made by Tenant under this Lease or any subtenant under its Sublease or otherwise proves to be untrue when made in any material respect;

(xiv) if any Governmental Authority having jurisdiction over the operation of the Facility removes ten percent (10%) or more of the patients or residents who reside in the Facility for violations of standards of care;

(xv) Tenant fails to give Landlord and Mortgagee timely notice or timely deliver copies of documents within the times required under Section 3.4 (e) through (i);

(xvi) Tenant's receipt of notice of an allegation or determination of "immediate jeopardy" (as such term is customarily used) or equivalent notice from any Governmental Authority or officer, acting on behalf thereof relating to the Facility;

(xvii) Tenant's receipt of notice of the freeze on admissions or the imposition of a denial of payment for new admissions or equivalent notice from any Governmental Authority or officer acting on behalf thereof relating to the Facility;

(xviii) Tenant's breach of its obligations under Section 3.5 including Tenant's failure to execute and deliver to Landlord within seven days of its request therefore any and all documents, certificate or agreement required or reasonably requested by Landlord, a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender or the Commissioner, including confirming the subordination required hereunder;

(xix) Tenant's breach of its obligations under Section 3.6 Management Agreement;

(xx) Tenant's breach of its obligations under Section 7.6 Security Agreement;



(xxi) Tenant fails to notify Landlord within twenty-four (24) hours after receipt of any notice from any Governmental Authority, terminating or suspending or threatening termination or suspension of any material license or certification relating to the Facility;

(xxii) a default beyond any applicable notice and cure periods under any Sublease, operating agreement, management agreement or any other material agreement relating to the Leased Premises or to which Landlord and Tenant are a party;

(xxiii) the creation of any indebtedness relating to the Leased Premises (other than trade payables which are not more than 30 days past due, not evidenced by a note and not in excess of One Million Dollars \$1,000,000.00);

(xxiv) the amendment, modification, restatement, termination or cancellation of any material contract relating to the Leased Premises, including but not limited to any Sublease, without Landlord's prior written consent, which consent shall not be unreasonably withheld;

(xxv) default or breach by Guarantor under the Guaranty beyond the expiration of any applicable cure period contained therein;

(xxvi) failure by Tenant to deposit all or any portion of the Security Deposit or Letter of Credit or to replace any portion of the Security Deposit or Letter of Credit utilized by Landlord;

(xxvii) a default or breach of any of the provisions set forth in Article XIX;

(xxviii) Tenant violates any term, covenant or condition of Tenant's Regulatory Agreement (with respect to a HUD financing) which violation is not cured within thirty (30) days of written notice to Tenant;

(xxix) a default or breach of the provisions set forth in Section 7.4(h) or a report required by Section 7.4 proves to be untrue in any material respect;

(xxx) any act or omission by Tenant or any Subtenant referenced in Section 7.4 that constitutes a default by Landlord under its loan documents with Mortgagee;

(xxxi) Tenant's failure to meet the covenants provided in Section 7.4 (q)

(xxxii) the sale or transfer or attempted sale or transfer of all or any portion of any certificate of need, bond or unit right or other similar authorization relating to any portion of the Facility or the Leased Premises, assignment or subletting in violation of the provisions of Section 15.3;

(xxxiii) the use of any portion of the Premises other than for the Intended Use;

(xxxiv) the Facility appears on the Special Focus Facility List, or similar list established by CMS;

(xxxv) Tenant fails to procure the insurance coverage, or loss of the insurance coverage, required by this Lease;

(xxxvi) Tenant enters into any corporate integrity agreement, settlement or consent decree, or deferred prosecution agreement with any Governmental Authority;

(xxxvii) Any Governmental Authority assesses a fine or penalty against, or with, Tenant that imposes a payment or fine upon Tenant in excess of \$75,000;

(xxxviii) The conviction of, or plea of no contest or nolo contendere by, Tenant or any member or beneficial owner of Tenant with respect to (1) any felony or (2) any misdemeanor that involves any act of fraud, embezzlement, theft or misappropriation;

(xxxix) Tenant fails to comply with its obligations in Section 18.1(i) within 10 days after written notice from Landlord; or

(xl) Tenant or any Subtenant fails or refuses to execute estoppel certificate required pursuant to Section 20.1, or otherwise complying with the requirements of Section 2.3 within ten (10) days after Tenant's receipt thereof.

Upon the occurrence of a Lease Default, Landlord, may, if Landlord so elects, upon five (5) days written notice of such election, forthwith terminate this Lease and Tenant's right to possession of the Leased Premises and, at Landlord's sole and absolute discretion, accelerate the payment of all Rent for the balance of the Term and declare the same presently due and payable in full provided, however, that with respect to a Lease Default under Section 16.1(b)(iv), this Lease shall automatically terminate. In the event of such Lease termination, Tenant shall immediately pay Landlord the then present value of all such accelerated Rent. Landlord, in addition to all other remedies given to Landlord at law or in equity, may by written notice to Tenant, without terminating this Lease, cause Tenant to apply to the DOH to install a manager and/or management consultant and/or a receiver having the necessary approvals from Governmental Authorities, of Landlord's choice, at Tenant's sole cost and expense or to the extent permitted by applicable law, reenter the Leased Premises by summary proceedings or otherwise. In any event, upon a Lease Default, Landlord may require Tenant to consent to a so-called "Change of Ownership" and Landlord may dispossess Tenant upon approval of the Change of Ownership or Certificate of Need by DOH, it being the understanding that under no circumstances is this Lease to be an asset for Tenant's creditors by operation of law or otherwise. In the event of such reentry, Landlord may relet the Leased Premises without being obligated to do so, and in the event of a reletting may apply the Rent therefrom first to the payment of Landlord's cost and expenses, including consulting and/or expert and attorneys' fees and expenses incurred by reason of such Lease Default, and the cost and expense of reletting including, but not limited to, repairs, renovation, or alteration of the Leased Premises and then to the amount of Rent and all other sums due from or payable by Tenant hereunder. Tenant remaining liable for all other sums due from or payable by Tenant hereunder and for any deficiency. Tenant shall also be liable for and indemnify Landlord against all amounts owed to

Medicare, Medicaid, all applicable third-party payer programs, third party payors, or residents, including, but not limited to, any overpayments received by Tenant, relating to the Term. Any and all such deficiencies shall constitute Additional Rent hereunder and shall be payable by Tenant monthly on the date herein provided for the payment of Rent. In addition to the foregoing remedies, Landlord shall immediately be entitled to retain the Security Deposit and draw on; and retain proceeds of the Letter of Credit, and thereafter Tenant shall have no further claim, right, title or interest therein to the extent of Landlord's claims only.

Landlord acknowledges that its rights of reentry onto the Leased Premises set forth in this Lease do not confer on Landlord the authority to operate a nursing facility as defined in Article 28 of the Public Health Law on the Leased Premises and agrees that except in the event of a Lease Default Landlord will give the DOH, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of its intent to reenter the Leased Premises or to initiate dispossession proceedings or that the Lease is due to expire at least thirty (30) days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least sixty (60) days before expiration of the Lease.

Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossession proceedings and sixty (60) days prior to the expiration of the Lease, Tenant shall immediately notify by certified mail the DOH, Tower Building, Empire State Plaza, Albany, NY 12237 (or its then current address), of the receipt of such notice or service of such process or that the Lease is about to expire.

(b) Except as provided in this Lease to the contrary, Rent and other sums not paid when due (unless paid within any applicable grace period) shall bear interest from the date when the same are first payable under the terms of this Lease until the same shall be paid at an annual rate of interest equal to the Overdue Rate.

(c) Upon the filing of a petition by or against Tenant pursuant to the Bankruptcy Code, Tenant, as debtor and as debtor-in-possession, and any trustee who may be appointed shall: (i) timely perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (ii) pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Leased Premises an amount equal to the Rent and other charges otherwise due pursuant to this Lease; and (iii) reject or assume this Lease within one hundred twenty (120) days after the filing of such petition under the Bankruptcy Code or within such time period as the Bankruptcy Code may allow. Tenant, as debtor and as debtor-in-possession and any trustee shall be deemed to have rejected this Lease in the event of the failure to comply with any of the above. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor, in the event of assumption and/or assignment is the prior written consent of any mortgagee to which this Lease has been assigned as collateral security.

(d) In the event of termination of this Lease by reason of any Lease Default by Tenant, or upon the expiration of the Term, then, and in any of such events, Tenant, upon Landlord's written request, shall to the greatest extent permitted by law, transfer to Landlord or its designees or assigns, or cause its Subtenants and/or Affiliates, to transfer to Landlord or its designees or assigns, the following: (i) all federal, state or municipal licenses,

certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements (including non-governmental) and other authorizations which relate to the operation of the Facility; and (ii) the name of the Facility as then commonly known to the general public. Tenant shall also prepare and file all notices required by applicable law in connection with such termination and shall also prepare and timely file all final Medicare and Medicaid cost reports. In the event Tenant fails or refuses to transfer any such licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, other authorization or trade name, then this provision shall constitute an act of assignment by Tenant to Landlord or its assigns without the necessity of any further written instrument. For this purpose, Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to complete or undertake such replacements in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

(c) Landlord shall have the option of taking over the operation of the Facility, or having the operation of the Facility taken over by a designee, in the event of a termination of this Lease for any reason, without Landlord or designee assuming any of Tenant's liabilities or obligations, including Tenant's liabilities and obligations with respect to employees, such as vacation, sick leave, health insurance and pension liabilities and Tenant's obligations under applicable law to offer and provide group health continuation coverage. Landlord shall give Tenant written notice of Landlord's intent to exercise the right set forth above, in which event, upon the approval of the DOH of the Change of Ownership, Tenant shall and shall cause the Subtenant to immediately turn over possession and control of the Facility without any further action having to be taken on the part of Landlord. At the request of Landlord, Tenant shall and shall cause the Subtenant to turn over any or all of inventories, personal property (including computer and telecommunications equipment but excluding any leased equipment) vehicles, and material contracts (including hospital, transfer, vendor, and managed care contracts).

(f) No failure of Landlord to enforce any rights or remedies upon default of Tenant shall prejudice or affect the rights of Landlord upon any subsequent or similar default.

(g) In the event of a Lease Default by Tenant of any of the terms, covenants, conditions or provisions of this Lease, which Lease Default is not cured within any applicable grace or cure period, Landlord shall have the right to invoke any remedy permitted to Landlord at law, in equity or otherwise. All remedies available to Landlord are declared to be cumulative and concurrent and the exercise of one shall not preclude or waive the right to exercise any other. No termination of this Lease and no taking or recovering of possession of the Leased Premises shall deprive Landlord of any of its remedies or actions against Tenant and Tenant shall remain liable for all past or future Rent, including all taxes, insurance premiums and all other charges and Rent payable by Tenant under this Lease, during and for the balance of the Term hereof. The bringing of any action for Rent or other default shall not be construed as a waiver of the right to obtain possession of the Premises.

(h) If suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent, or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and breach shall be established, Tenant shall pay to Landlord all expenses,

including reasonable attorney fees, incurred therefor. (This subsection shall survive termination of this Lease.

**Section 16.2 Facility Operating Deficiencies.** On written notice of a request therefor by Landlord to Tenant, upon a Lease Default and for a period of time necessary to fully remedy the Lease Default, Tenant shall engage the services of a consultant, unaffiliated with Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to review the management of the facility for the purpose of making recommendations to remedy the Lease Default. Subject to applicable legal requirements governing confidentiality of patient records, the consultant shall have complete access to the Facility, its records, offices and facilities, in order that it may carry out its duties. Tenant shall cause such consultant to prepare and deliver to Landlord and Tenant a written report of its recommendations within ten (10) days after its engagement. If Tenant shall fail to designate a consultant approved by Landlord as provided above within five (5) days after Tenant's receipt of Landlord's notice, Landlord may designate such consultant by further notice to Tenant. Tenant shall be responsible for payment of all fees and expenses reasonably charged and incurred by the consultant in carrying out its duties. Tenant shall promptly implement any and all reasonable recommendations made by such consultant in order to promptly correct or cure the Lease Default; provided, however, that in no event shall Tenant implement any such recommendations if the same would constitute a violation of applicable legal requirements, violate any rule or regulation of the DOH, or would otherwise cause a Lease Default hereunder (e.g., a transfer or change in use of the Leased Premises), unless Landlord consents in writing to such Lease Default, which consent may be given or withheld in Landlord's sole and absolute discretion. Nothing herein shall impose any liability or obligation on Landlord to (a) request the appointment of a consultant or (b) otherwise remedy the Facility Operating Deficiency(ies) nor shall it deem Landlord an operator of the Facility.

**Section 16.3 Receivership.**

Tenant acknowledges that one of the rights and remedies available under applicable law for nursing facilities which fail to comply with the conditions of participation for Medicaid or Medicaid is to apply to a court of competent jurisdiction for the appointment of a receiver to take possession of the Facility, to collect the rents, issues, profits and income of the Facility and to manage the operation of the Facility. Tenant further acknowledges that the revocation, suspension or material limitation of the certification of the Facility for provider status under Medicare or Medicaid (or successor programs) and/or the revocation, suspension or material limitation of a license relating to the operation of the Facility for its intended use under the laws of the State of New York will materially and irreparably impair the value of Landlord's investment in the Facility. Therefore, in the event of a Lease Default, and in addition to any other right or remedy of Landlord under this Lease, at the request of Landlord, Tenant shall request DOH to, or to the extent permissible under law, Tenant shall, petition any appropriate court, for the appointment of a receiver to take possession of the Facility, to manage the operation of the Facility under Tenant's licenses and certifications, to collect and disburse all rents, issues, profits and income generated thereby and to preserve or replace to the extent possible any such license and provider certification for the Facility or to otherwise substitute the licensee or provider thereof. The receiver shall be entitled to a reasonable fee for its services as a receiver. All such fees and other expenses of the receivership estate shall be added to the

monthly Rent due to Landlord under this Lease as Additional Rent. Tenant hereby irrevocably stipulates to the voluntary appointment of a receiver under such circumstances and for such purposes and agrees not to contest such appointment.

Section 16.4 Tenant's Waiver, Mitigation. In connection with the exercise by Landlord of any of its remedies under this Section 16, including the termination of this Lease, in whole or in part, Tenant waives, to the maximum extent permitted by applicable Laws, (1) any right of redemption, re-entry or repossession, (2) the benefit of any moratorium laws or any laws now or hereafter in force exempting property from liability for rent or for debt, (3) any duty on the part of Landlord to mitigate the damages recoverable from Tenant on account of any Lease Default by Tenant, except that, notwithstanding the foregoing or anything in this Lease to the contrary, Landlord agrees to comply with any duty to mitigate damages where applicable Laws do not allow Tenant to waive such right, (4) the right to interpose any counterclaim (other than compulsory counterclaims) in any summary proceeding instituted by Landlord against Tenant in any court or in any action instituted by Landlord in any court for unpaid Rent under this Lease, and (5) any other right provided to Tenant under applicable Laws relating to a breach of or Lease Default under this Lease, including any rights to cure such breach or Lease Default.

ARTICLE XVII

ENTRY AND REIMBURSEMENT RIGHTS OF LANDLORD

Section 17.1 Entry and Reimbursement Rights of Landlord. In addition to those rights set forth in Section 7.2 of this Lease, Landlord reserves the right at all reasonable times during business hours and upon at least twenty-four (24) hours' advance oral notice to go upon and inspect the Facility and every part thereof (subject to applicable Laws pertaining to patient confidentiality and privacy and the confidentiality of medical records). If Landlord shall make any payments or perform any repairs on behalf of Tenant which are Tenant's obligation and which Tenant has failed to make after applicable notice from Landlord, then any reasonable amounts so paid by Landlord are agreed and declared to be Additional Rent, and shall be due and payable to Landlord by Tenant upon submission to Tenant of an invoice, bill, or statement therefor, together with interest charged at the Overdue Rate commencing on the date of such invoice, bill, or statement. Nothing in this Section 17.1 shall impose any liability or obligation upon Landlord.

ARTICLE XVIII

REPRESENTATIONS AND WARRANTIES

Section 18.1 Tenant's Representations, Warranties and Additional Covenants. Tenant represents, warrants and covenants to Landlord and agrees (all of which shall survive the delivery and execution of this Lease) as follows (all of Tenant's representations, warranties, and covenants shall be deemed to include, in addition to that specified herein, the identical warranties, representations, and covenants of all Subtenants, which Tenant agrees to set forth in any Sublease and which are hereby incorporated herein by reference as if set forth in full herein):

(a) Corporate. Tenant is a limited liability company duly formed and validly existing and in good standing under the laws of the State of New York, and has the limited liability company power and authority to own its property and assets and to carry on its business as now being conducted or as will be conducted on and after the Commencement Date.

(b) No Breach of Statute or Contract. The execution, delivery and performance of this Lease by Tenant and any Sublease by a subtenant will not breach any statute or regulation of any Governmental Authority, and will not as of the Commencement Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of Tenant's articles of organization, operating agreement, other material agreements, or any order, writ, injunction, decree, agreement or instrument to which Tenant is a party, or by which it or its property may be bound.

(c) Authorization of Lease. The execution, delivery and performance of this Lease, and all Subleases, has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Tenant and this Lease constitutes the valid and binding obligation of Tenant, fully enforceable in accordance with its terms.

(d) No Litigation or Adverse Events. Except as set forth on Schedule 18.1(d) attached hereto and incorporated herein, there is no suit, claim, action or legal, administrative, arbitration, or other proceeding, or governmental investigation pending or threatened, by or against Tenant, and there exists no event or condition of any character, which could prevent the consummation of the transactions contemplated by this Lease or materially adversely affect Tenant's performance of the terms and conditions hereunder.

(e) Conduct of Business. Subject to the express provisions herein, at all times after the Effective Date, Tenant shall, and cause its subtenants to (i) operate the Leased Premises (after the Commencement Date) and otherwise conduct its/their business in the ordinary course, and in compliance with all statutory and regulatory requirements of any federal, state or local authority, (ii) continue to operate the Leased Premises after the Commencement Date and maintain it in substantially its condition as of the Commencement Date, reasonable wear and tear excepted, including but not limited to repairs and replacements permitted or required under this Lease, and in a lawful manner, (iii) not encumber all or any portion of its assets or properties of the Leased Premises, including without limitation, certificates of need, bed rights, or provider agreements, (iv) preserve the goodwill of the Facility, (v) not take any action from an accounting perspective which would materially adversely affect the reimbursement formula or tax benefits with respect to the Leased Premises or any portion thereof, (vi) utilize the Leased Facility only for the Intended Purpose, (vii) not relinquish or attempt to transfer the location of or sell the skilled nursing facility license, certificate of need approval, Medicare or Medicaid certification or any other licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements or other authorizations, (viii) not refuse to admit patients without 30 days' written notice of intent to, and prior written consent of, Landlord, (ix) not dissolve, merge or consolidate with or into any other person or entity, or otherwise change its identity or company or capital structure, or (x) not change its name or its business address.

(f) Continued Existence. At all times on and after the Effective Date, Tenant shall cause to be done all things needed to preserve its rights and franchises and comply with all Laws applicable to it, and to continue to conduct its business in the ordinary course.

(g) Payment of Obligations. At all times on and after the Effective Date, Tenant shall timely pay, and cause its subtenants to timely pay, all of its obligations, indebtedness, taxes, charges and impositions, whether or not relating to the Leased Premises or this Lease, as they become due unless contested in good faith and diligently pursued only if permitted under and subject to the terms and conditions of this Lease.

(h) Notice of Default. At all times on and after the Effective Date, Tenant shall promptly notify Lessor of (i) any material default by Tenant relating to any indebtedness or obligation of Tenant, whether or not relating to the Leased Premises or this Lease, and (ii) any material violations by the Facility of any applicable Law.

(i) Compliance with Law. At all times on and after the Effective Date, Tenant shall comply in all respects, and cause its subtenants to comply in all respects, with all applicable Laws, including Medicare and Medicaid conditions of participation, to which it is subject or which are applicable to the Leased Premises and to Tenant's operation of the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility.

(j) Beds and CON. Tenant has been awarded a CON for construction and operation of 160 skilled nursing facility beds for use at the Lease Premises by DOH and such CON may be used in connection with this Lease.

(k) Tenant, on behalf of itself and its Subtenants, makes the Health Care warranties and representations set forth in Schedule 1A(k) attached hereto and incorporated herein, to Lessor, its successors and assigns, which warranties and representations shall be true and correct as of Commencement Date and at all times during the Term.

(l) Except for the Subleases of the Leased Premises to the Operators, there are no subleases or sub-subleases or occupancy agreements (other than residence agreements with patients or residents) for any portion of the Leased Premises.

(m) Tenant shall maintain and comply at all times with all O&M Plans (Operation and Maintenance Plans covering the handling, treatment or maintenance of asbestos or Hazardous Materials) relating to the Leased Premises, or that shall be required in the future by Mortgagee or any HUD mortgagee or, where applicable, the Commissioner.

(n) Obligations prior to Commencement Date. In addition to all of Tenant's obligations provided in this Lease, Tenant shall:

(i) as soon as practical after the Effective Date, apply for all and vigorously pursue until obtained all Health Care Licenses;

(ii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain from DOH the maximum total project cost for the Facility approvable by DOH;



(ii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain the highest possible reimbursement rate with respect to the Medicare and Medicaid programs;

(iv) as soon as practical after the Effective Date, apply for and vigorously pursue until obtained provider agreements with third party payors providing reimbursement for skilled nursing facility services in the geographic area of the Facility;

(v) after the Effective Date take all actions requested by Landlord in order for Landlord to finance and complete Landlord's Work;

(vi) as soon as practical prior to the Commencement Date, hire, employ and train a staff adequate to provide services to the residents of the Facility immediately after the Commencement Date;

(vii) as soon as practical prior to the Commencement Date, purchase a sufficient inventory of food, medicines and other perishable items necessary to provide services to the residents of the Facility immediately after the Commencement Date;

(ix) as soon as practical prior to the Commencement Date, purchase and deliver to the Facility all small wares necessary provide services to the residents of the Facility immediately after the Commencement Date;

(x) six months after the Effective Date and thereafter every six months until the Commencement Date, deliver to Landlord a detailed projected statement of income and expenses and cash flow for a three year period.

Section 18.2 Representations and Warranties. Landlord hereby represents and warrants to Tenant, all of which shall survive the delivery and execution of this Lease, and agrees, as follows:

(a) No Breach of Statute or Contract. The execution, delivery, and performance of this Lease will not violate any provision of law, any order of any court or other agency of federal or state government or any provision of any indenture, agreement, or other instrument to which Landlord is a party or by which it or any of its properties or assets are bound; conflict with, result in a breach of, or constitute (with passage of time or delivery of notice, or both), a default under any such indenture, agreements or other instrument, or result in the creation or imposition of any lien or other encumbrance of any nature whatsoever upon any of the properties or assets of Landlord.

(b) Authorization of Lease. This Lease has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Landlord and this Lease constitutes the valid and binding obligation of Landlord, fully enforceable in accordance with its terms.

(c) No Litigation or Adverse Events. There is no action, suit, examination, review, or proceeding by or before any governmental instrumentality or agency now pending or, to the knowledge of Landlord, threatened against Landlord, which, if adversely determined,



would materially impair the right of Landlord to carry on the business as contemplated under this Lease.

(d) No Default. Landlord is not in default in the performance, observation, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which it is a party relating to the Leased Premises and which default would have a material adverse affect on the Leased Premises; and

(e) Corporation. Landlord is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of New York and is qualified to do business in the State of New York, and has the limited liability company power and authority to own its properties and assets and to carry on its business as now being conducted.

ARTICLE XIV

OPERATION, MERGER AND CONSOLIDATION RESTRICTIONS

Section 19.1 Intentionally Omitted

Section 19.2 SPE Provisions. At all times during the term of this Lease, Tenant represents, warrants and covenants that Tenant and each Subtenant, and all successors and assigns of Tenant and Subtenants, is, shall be and shall continue to be a "Special Purpose Entity" as defined in Schedule 19.2. The Operating Agreement of Tenant and each subtenant shall include the Special Purpose Entity provisions set forth in Schedule 19.2.

Section 19.3 Injunctive Relief. Notwithstanding anything to the contrary set forth in this Lease, the Parties hereto understand and agree that: (a) each term of Article XIX of this Lease is fully required to protect Landlord's interests, and that no such term confers a benefit on Landlord that is disproportionate to the detriment imposed on Tenant, if any; (b) the remedy at law for any breach by Tenant of Article XIX would be inadequate; (c) the damages flowing from such breach are not readily susceptible to measurement in monetary terms; and (d) Landlord shall be entitled to immediate injunctive relief restraining any breach thereof. Nothing in this Agreement shall be deemed to limit Landlord's remedies at law or in equity for any such breach by Tenant of any term or provision of Article XIX of this Lease.

Section 19.4 Equity Interests. In the event that Tenant or any constituent entity under this Lease is ever a form of entity other than a limited liability company, the term "membership interest" as used in Articles XIX and XX hereof shall be deemed to mean the analogous form of equity ownership interest in such other type of entity, such as capital stock, partnership interest, beneficial interest or the like.

Section 19.5 No Merger or Consolidation. Except as expressly provided elsewhere in this Lease, Tenant shall not sell, or offer for sale, its assets or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity other than selling non-material assets in the ordinary course of business, to any other entity, business or activity involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and

representatives. Except as expressly provided elsewhere in this Lease, Tenant, Subtenants, Contractor(s) and their Affiliates, shall not sell or offer to sell, assign, transfer, convey, pledge, or encumber its/their membership interests to, or otherwise attempt to merge with or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity, business or activity, whether involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns and their respective successors, assigns, agents and representatives, or otherwise.

ARTICLE XX  
MISCELLANEOUS

Section 20.1 GOVERNING LAW. (a) ALL MATTERS PERTAINING TO THIS LEASE OR THE LEASED PREMISES SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS LEASE, AND THIS LEASE SHALL BE GOVERNED BY AND CONSTRIED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LANDLORD OR TENANT ARISING OUT OF OR RELATING TO THIS LEASE MAY AT LANDLORD'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF WHITE PLAINS, COUNTY OF WESTCHESTER, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND TENANT WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TENANT HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. TENANT DOES HEREBY DESIGNATE AND APPOINT:

Lizer Josefoyle  
HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, New York 10520

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO TENANT IN THE MANNER PROVIDED IN ARTICLE XIII OF THIS LEASE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON TENANT IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE

STATE OF NEW YORK. TENANT (A) SHALL GIVE PROMPT WRITTEN NOTICE TO LANDLORD OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE, IN THE FORM OF A WRITTEN NOTICE TO LANDLORD, A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN WHITE PLAINS, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR AND NOTIFY LANDLORD IN WRITING OF SUCH SUBSTITUTION.

Section 20.2 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Lease shall not operate as, or be construed to be a waiver of, any subsequent breach of the same or other provision hereof. No waiver shall be effective unless set forth in writing and signed by the party against whom such waiver is asserted.

Section 20.3 Delay Not a Waiver. Neither any failure nor any delay on the part of any party hereto in insisting upon strict performance of any terms, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or any other document or instrument entered into or delivered in connection herewith or pursuant hereto, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. A waiver of one default with respect to any Person shall not be construed to be a waiver of any subsequent default with respect to such Person or any other Person or to impair any remedy, right or power consequent thereon.

Section 20.4 Force Majeure. Neither party shall be liable nor deemed to be in default (other than monetary defaults) for any delay or failure in performance under this Lease or other interruption of service or employment deemed resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Parties' employees, or any similar or dissimilar cause beyond the reasonable control of either party ("Force Majeure").

Section 20.5 Severability. In the event any provision of this Lease is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Lease so long as the intent of the parties under this Lease can still be effected, which shall remain in full force and effect and enforceable in accordance with its terms.

Section 20.6 Entire Agreement; Amendments. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such Parties are merged into and expressed in this instrument, and any and all prior agreements between such Parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Landlord and Tenant.

Section 20.7 Counterpart Reception; Electronic Execution. This Lease may be executed in any number of counterparts with the same effect as if the Parties hereto had signed the same document. All counterparts will be construed together and shall constitute one lease. Signatures transmitted by email or PDF's shall have the same effect as original signatures.

Section 20.8 Survival of Representations and Warranties. Except as specifically provided otherwise in this Lease, all representations and warranties of Landlord and Tenant shall survive the Term of this Lease.

Section 20.9 Use of Brokers. Landlord and Tenant each represent and warrant to the other that no broker, finder or other person has been involved in regard to this Lease. Landlord and Tenant hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind (including the injured party's reasonable attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of a party to this Lease in connection with the transactions contemplated herein. The provisions of this Section 20.9 shall survive the expiration and termination of the Lease.

Section 20.10 Owner for Federal Tax Purposes. It is hereby agreed between Landlord and Tenant that for federal, state and local income tax purposes Landlord will be the owner of the Leased Premises and Tenant will be the lessee thereof, and each party hereto agrees to characterize this Lease as a lease for federal, state and local income tax purposes and to file all tax returns consistent therewith.

Section 20.11 Estoppel Certificates. Tenant shall, without charge, at any time and from time to time, within ten (10) days after written request by Landlord or Mortgagee, deliver a written instrument to Landlord or any other person specified by Landlord, duly executed and acknowledged, certifying the following and such other matters as may be reasonably required by Landlord, including without limitation, current financial information relating to Tenant:

- (a) That Tenant has accepted and is in possession of the Leased Premises;
- (b) That this Lease is unmodified and in full force and effect or, if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
- (c) Whether or not there are then existing any setoffs or defenses in favor of Tenant against the enforcement of any of the terms, covenants, and conditions of this Lease by Landlord and, if so, specifying the same, and also whether or not Landlord has observed and performed all of the terms, covenants, and conditions on the part of Landlord to be observed and performed and, if not, specifying same;
- (d) That no Lease Defaults exist or are continuing; and
- (e) The dates to which Rent and all other charges hereunder have been paid.



Section 20.12 Confidentiality. (c) Landlord and Tenant agree to keep all aspects of (but not the existence of) this Lease confidential, and shall not disclose to any person other than the members, managers, owners, directors, officers, employees, agents, advisors, affiliates, brokers, lenders, attorneys or accountants (collectively the "Representatives") of the Parties hereto on a need-to-know basis, or to any Governmental Authority pursuant to regulatory authority, any confidential or proprietary information, knowledge or data concerning the business, affairs, operations, secrets, dealings or finances of the other party furnished directly or indirectly by such other party (collectively referred to as the "Confidential Information"). As used in this Lease, the term "Confidential Information" does not include any information which: (i) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by either party or their Representatives); (ii) was available to either party on a non-confidential basis from a source other than a party to this Lease or its Representatives, provided that such source is not, and was not bound by a confidentiality agreement with the party hereto; (iii) has been independently acquired or developed by either party or their Representatives without violating any of the obligations hereunder; (iv) is required by law to be disclosed; or (v) relates to the tax structure, tax strategy or tax planning of this transaction.

(f) In the event that either party or any of the Representatives receives notice of a legal request for disclosure of any of the Confidential Information (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), the party receiving such notice ("Receiving Party") shall promptly notify the other party ("Notified Party") so that the Notified Party may seek a protective order or other appropriate remedy if it chooses to do so. Failure by the Notified Party to take action to seek a protective order or other remedy and to notify the Receiving Party of such action prior to the required disclosure date, shall be deemed a waiver of the provisions of this section. In the event that a protective order or other remedy is not obtained or that the Notified Party waives compliance with the provisions hereof, the Receiving Party shall exercise its best efforts to obtain a confidentiality agreement or protective order concerning the Confidential Information, and in the absence thereof, shall disclose only that portion of the Confidential Information which it is advised by written opinion of counsel is legally required to be disclosed, or which is compelled by court order.

(g) In the event of any breach or threatened breach hereof, Landlord or Tenant shall be entitled to equitable relief, including a temporary preliminary and permanent injunction and specific performance, in addition to all other remedies available to them at law or in equity.

(h) Notwithstanding anything herein to the contrary, Landlord (and each employee, agent, or other Representative of Landlord) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of this Lease, related documents and all materials of any kind (including opinions or other tax analyses) that are provided to Landlord relating to such tax treatment and tax structure. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income tax treatment of the transaction and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of the transaction.

Section 20.13 Holdover. If, at the expiration of the Term, or earlier termination of the Lease, Tenant continues to occupy the Leased Premises except during a Reimbursement Period, with Landlord's consent, such holding over shall not constitute a renewal of this Lease, but Tenant shall be a Tenant from month-to-month at 300% of the most recent Rent payable by Tenant hereunder, at Landlord's sufferance, and under the same terms and conditions as were in force and effect at the expiration of the Term (except only as to the Term), and except that in the event Tenant shall continue to occupy the Leased Premises after the expiration of the Term, without a duly executed extension agreement in writing having been entered into by and between Landlord and Tenant, then if Landlord shall suffer any damage, loss, cost or expense as a result of such holdover, then Tenant, in addition to such increased Rent, shall pay the amount thereof to Landlord immediately on demand. The provisions of this Section shall be deemed to be "an agreement expressly provided" otherwise as provided in Section 232-C of the Real Property Law of the State of New York, Holding Over. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the Expiration Date or earlier termination of this Lease, nor shall anything contained herein be deemed to limit Landlord's remedies.

Section 20.14 Tenant's Waiver of Claim for Physical Injury. Landlord and Landlord's Indemnitees shall not be liable for, and Tenant waives and indemnifies Landlord and Landlord's Indemnitees against all claims for, damage or injury to person or property sustained by Tenant or any person claiming through Tenant, or otherwise, resulting from any accident or occurrence in, about, or upon the Leased Premises, whether occurring as a result of Landlord's active or passive negligence, or otherwise.

(a) Such waiver shall include, but not be limited to, claims for damage resulting from: (i) any equipment or appliances becoming out of repair or any other capital improvement, replacement, repair or maintenance; (ii) injury done or occasioned by wind; (iii) any defect in or failure of plumbing, heating, or air conditioning equipment, electric wiring, gas, water and steam pipes, stairs, rail or walks; (iv) broken glass; (v) the backing up of any sewer pipe or washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Leased Premises; (vi) the escape of steam or hot water; (vii) water, snow or ice being upon, falling from or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Leased Premises; (viii) the falling of any fixture, plaster, drywall or stucco; and (ix) any act, omission or negligence of trespassers.

Section 20.15 Binding Effect. This Lease does not constitute an offer to lease and shall not bind Landlord or Tenant unless and until each such party elects to be bound hereby by executing and delivering to the other party an executed original counterpart hereof.

Section 20.16 Default by Landlord. Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within sixty (60) days of when they are due to be performed, except in cases when documents are required or consents needed in less than sixty (60) days in which case failure to render timely shall be deemed to be approval or consent of Landlord (or such additional time as is reasonably required to correct any such default) except for Landlord's default in making timely payment of taxes and interest, in which case Landlord shall be in default when such payments are delinquent or past due. Tenant agrees to give to the

holder of record of any mortgage covering the Leased Premises notice simultaneously with any notice given to Landlord to correct any default of Landlord as hereinabove provided and agrees that the holder of record of any mortgage shall have the right, after receipt of notice of such default, within sixty (60) days after the expiration of Tenant's applicable cure period with respect thereto, to correct or remedy such default before Tenant may take any action under this Lease by reason of such default. Landlord shall also give to the holder of any mortgage copies of any notices of default which it may give or send to Tenant.

Section 20.17 Liens. Tenant shall not do or suffer anything to be done whereby the Leased Premises, or any portion thereof, or any interest therein, may be encumbered by any liens of mechanics, laborers, or materialmen, chattel mortgages or any other liens. Tenant shall, whenever and as often as any such liens are filed against the Leased Premises, or any portion thereof, purporting to be for labor or material furnished or to be furnished to Tenant, discharge the same of record within thirty (30) days after the date of filing by payment, bonding or otherwise, as provided by law. In the event of the default of Tenant in procuring the discharge, as aforesaid, of any such lien, Landlord may, with five (5) days prior notice, procure such discharge and the expenses incurred by Landlord in obtaining such discharge shall be paid by Tenant as Additional Rent within ten (10) days after notice from Landlord of the amount thereof.

Section 20.18 Publicity. All news releases, publicity or advertising by Tenant or their Affiliates through any media intended to reach the general public which refers to Landlord, or its Affiliates, this Lease or the purchase of the Real Property shall be subject to the prior written approval of Landlord.

Section 20.19 Trial by Jury. TENANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS LEASE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TENANT.

Section 20.20 Construction and Interpretation. The Parties have each negotiated the terms and conditions hereof and reviewed this Lease carefully. It is the intent of the Parties that each word, phrase, sentence and other part hereof shall be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part hereof against the draftsman, by virtue of being the draftsman, shall not apply.

Section 20.21 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than shall be due hereunder, shall be deemed to be other than a payment on account nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be given any effect or be deemed an accord and



satisfaction, and Landlord may accept such checks without prejudice to any other rights or remedies which Landlord may have.

**Section 20.22 Captions and Headings.** The captions and headings set forth in this Lease are included for convenience and reference only, and the words obtained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of, or the scope or intent of, this Lease, or any parts hereof or thereof.

**Section 20.23 Time is of the Essence** Time is of the essence of each and every term, condition, covenant and warranty set forth herein or in any of the other Lease Documents.

**Section 20.24 Successors and Assigns.** This Lease and the other Lease Documents shall (a) be binding upon Tenant and Tenant's legal representatives and permitted successors and permitted assigns, and (b) inure to the benefit of Landlord and any other person or entity who may now or hereafter hold the interest of Landlord under this Lease and their respective successors and assigns.

**Section 20.25 No Third Party Beneficiaries** This Lease is solely for the benefit of Landlord, its successors and assigns, and Tenant, and nothing contained herein shall confer upon any person other than Tenant or Landlord or their respective successors and assigns, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein, except only as may be otherwise specifically provided for in this Lease. All conditions to the obligations of Landlord to advance or make available proceeds of insurance or condemnation are imposed solely and exclusively for the benefit of Landlord, its successors and assigns. No other person or entity shall have standing to require satisfaction of such conditions in accordance with their terms, and no other person or entity shall, under any circumstances, be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Landlord at any time, if in Landlord's sole and absolute discretion, Landlord deems it advisable or desirable to do so.

**Section 20.26 Non-Competition and Non-Solicitation.**

Tenant agrees to the following restrictive covenants and agreements which covenants are not severable from this Lease and which are included to protect the value of the Leased Premises. Accordingly, Tenant agrees that it and their Affiliates will not, during the Term of this Lease at any time for a period of two (2) years after the expiration or early termination of this Lease, directly or indirectly, together or alone or in conjunction with any others, engage in the following:

- (i) compete with the business conducted at the Facility, and for those purposes will not own, manage, operate, join, control or participate in, or be connected as an officer, employee, partner, director, trustee or otherwise in any manner with a company which owns or operates (or provides consulting and/or management services to any skilled nursing facility located within the Primary Market of the Facility or (ii) any company providing hospice services in the Commonwealth of Massachusetts, or, otherwise lend credits to a person, firm or entity of a type which they prohibited from owning.

(ii) solicit or hire any then current or former (having provided services during the period commencing one year prior to such date of solicitation or hire) employees of the Facility (except for employment at the Facility),

(iii) solicit or cause any then current resident of the Facility to move to another nursing facility unless, except during the Term of this Lease the Facility can no longer provide adequate care for such resident.

Tenant acknowledges and agrees that the remedy at law for any breach or threat of breach of the foregoing agreements will be inadequate and that Landlord shall be entitled to injunctive relief in addition to any rights or remedies available to it for any breach or threat of breach hereof. The foregoing covenants shall be deemed to be severable and if the same be held invalid by reason of length of time or area covered, or both, the Tenant agrees that such length of time or area covered, or either of them, shall be reduced to the extent necessary to cure such invalidity and the provisions hereof shall be enforceable to the fullest extent permitted by law.

Section 20.27 Subdivision. If the Leased Premises are in excess of that which is required to operate the Facility in accordance with the Intended Use, Landlord may subdivide the Leased Premises and amend this Lease to include only so much of the Leased Premises as is necessary to operate the Facility in accordance with the Primary Intended Use. If Landlord subdivides the Leased Premises there shall be no change in the Rent payable hereunder. After any such subdivision, Tenant shall have no rights to any land which is no longer part of the Leased Premises and Landlord may sell, lease or develop any land which is no longer part of the Leased Premises. If Landlord elects to subdivide the Leased Premises Tenant shall cooperate with Landlord and take all actions reasonably requested by Landlord to effect such subdivision.

Section 20.28 Landlord Not in Control; No Partnership. None of the covenants or other provisions contained in this Lease shall, or shall be deemed to, give Landlord the right or power to exercise control over the affairs or management of Tenant, the power of Landlord being limited to the rights to exercise the remedies referred to in this Lease. The relationship between Tenant, on the one hand, and Landlord, on the other hand, is, and at all times shall remain, solely that of landlord and tenant. No covenant or provision of this Lease is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand. Landlord undertakes or assumes no responsibility or duty to Tenant or to any other person with respect to the Facility or this Lease, except as expressly provided in this Lease; and notwithstanding any other provision of this Lease (a) Landlord shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Tenant or its stockholders, members, or partners and Landlord never intends to ever assume such status; (b) Landlord shall not in any event be liable for any debts, expenses or losses incurred or sustained by Tenant; and (c) Landlord shall not be deemed responsible for or a participant in any acts, omissions or decisions of Tenant or their stockholders, members, or partners. Landlord, on the one hand, and Tenant, on the other hand, disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand, or any sharing of liabilities, losses, costs or expenses.

Section 20.29 Tenant Cooperating. Tenant agrees to cooperate with Landlord in providing, and upon request by Landlord or its lender, Tenant shall provide or cause its subtenants to provide, such documents, information, financial reports, and such other items as may be required by Mortgagee in connection with Landlord's loan or loans to acquire the Leased Premises. Tenant agrees to cause its outside counsel to provide updated healthcare opinions required by Mortgagee in connection with the healthcare operations by Tenant or its subtenants at the Facility, and if required by Mortgagee, an opinion of counsel as to the due formation of Tenant and its subtenants and due execution by said parties, and Tenant, Affiliates, of the Lease, all subleases, all guarantees of the Lease, and any other documents executed by such parties in connection with the loan(s) from Mortgagee to Landlord. Tenant agrees to execute, and cause the subtenants to execute, SNDAs in form and substance required by Mortgagee and by its prospective lender who will be making HUD-insured loans to Landlords. Tenant further agrees to cooperate with Landlord and with its lenders who are processing and will be making HUD Loans to Landlords.

Section 20.30 Capitalized Terms. To the extent capitalized terms used herein are not defined, they shall have the same meaning as capitalized terms in the Loan Documents.

Section 20.31 Affiliate. The term "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

## ARTICLE XXI

### REMEDIES CUMULATIVE

Section 21.1 The rights and remedies set forth under this Lease are in addition to all other rights and remedies afforded to Landlord under any of the other documents contemplated under this Lease ("Lease Documents") or at law or in equity, all of which are hereby reserved by Landlord, and this Lease is made and accepted without prejudice to any such rights and remedies. All of the rights and remedies of Landlord under each of the Lease Documents shall be separate and cumulative and may be exercised concurrently or successively in Landlord's sole and absolute discretion.

## ARTICLE XXII

### LIMITATION OF LIABILITY

Section 22.1 Liability. No member, manager, officer, shareholder, employee or agent of Landlord or its respective affiliates shall be held to any personal liability, jointly, or severally, for any obligations of, or claim against Landlord under this Lease. All persons dealing with Landlord, in any way, shall look only to the assets of Landlord for the payment of any sums or the performance of any obligations.

Section 22.2 Consequential Damages. Under no circumstances shall Landlord be liable to Tenant or any subtenant or Affiliate of Tenant for any consequential, specified, exemplary or permitted damages.

Section 22.3 Liability Limited to Interest in Premises. Tenant shall look solely to Landlord's interest in the Leased Premises owned by Landlord to satisfy any liability arising under this Lease. It is specifically agreed that no constituent partner in Landlord or officer, director, member, manager or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. Except as otherwise expressly provided herein, in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause.

### ARTICLE XXIII

#### REGULATORY ACTIONS

Section 23.1 Notice of Litigation. (a) Promptly after receipt by Tenant or its Affiliates of notice of the commencement thereof, Tenant shall provide Landlord with notice of all actions, suits, and proceedings before any Governmental Authority affecting Tenant, or its Affiliates or its Subtenants, which, if determined adversely to Tenant, its Affiliates or its Subtenants, could result in a judgment equal to or greater than Fifty Thousand Dollars (\$50,000.00).

(b) Notice of Regulatory Actions. Promptly after receipt by Tenant or its Affiliates of the notice of commencement thereof, Tenant shall provide Landlord with notice of (i) any audit, investigation, claim (excluding adjustments, complaints, and corrective activity in the ordinary course of business), proceeding, settlement, judgment, consent order, or corporate integrity agreement by or imposed by any Governmental Authority, (ii) any suspension, debarment or disqualification of Tenant, its officers and members, or its Affiliates from being a health care provider, government contractor, holder of any health care license or recipient of reimbursement from any third party payor, (iii) any suspension, termination, or revocation of any health care license of Tenant or any or any of Tenant's Affiliates or (iv) any self or voluntary disclosure of any overpayment to a third party payor by Tenant or any of Tenant's Affiliates.

(c) Notice of Settlement Negotiations. Tenant shall provide Landlord with reasonable notice of any and all settlement discussions and/or negotiations (excluding adjustments, complaints and corrective activity in the ordinary course of business) between representatives of Tenant and/or its Subtenants and any Governmental Authority, including without limitation negotiations with respect to any claim, settlement agreement, consent order or corporate integrity agreement between Tenant and its Affiliates and any Governmental Authority ("Settlement Discussions"). In connection with Settlement Discussions, (i) Tenant shall timely provide Landlord with copies of any and all documents that Tenant and/or its Subtenants intends to submit, or that Tenant and/or its Subtenants receives, in connection with any Settlement Discussions, and (ii) Tenant shall advise Landlord as to the status of the Settlement Discussions.

No receipt of any such notice under subsections (a), (b) and (c) shall impose any obligation on Landlord to take any action or to enforce its rights hereunder or otherwise remedy the circumstances leading to such notice.

ARTICLE XXIV

ANTI-TERRORISM AND ANTI-MONEY LAUNDERING COMPLIANCE

Section 24.1 Compliance with Anti-Terrorism Law Tenant represents and warrants to Landlord that it is not, and, after making due inquiry, that no person who owns a controlling interest in or otherwise controls Tenant is, (i) listed on the Specially Designated Nationals and Blocked persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (ii) a person (a "Designated Person") either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "Anti-Terrorism Laws". Tenant represents and warrants that it requires, and has taken reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Tenant is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section 24.1 shall not apply to any person to the extent that such person's interest in Tenant is through a U.S. Publicly-Traded Entity. As used in this Lease, "U.S. Publicly-Traded Entity" means a person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person.

Section 24.2 Funds Invested in Tenant. Tenant represents and warrants that it has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in Tenant, to assure that funds invested by such holders in Tenant are derived from legal sources ("Anti-Money Laundering Measures"). The Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq. ("BSA"), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, "Anti-Money Laundering Laws").

Section 24.3 No Violation of Anti-Money Laundering Laws. Tenant represents and warrants to Landlord, to its actual knowledge after making due inquiry, that neither Tenant nor any holder of a direct or indirect interest in Tenant (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties

under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

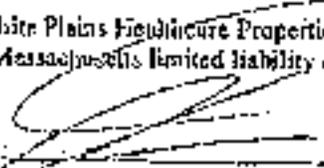
Section 24.4 Tenant Compliance with Anti-Money Laundering Laws. Tenant represents and warrants to Landlord that it has taken reasonable measures appropriate to the circumstances (in any event as required by law), to ensure that Tenant is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking.

[SEE ATTACHED SIGNATURE PAGES]

IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

White Plains Healthcare Properties I, LLC,  
a Massachusetts limited liability company

By:   
\_\_\_\_\_  
Manager

**TENANT:**

HBL SNF, LLC,  
a New York limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_





**SCHEDULE 18(k)**

**Health Care Representations**

Health Care Representations. Tenant, for itself, and for the Subtenants, do hereby represent and warrant to Landlord, its successors and assigns, as of the date of the Lease, that:

(a) All Medicare and Medicaid provider agreements, certificates of need, if applicable, certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by Health Care Authorities (as defined in the Lease) for the legal use, occupancy and operation of the Facility (collectively, the "Health Care Licenses") for the Facility have been obtained by the party required to hold such Health Care Licenses and are in full force and effect, including approved provider status in any approved third-party payor program. Each Subtenant (hereinafter "Operator") owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all such Health Care Licenses and will operate or cause the Facility to be operated in such a manner that the Health Care Licenses shall remain in full force and effect;

(b) The Facility is duly licensed as a skilled nursing facility as required under the applicable laws of the State of New York. The licensed bed capacity of the Facility and the actual bed count operated at the Facility is 160. The Tenant has not applied to reduce the number of licensed or certified beds of the Facility or to move or transfer the right to any and all of the licensed or certified beds of the Facility to any other location or to amend or otherwise change the Facility and/or the number of beds approved by the DOH or other applicable state licensing agency, and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility;

(c) The Health Care License with respect to the Facility (i) has not been and will not be (A) transferred to any location other than the Facility or (B) pledged as collateral security (other than any pledge as collateral security to Tenant's accounts receivable lender approved by Landlord which pledge is subject to the interests of (x) Landlord under the Lease and (y) Mortgagee, including the less and security interests of the Loan Documents), (ii) is and will continue to be held free from restrictions or known conflicts that would materially impair the use or operation of the Facility as intended, and (iii) is not provisional, probationary, or restricted in any way, except in instances where a Governmental Authority or Health Care Authority has issued a provisional, probationary or restricted license, permit or certification in the ordinary course pending issuance of a final license, permit or certification;

(d) Tenant has or will take any action to rescind, withdraw, revoke, amend, modify, supplement or otherwise alter the nature, tenor or scope of any Health Care

License or applicable provider payment program participation other than non-material alterations effected in the ordinary course of business;

(e) Tenant and the operation of the Facility are in material compliance with the applicable provisions of the Law and all orders, standards, policies, restrictions or rules of any Health Care Authority having jurisdiction over the ownership, use, occupancy or operation of the Facility, including (i) staffing requirements, (ii) health and fire safety codes including quality and safety standards, (iii) accepted professional standards and principles that apply to the Operator's provision of services at the Facility, (iv) federal, state or local laws, rules, regulations or published interpretations or policies relating to the prevention of fraud and abuse, (v) insurance, reimbursement and cost reporting requirements, government payment program requirements and disclosure of ownership and related information requirements, (vi) requirements of applicable Health Care Authorities, including those relating to the Facility's physical structure and environment, licensing, quality and adequacy of nursing facility care, distributions of pharmaceuticals, rate setting, equipment, personnel, operating policies, and conditions of Facility and services, and (vii) any other applicable laws, regulations or agreements for reimbursement for the type of care or services provided by Tenant and/ with respect to the Facility. As used herein, "material compliance" means a level of compliance that would keep Tenant and/ (and the operation of the Facility) free from any final orders or sanctions by any Governmental Authority or Health Care Authority having jurisdiction over the operation of the Facility and would not adversely affect Tenant's and/'s operations, including, but not limited to, its right to receive reimbursement or insurance payments;

(f) Tenant and the Facility are each in material compliance with the requirements for participation in the Medicare and Medicaid programs with respect to the Facility that currently participates in such programs and has a current provider agreement under Title XVIII and/or XIX of the Social Security Act which is in full force and effect. Facility has not had any deficiencies on its most recent survey (standard or complaint) that would result in a denial of payment for new admissions with no opportunity to correct prior to termination. The Facility had not any deficiencies at "level G" or above on its most recent survey (standard or complaint), nor has Tenant been cited with any substantial quality of care deficiencies (as that term is defined in Part 488 of 42 C.F.R.) for the past two consecutive surveys. The Facility has not been designated as a Special Focus Facility (as such term is defined by the Centers for Medicare and Medicaid Services Special Focus Facility Program);

(g) Neither Tenant nor the Facility is a target of, participant in, or subject to any action, proceeding, suit, audit, investigation or sanction by any Health Care Authority or any other administrative or investigative body or entity or any other third party payor or any patient or resident (including, without limitation, whistleblower suits, or suits brought pursuant to federal or state False Claims Act, and Medicaid/Medicare/State fraud/abuse laws, but excluding medical malpractice claims and other civil liability lawsuits for which the Facility is maintaining insurance coverage in the ordinary course of business) which may result, directly or indirectly or with the passage of time, in the imposition of a fine, penalty, alternative, interim or final sanction, a lower rate

certification, recoupment, recovery, suspension or discontinuance of all or part of reimbursement from any Health Care Authority, third-party payor, insurance carrier or private payor, a lower reimbursement rate for services rendered to eligible patients, or any other civil or criminal remedy, or which could reasonably be expected to have a material adverse effect on Landlord, Tenant, or the operation of the Facility, including the Facility's ability to accept or retain residents, or which could result in the appointment of a receiver or manager, or in the modification, limitation, annulment, revocation, transfer, surrender, suspension or other impairment of a Health Care License, or effect Tenant's participation in the Medicare, Medicaid, or third-party payor program, as applicable, or any successor program thereto, at current rate certification, nor has any such action, proceeding, suit, investigation or audit been threatened;

(b) There are no agreements with residents of the Facility or with any other persons or organizations that deviate in any material adverse respect from or that conflict with, any statutory or regulatory requirements. All resident records at the Facility, including patient and/or resident accounts records, are true, complete, and correct in all material respects;

(j) Other than the Medicare, Medicaid, and Veteran Administration programs, Tenant is not a participant in any federal, state or local program whereby any federal, state or local government or quasi-governmental body, or any intermediary, agency, board or other authority or entity may have the right to recover funds with respect to any Individual Property by reason of the advance of federal, state or local funds, including, without limitation, those authorized under the Hill-Burton Act (42 U.S.C. 291, et seq.). Tenant has received no notice, and is not aware of any violation of applicable anti-trust laws;

(k) Tenant's private payor, Medicaid, Medicare, and/or managed care company, insurance company or other third-party insurance accounts receivable with respect to the Facility are free of any liens and Tenant has not pledged any of its receivables as collateral security for any loan or indebtedness;

(l) Tenant is not a party to any collective bargaining agreement or other labor contract applicable to persons employed by it at the Facility and there are no threatened or pending labor disputes at the Facility;

(m) Tenant has instituted, and the Facility is operated in material compliance with, a compliance plan which follows applicable guidelines established by Health Care Authorities;

(n) Tenant is in compliance with the Health Care Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder;

(o) There is no threatened or pending revocation, suspension, termination, probation, restriction, limitation, or non-renewal affecting Tenant and/or the Facility or provider agreement with any third-party payor, Medicare or Medicaid;

(o) All Medicare, Medicaid, and private insurance cost reports and financial reports submitted by or on behalf of the Facility are and will continue to be materially accurate and complete and have not been and will not be misleading in any material respects;

(p) The Facility and the use thereof complies in all material respects with all applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements and no waivers of such physical plant standards exist at the Facility;

(q) Any existing agreement relating to the management or operation of the Facility is in full force and effect and is not in default by any party. In the event any management or operating agreement is terminated or in the event of foreclosure or other acquisition, the subsequent operator need not obtain a certificate of need prior to applying for and receiving a license to operate the Facility or prior to receiving Medicare or Medicaid payments, as applicable;

(r) There are no actions, suits, or proceedings at law or in equity by any person or entity, including any Governmental Authority or any Health Care Authority or other agency now pending or threatened against or affecting Tenant and/or the Facility, which actions, suits or proceedings, individually or collectively, if determined against Tenant and/or the Facility, might materially adversely affect the condition (financial or otherwise) or business of Tenant and/or the condition, ownership or operation of the Facility.

SCHEDULE 19.2

"Special Purpose Entity" shall mean a corporation, limited partnership or limited liability company (such entity sometimes referred to herein as the "Company") which at all times on and after the date hereof:

(d) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Leased Premises, entering into this Lease with Landlord, subleasing the Leased Premises to affiliated subtenants; and (ii) transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(e) is not engaged and will not engage, directly or indirectly, in any business unrelated to those activities required or permitted to be performed under the Lease, including pursuant to this definition of "Special Purpose Entity" and Subsection (a) above, as applicable;

(f) does not have and will not have any assets other than those (i) related to the Leased Premises or its partnership interest in the limited partnership or the member interest in the limited liability company that operates the Leased Premises or acts as the general partner or managing member thereof, as applicable, and (ii) incidental personal property necessary for the conduct of its business, as applicable;

(g) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(h) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(i) has not failed and will not fail to correct any known misunderstanding regarding its separate identity;

(j) has maintained and will maintain its accounts, books and records separate from those of any other person, individual or entity (a "Person") and maintain its bank accounts separate from those of any other Person. To the extent required by law to file a tax return, will file its own tax returns, except to the extent it is required to file consolidated tax returns by law;

(k) has maintained and will maintain its own records, books, resolutions and agreements;

(l) has not commingled and will not commingle its funds or assets with those of any other Person and has not participated and will not participate in any cash management system with any other Person other than pursuant to its *insert any credit facilities or accounts receivable financings*;

(m) has held and will hold its assets in its own name;

(n) has conducted and will conduct its business in its name;

(o) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(p) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees, if any, in light of its contemplated business operations and in accordance with all Laws;

(q) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(r) has and will have no indebtedness other than (i) liabilities under this Lease or any Sublease (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Leased Premises and the routine administration of Tenant, and (iii) such other liabilities that are permitted under this Lease;

(s) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Lease;

(t) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(u) has allocated and will allocate fairly, reasonably and in accordance with all Laws, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(v) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Tenant or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity;

(w) has not pledged and will not pledge its assets for the benefit of any other Person;

(x) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(y) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(z) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity;

(aa) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(bb) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (A) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are in compliance with all Laws and no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party and (B) in connection with this Lease;

(cc) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Rent payable under this Lease and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Rent is insufficient to pay such obligation;

(dd) It shall consider the interests of its creditors in connection with all limited liability company actions.

(ee) does not and will not have any of its obligations guaranteed by any Affiliate except obligations under this Lease;

(ff) if such entity is a limited liability company, it shall have its own board of directors or board of managers, and shall cause such board to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other corporate formalities;

(gg) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts recited in its organizational documents are true and correct and will remain true and correct;

(hh) has not and will not permit any other Person independent access to its bank accounts;



(i) has caused and will cause all representatives of Tenant to act at all times with respect to Tenant consistently and in furtherance of the foregoing; and

(j) has not and will not form, acquire, or hold any subsidiary or own any equity interest in any other entity.



# Exhibit 2 to Verified Complaint

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Lizer Jozosevic ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

**RECITALS**

- A. Landlord has been requested by HBL SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").
- B. Tenant is owned by Guarantor, and Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.
- C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.
- D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recovery against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim.

against Tenant or any Other Guarantor and (ii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

**3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.**

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, iterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable legal requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease; (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)

an unconditional Letter of Credit in accordance with the Section 7.1(a)(i) of the Lease in the amount of \$3,700,000, or (b) \$3,700,000 in cash to secure the full and timely payment and performance of Tenant's obligations under the Lease, (ii) an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached as Exhibit 7.1(a) of the Lease or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months, and (iii) and released to Landlord all funds in the controlled account number [REDACTED] in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held as an additional Security Deposit by Landlord. After the Guaranty Termination Date, Guarantor shall continue to remain personally liable pursuant to the terms of this Guaranty for (i) all obligations of Tenant under the Lease which arose or accrued on or prior to the Guaranty Termination Date and (ii) any liability of Tenant arising out of a breach of any warranty or representation of Tenant under Lease, and all documents executed by Tenant in connection therewith, (iii) and any liability of Guarantor arising out of a breach of any warranty or representation hereunder.

**4. WAIVERS OF GUARANTOR**

4.1 Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any notices taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protest, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collaterals, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

4.2 GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defenses of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

6. **REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

If to Landlord:

White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Bilow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

My Guarantor:

HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

8. CONSENT TO JURISDICTION. Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. CERTAIN ADDITIONAL COVENANTS.

9.1 Financial Deliveries. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. MISCELLANEOUS.

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landleord's request, execute, acknowledge and deliver to Landleord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landleord may reasonably request. Such certificates may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guarantees of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landleord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landleord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:

  
Linda G. Zeffo

:

# Exhibit 3 to Verified Complaint

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Mark Newman ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

**RECITALS**

A. Landlord has been requested by HBI SNE, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restored Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recovery against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantors, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease; (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceedings; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)

[REDACTED]

4. WAIVERS OF GUARANTOR.

4.1 Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protect, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

4.2 GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION.**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by cutoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable legal requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon, or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action, by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantees, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

If to Landlord:

White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blackstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

IBL SNP, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Mark Neuman

With a copy to:

Mitchelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

8. CONSENT TO JURISDICTION. Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. CERTAIN ADDITIONAL COVENANTS.

9.1 Financial Deliveries. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 1.8% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. MISCELLANEOUS.

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

in the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom, or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

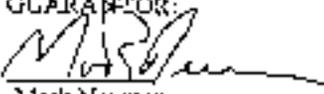
10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:  
  
Mark Neuman

# Exhibit 4 to Verified Complaint

**IBH-SNF, LLC**  
**1280 Albany Post Road**  
**Croton-on-Hudson, NY 10520**

November 20, 2019

White Plains Healthcare Properties, I, LLC  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William Nicholson

**Re: Letter of Intent**  
**Premises: 116-120 Church Street**  
**White Plains, New York**

Dear Mr. Nicholson

This Letter of Intent ("LOI") outlines our proposal for White Plains Health Care Properties, I, LLC (the "Contributor") to transfer the premises known as 116-120 Church Street, White Plains New York (the "Premises") to a Delaware Statutory Trust where we would jointly hold the beneficial interests in the Trust on the terms and conditions set forth below. The Building a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Facility") had been constructed pursuant to a Development Agreement dated November 19<sup>th</sup>, 2015 and for which we had simultaneously entered into that certain operating lease by and between you as Landlord and us as Tenant/Operator (the "Lease").

- 1) **Basic Transaction:** (the "Transaction"): Contributor shall contribute premises 116-120 Church Street White Plains, New York to a newly formed Delaware Statutory Trust (the "Trust") formed by the parties. This transaction shall be memorialized by a contribution agreement in substantially the form annexed hereto as Exhibit A. The Contribution shall be governed by IRC Sec. 721. The agreed upon cost and fair market basis shall be \$67,345,348.00
  - a) Lizer Jozefovic and Mark Neuman will acquire from the Trust by a Purchase Agreement 77.50 Percent of the Beneficial Interests in the Trust and redemption of a portion of the B Beneficiaries' interest for a purchase price of \$52,200,000.00 paid as follows:
    - i) By a down payment (the "Down Payment") not to be held in escrow, but to be made upon the execution and delivery of this LOI of \$2,200,000.00 by wire transfer to the account of White Plains Healthcare Properties I, LLC according to the wire instructions annexed hereto.
    - ii) By the Trust obtaining a new first mortgage of \$51,000,000.00 to pay the balance of the Purchase Price and cover closing costs to be used as follows;

- (1) To pay the first Mortgage held by Security Benefit Life Insurance in the approximate amount of \$39,226,253 plus accrued interest and fees.
  - (2) To pay the loan encumbering the membership interests of the Contributors by Bradford Allen in the approximate amount of \$9,770,963 plus accrued interest and fees;
  - (3) By the Trust making a non-refundable down payment of \$2,200,000.00
  - (4) To pay the costs of the financing.
- b) Lizer Jozefovic and Mark Neuman shall be the A Beneficiaries of the trust holding a 77.50% Beneficial interest, and the present members of the Contributor or their designees shall be the B Beneficiary with a 22.5% equity position.
  - c) The A Beneficiaries shall be the personal guarantors of the new financing in the amount of Fifty-One Million (\$51,000,000.00) Dollars. The Transaction is to close thirty (30) days after Buyer has received approval for the Financing set forth in paragraph 1)a) ii). The Contribution Agreement shall call for a purchase price equal to Transferees cash basis in the property and shall not result in a taxable event for Contributor;
  - d) The Financing shall be an obligation of the Trust secured by a first mortgage loan on the Facility and the Premises.
  - e) Lizer Jozefovic and Mark Neuman shall act as the Personal Guarantors and shall be obligated if necessary, to secure additional personal guarantors to ensure that none of the B beneficiaries shall have any obligation to guarantee the Financing. Any additional guarantors on the Financing shall also execute and deliver a personal guaranty of Tenant's obligations to Landlord on the Lease. All guaranties on the Lease shall be full unlimited personal guaranties.
  - f) The Financing shall bear interest at a constant rate of no more than 7% per annum, with Principal and Interest paid on an amortization schedule of 35 years and shall be subject to the reasonable approval of the Contributor, which consent shall not be unreasonably withheld or delivered without cost to the Tenant Borrower.
  - g) Formal Contracts: The Parties intend that additional agreements including the Contribution Agreement, Redemption Agreement and Trust Agreement (the Formal Contracts") shall be complete as of November 22nd, 2019, and absent execution of Formal Contracts this LOI shall govern provided the Down Payment is received in good funds by Contributor upon execution of this LOI, and in no event later than the end of business November 22, 2019. In the event Tenant defaults in the payment of rent on the Lease and such default continues for five (5) days, Contributor shall have the right to terminate this LOI and all Formal Contracts.
  - h) Closing: The Closing of the Transaction ("Closing") will occur at the offices of the First Mortgagee Bank's counsel or such other location within the State of New York as may be agreed upon by the Parties thirty (30) days after receipt by the Trust of approval for

the Financing but no later than April 1st, 2020. If the Tenant has a commitment letter on April 1st, 2020 that is in the process of closing or if the closing is delayed by a title issue, the closing date shall be automatically extended for another Ninety-Days. If the closing does not occur by such date, time being of the essence, this LOI and the Formal Contracts shall be terminated and no party shall have any rights with respect thereto. The parties shall remain as Landlord and Tenant pursuant to the existing Lease until such time as the Transaction closes. The Lease may be amended as provided herein but only if and when such amendments are approved by Contributor's existing Lender.

- 2) **Structure of the Trust:** The Contributor and Tenant have agreed to create a Trust as a "statutory trust" in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. 3801 and enter into a Trust Agreement which shall constitute the "governing instrument" of the Trust. Each party will become a Beneficiary and will transfer certain sums of money and/or property to the Trust in exchange for a beneficial interest in the Trust as set forth above;
  - a) The Trust shall be a special purpose entity which is being formed solely for the purpose of acquiring the Trust Property from the Contributor and maintaining, improving, building upon, and leasing the Trust Property for use as a skilled nursing facility and all and such other activities incident or appropriate to the preceding
  - b) Simultaneously upon the closing of the transaction, the existing lease shall be modified only as set forth herein.
  - c) The trust shall be permitted to have only the following liens on the Trust Property and no other:
    - i) A Mortgage in the amount of Fifty-One Million (\$51,000,000.00) Dollars (the "First Mortgage") the terms of which shall be acceptable to the Department of Health and the Contributor.
    - ii) The Trust will designate Howard Fensterman and William Nicholson as the Administrative Trustees of the B interests.
      - (1) The Trust Agreement shall provide that Howard Fensterman and William Nicholson as the B beneficiaries Administrative Trustees shall have the sole authority to all issues governing administering and enforcing the terms of the Lease including the collection and distribution of rent.
      - (2) Lizer Jozefovic shall be responsible as the overall Administrative Trustee for all other matters concerning the building including but not limited to repairs, maintenance, and operation of the building. Any Trustee may be removed for cause including misconduct, bad faith, fraud or gross negligence.
      - (3) Except as otherwise provided in a Trust Agreement to be executed and notwithstanding any provision of the Act that otherwise so empowers the Trust, neither the Beneficiaries nor any Trustees nor any other Person shall be authorized or empowered, nor shall they permit the Trust, to take any of the following actions

without the prior unanimous written consent of all of the Beneficiaries:

- (a) Make any arrangements to reduce, modify, or forebear on the payment of rent by the Tenant.
- (b) Guarantee any obligation of any Person, including any Affiliate;
- (c) engage, directly or indirectly, in any business other than the actions required or permitted to be performed hereunder;
- (d) incur, create or assume any indebtedness;
- (e) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person;
- (f) To the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of their interests subject to obtaining any approvals required under this Trust Agreement other than a sale of the interests to qualified purchasers under a syndicated offering of the B interests. The cost of such syndication shall not be charged to the B Beneficiaries and all monies derived therefrom and due hereunder shall be net of the costs of the syndication.
- (g) allow any business to be conducted on the Property other than the operation of a skilled nursing facility and ancillary uses;
- (h) own any other property or engage in any business other than owning and leasing the Trust Property for use as a skilled nursing facility;
- (i) take any action to consolidate or merge the Trust with or into any Person;
- (j) sell all or any portion of or any interest in the Trust Property;
- (k) grant an option to lease all or any portion of the Trust Property for a term (with all extension periods) ending on or after the 45th Anniversary Date;
- (l) amend, terminate or waive any material provisions of any lease for all or any portion of the Trust Property;
- (m) enter into any agreement with any Person giving any Person any rights with respect to the Trust Property that extend beyond the 45th Anniversary Date or which are not terminable without penalty on less than 90 days' notice;
- (n) encumber the Trust Property with any mortgages or another lien, easement, covenant or restriction other than the First Mortgage, or a HUD Mortgage to refinance the debt contemplated by this Agreement, at such time as HUD regulations shall allow;
- (o) modify the Trust Agreement or the Trust's certificate of trust in any manner, issue additional interests in the Trust to any Person, or modify the rights and privileges of the Interest owners;
- (p) institute proceedings to have the Trust be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Trust or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrate (or other similar official) of the Trust or a substantial part of its property;
- (q) make any assignment for the benefit of creditors of the Trust;

- (r) admit in writing the Trust's inability to pay its debts generally as they become due;
  - (s) take action in furtherance of any of the foregoing actions; or dissolve or liquidate the Trust.
- iii) The 22.5% of the Trust Owned by the B Beneficiaries interest shall be subject to a Redemption Agreement where the B interests shall be sold to the A interests or their designees, assigns or transferees, over five years for a total price of \$19,800,000.00 in four tranches each representing interests of 5.625% each
- (1) Tranche one on or before August 1, 2020 in the amount of \$3,786,250.00
  - (2) Tranche two on or before August 1, 2021 in the amount of \$3,786,250.00
  - (3) Tranche three on or before August 1, 2022 in the amount of \$3,786,250.00
  - (4) Final Tranche by August 1, 2023 in the amount of \$8,441,250
- iv) Any purchase of the membership interests shall be a purchase of Beneficial Interests from the B Beneficiaries and shall reduce the Priority Return proportionate to the payments as a percentage of the total remaining price of \$19,800,000, which is the balance after payment of the non-refundable Down Payment.
- v) The A Beneficiaries shall prepare at their sole cost and expense of the A Beneficiaries a Private Placement Memorandum for the Sale of Membership interests in the Trust by a Broker Dealer who specializes in sales of marginal interests in Delaware Statutory Trusts to individuals and other entities who have to designate property as target property in connection with 1031 Exchanges of Property. The A Beneficiaries shall have the right to designate a portion of their membership interests as C interests for the purpose of selling them as part of the same syndication, provided that (1) there is no change in control of the A Beneficiaries or the Tenant entity.
- vi) The B Beneficiaries will be entitled to a priority return (the "Priority Return") equal to all available rental and other income over and above the payment of the P&I on the New First Mortgage which shall in no event be less than \$2,000,000 per year (as adjusted by periodic redemptions) and shall be paid to the B Beneficiaries as a Priority Return until such time as they have been fully redeemed pursuant to the Redemption Agreement.
- vii) The Trustee shall deposit all rents and other funds collected from the operation of the Real Estate in the bank designated by the first mortgagee (the "Operating Account") which shall be subject to both a Deposit Account Control Agreement and Deposit Account Instruction Agreement. The Trust shall maintain books and records of the funds from the Real Estate deposited in such account, interest earned thereon, and withdrawals therefrom. The Trustee shall pay from the Operating Account the operating expenses of the Real Estate (other than those paid by a tenant of the Real Estate as set forth in its lease) and any other payments relative to the Real Estate as required by this the Trust Agreement.

- viii) The Trustee shall be responsible for receiving all cash from the Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust Agreement. The Trustees shall furnish quarterly and annual reports to each of the Beneficiaries as to the amounts of rent received from the Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficiaries.
- ix) To the extent permitted by the Internal Revenue Code depreciation, which shall be calculated on a straight-line depreciation method shall be allocated as follows: a) first to the B Beneficiary to the extent necessary to shelter the Priority return from taxes and b) second to the beneficiaries, pro rata, in accordance with the ownership interests.
- 3) Condition of Property and Title: Contributor shall give, and the Trust and the Trust shall accept, a good and marketable title which any National Title Insurance Company (the "Title Company"), will approve and insure at standard rates, free and clear of all liens, hypothecations, mortgages, easements, and encumbrances, except for the Permitted Exceptions.
- i) The Premises is being contributed subject to the following exceptions to the title (the "Permitted Exceptions"):
- (1) Zoning and building regulations, restrictions and ordinances now or hereafter adopted or imposed by any governmental or quasi-governmental body having or asserting jurisdiction over the Premises or any part thereof;
  - (2) Future Real Estate taxes, assessments, water charges, sewer rents or other charges not yet due and payable (subject to apportionment as provided herein) and certified, confirmed or ratified assessment liens and pending assessments, if any;
  - (3) The state of facts shown on an updated as built survey prepared originally prepared and revised to be an as built survey, (the "Survey") and such additional state of facts which said survey would show or reveal provided such additional state of facts do not render title unmarketable;
  - (4) Any state of facts a physical inspection of the Premises would reveal;
  - (5) Exceptions permitted by the Title Company (as defined herein) (the "Title Exceptions");
- 4) All payments made to purchase any portion of the B Beneficiaries 22.5% interest shall also act to proportionally reduce the amount of Priority Return paid to the B beneficiaries under the Trust and the proportionate difference shall be paid to the A Beneficiaries or whoever purchases the B Beneficiaries interests as the case may be.,
- a) Distributions: Provided that all required payments set forth herein have been made by the Tenant, During the interim period prior to the purchase of the premises Tenant may pay Management Fees so long as (i) the amount of such Management Fees paid in any twelve-month period shall not exceed five percent (5%) of Tenant's gross revenues for such period

and (ii) there shall not then exist, and/or the paying of such Management Fees shall not cause there to exist, a Default or Event of Default under the Lease the first mortgage on the property or the Tenant's Working Capital Loans, (iii) the Initial Payment, the payment of Rent, and all other payments set forth herein have been made by the Buyer/Tenant. Upon the occurrence of an Event of Default, Tenant shall not pay Management Fees. The Tenant will make no distributions to its shareholders, officers, affiliates, or any related party unless the Down Payment, the payment of Rent is current, and.

- 5) **Confidentiality and Disclosure:** Tenant and Contributor shall each maintain the confidentiality of all confidential and non-public information supplied by the other. If this Transaction is not consummated, each party shall return all documents obtained to the other. Except as required by law, without the prior written consent of the other party, neither Tenant nor Contributor will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this Letter of Intent. If a party is required by law to make any such disclosure, the parties shall consult with each other and seek to agree upon appropriate language for such disclosure. The Tenant acknowledges that Contributor will be unable to furnish any patient health information, unless such disclosure complies specifically and completely with all terms, conditions, regulations, and guidelines in HIPAA.
  
- 6) **Interim Operation:** Subject to the approval in writing of Contributor's existing Leader, the parties will enter into an amendment of the Lease as follows to allow for the operation of the facility before the closing.
  - a) **Commencement Date:** The Commencement Date according to the Lease shall be September 30, 2019.
  
  - b) **Rent:** An initial rent payment of \$509,000.00 has been paid receipt of which is on account toward the rental period from September 30, 2019 to October 31, 2019 (the "October 2019 Rent") leaving a balance of \$13,735 for October 2019 Rent. November 1, 2019, to November 30, 2019 (the "November 2019 Rent") shall be postponed until November 18, 2019 and shall be paid by Tenant on that date. The next rental payment shall be the December monthly rent amount outlined in the Lease - \$506,097 which shall be paid on December 5, 2019. Also, the Tenant will reimburse the Landlord for their municipal maintenance escrow and utility deposits of \$5,500 and \$60,356, respectively. Such reimbursement payment shall be made on or before December 5<sup>th</sup>, 2019. Upon receipt of the \$60,356 for the utility deposits from the Tenant, Landlord will direct any refund from the Utility companies to the Tenant, or otherwise pay such refund over to the Tenant forthwith provided Landlord has previously received those funds from the Tenant.
  
  - i) The following amounts are in dispute, and neither party will be obligated to waive their rights and positions by the signing of this agreement. The landlord has demanded the following sums due to their Lender.

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- (1) Late and Default Interest costs of \$201,997.34 for September 2019 and October 2019,
- (2) \$19,000 of Late Fees for November 2019,
- (3) \$5,061 per day for Default Interest premium during November 2019.
- i) The A Beneficiaries and the B Beneficiaries shall jointly negotiate with the Contributor's current Lenders to effectuate the best possible settlement of these late costs (the "Late Costs"). The amounts if any remaining after such joint negotiation will be paid by the 77.5% by the Buyer and 22.5% by the Contributor (provided the Initial Payment, the payment of Rent and all other payments set forth herein are made timely) from Financing proceeds. If not available from the Financing proceeds the Tenant shall pay all Late Costs.
- c) Security Deposit/ Guaranty: Section 7.1(a)(i) the Lease shall be amended to provide that Tenant shall enter into a Deposit Account Control Agreement with Metropolitan National Bank which can only be revoked with the consent of both parties, which shall provide that each month, the Tenant's Lender shall draw on the loan amount first to pay rent to the Landlord, notwithstanding the adequacy of any accounts receivable borrowing base calculations. This Document shall be part of the Closing Documents on the Tenant's first initial Term Loan and shall be delivered in full effect by December 1, 2019.
- d) Section 7.1(a)(ii) of the Lease shall be amended to provide that the obligation for the Security Deposit shall initially be reduced to 2,000,000 dollars.
  - i) The sum shall be paid by Tenant as follows: (a) Provided that the Contributor has obtained a permanent Certificate of Occupancy the Tenant shall draw the initial \$1,000,00.00 from its credit line on or no later than December 1, 2019. (b) Landlord shall obtain a release of the lien of its Lender on the FF&E, upon delivery of free and clear title to the FF&E the Tenant will enter into a reverse lease and obtain at least \$1,000,000.00 which shall be paid on account of the Security Deposit no later than April 1, 2020.
  - ii) Also, Tenant shall pay the sum of \$40,000 per month commencing January 1, 2020 to be treated as additional rent until there is a total \$3,700,000 posted as Security Deposit under 7.1(a)(i).
- e) Section 7.1(a)(iii) of the Lease shall be amended to provide that instead of delivering the sum of \$1,600,000 in cash, the parties shall enter into a blocked account agreement wherein and whereby account number [REDACTED] in JP Morgan Chase Bank NA prohibiting any liquidation of that account until the Second Payment is paid. Such account shall be not be posted as collateral security to Landlord's Lender provided the Initial Payment has been made in full, and all payments of Rent are current and the Tenant is not otherwise in Default, except that the Landlord shall have a security interest in such account under a DAISA, which allows the Landlord to demand the liquidation of such account to pay any defaults under the lease.

- f) Working Capital: Section 7.7 of the Lease shall be amended to suspend the requirement for providing the working capital account. The Tenant shall be obtaining a single working capital line for \$8,000,000.00 no later than December 1, 2019.
- g) Right of First Refusal and Option to Purchase: The Tenant's rights with respect to the right of first refusal and option to purchase under Sections 3.7 and 3.7 of the Lease will be suspended pending payment in full of the Security Deposits required by Section 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) of the Lease as amended, the payment of the Initial Payment, the working capital required by Section 7.7 of the Lease and Tenant being in full compliance with the Lease.
- h) Insurance: Tenant shall obtain property insurance, effective as of September 30, 2019, and (2) provide the property insurance, and all other insurances required by the Lease by November 19, 2019, effective retroactively back to September 30, 2019.
- i) Real Estate Taxes: Real estate taxes shall be prorated as of September 30, 2019 and the Tenant's portion shall be paid to the Landlord no later than December 1, 2019, plus any late charges which the City of White Plains may impose.
- j) Utilities: Tenant shall pay actual costs of utilities incurred at the property covering the rental period from September 30, 2019 (pro-rated as the utility company billing periods may require) forthwith upon presentation of invoices for the same from the Landlord, no later than December 1, 2019.
- k) Punchlist: The punch list and all other developer obligations are deemed complete except for:
  - i) The White Plains Outstanding Punchlist November 5, 2019 (the Remaining Punchlist), the value of which is has been determined by the Architect and agreed herein to be \$3,800.
  - ii) The Electric Blinds in rooms (the "Suspended Work") the value of which is agreed herein to be \$35,000.
  - iii) Provided the Initial Payment is made by November 15, 2019 and provided there are no other Defaults by the Tenant, Landlord shall complete the Remaining Punchlist and the Suspended Work to the approval of the Architect, within 45 days from the date of the Contributor's receipt of the Initial Payment. Should Landlord not do so, then the Tenant may credit the agreed values of any uncompleted Punchlist or Suspended Work from the February, 2020 Rent payment, and the Landlord's Work under the Lease and Development Agreement shall be deemed complete.

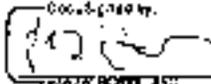
Security: Tenant shall assume all property security obligations as of November 11, 2019.

Upon the closing of the purchase of the premises by the Trust, the Trust shall take an assignment of the lease as amended above.

- 7) **Exclusivity:** In consideration of (1) the Initial Payment, (2) the payment of Rent as set forth herein, and (3) Tenant's efforts in pursuing the Transaction, Contributor agrees that (1) until the termination of this Letter of Intent or execution of the Formal Contracts and (2) provided the payment of the Initial Payment and the payment of Rent as set forth herein is made, and (3) all other obligations of the Tenant set forth herein, Contributor will not permit any of its affiliates to, and will not authorize or permit any officer, director, employee, counsel, agent, investment banker, accountant, or other representative of any of them, directly or indirectly, to: (a) initiate contact with any person in an effort to solicit any proposal (other than that contemplated by this Letter of Intent for the acquisition (directly or indirectly, by sale of stock or assets, or by merger or consolidation or otherwise) of the operation of the Real Estate, or any of the Assets, or any other business combination or financing transaction involving such business (a "Proposal"); (b) cooperate with, or furnish or cause to be furnished any non-public information concerning the operation of the Real Estate, to, any person in connection with any Proposal; (c) negotiate or enter into discussions with any person with respect to any Proposal; or (d) enter into any agreements or understanding with the intent to effect a Proposal. Contributor will immediately give written notice to Tenant of the details of any Proposal of which Contributor becomes aware. Contributor will, and will cause its officers, directors, affiliates, agents, and representative to, terminate all discussions regarding a Proposal, other than those with Tenant and its representatives concerning the Transaction, and represents that neither it nor any of its officers, directors, affiliates, agents, or representatives have entered into any executory agreements or accepted any commitments concerning any Proposal other than the Transaction provided that (1) this LOI or successor Formal Contracts has not terminated, and (2) the payment of the Initial Payment, the payment of Rent as set forth herein have all been paid and are current, and (3) all other obligations of the Tenant set forth herein are not in Default and are current.
- 8) **Waiver of Claims:** Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the Lease, (3) any claims related to the Cust Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.
- 9) **Expenses:** Tenant and Contributor shall each be responsible for their respective accounting, legal, advisory, and other costs and expenses in connection with the Transaction. Tenant shall reimburse Contributor for its legal, advisory and other costs and expenses in connection with the Transaction and the Termination of the Lease. Reimbursement for such legal and transaction fees shall not exceed \$125,000 and may be made from the proceeds of the Closing, provided the Closing occurs and the Contributor's existing 1<sup>st</sup> Mortgage Loan and Mezzanine Loan are paid off from the proceeds of the Financing by March 31, 2020, and (2) the Initial Payment is made as set forth herein above, and (3) the Tenant is not in default under this LOI or the successor Formal Contracts. Otherwise the \$125,000 cap shall expire and the Tenant shall pay the Contributor all such costs incurred after September 30, 2019.

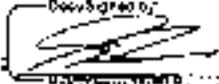
- 10) **Letter of Intent:** This LOI represents a statement of all of the terms, conditions, representations, warranties, indemnities, covenants, and other provisions that would be contained in the definitive documentation for the proposed transactions. This LOI shall constitute a binding agreement upon payment of the or any of their respective affiliates will have any legal obligation under this LOI unless and until one or more subsequent definitive written agreements are mutually executed and delivered by each of Contributor and Buyer. No past, present, or future action, course of conduct, or failure to act relating to the transactions referenced in this LOI or relating to the negotiation of the terms of such transactions will give rise to or serve as the basis for any obligation or other liability on the part of Contributor or Buyer or any of their respective affiliates. [ These changes should be rejected]
- 11) **Governing Law:** This Agreement shall be governed by and construed by the internal laws of the State of New York, Venue shall be in Westchester County without application of its conflicts of law rules. If you agree with the preceding, please sign and return one copy of this Letter of Intent

HBL-SNF, LLC

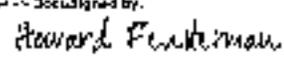
Doc signed by:  
  
 \_\_\_\_\_  
 Lizer Jozetovic

**ACKNOWLEDGED AND AGREED**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

Doc signed by:  
  
 By: \_\_\_\_\_  
 Name: William A. Nicholson  
 Title: Manager

Accepted and Agreed

Doc signed by:  
  
 \_\_\_\_\_  
 HOWARD FENSTERMAN

# Exhibit 5 to Verified Complaint

**DELBELLO DONNELLAN WEINGARTEN**

**WISE & WIEDERKEHR, LLP**

Alfred J. Donnellan  
Partner  
ad@ddw-law.com

COUNSELLORS AT LAW  
THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601  
(914) 831-0200  
FACSIMILE (914) 654-0288

Scarsdale Office  
111 SPINNEY STREET  
SPRINGFIELD, CT 06105  
(203) 398-6000

January 7, 2020

BY EMAIL lizerj@watersedgeusa.com  
BY FEDERAL EXPRESS

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**NOTICE OF DEFAULT  
AND LANDLORD'S ELECTION TO TERMINATE LEASE AND  
ACCELERATE ALL RENTS DUE FOR THE BALANCE OF THE LEASE TERM**

**PREMISES: 116-120 Church Street, White Plains, New York ("the Leased Premises")**

Mr. Josefovic:

We are attorneys for your Landlord, White Plains Health Care Properties I, LLC.

**PLEASE TAKE NOTICE**, that HBL SNF, LLC ("HBL") is in material violation of the provisions of its November 19, 2015 Lease, for the above referenced premises ("the Lease"), and the November 20, 2019 Letter of Intent (the "LOI"), the terms of which are in full force and effect (the "LOI"), and is in **DEFAULT** thereof, as follows:

1. Lease Section 3.2, and LOI Para 6) d) i) - Payment of Rent: HBL has failed or refused to pay the following Rent:
  - a. Rent due for Sept. 30, 2019 - Dec. 31, 2019, totaling \$10,831.79.
  - b. Additional Rent due for Jan. 01 - 31, 2020, due Jan. 1, 2020, totaling \$40,000.00.
2. Lease Section 4.2, and LOI Para 6) b) - Payment of Real Estate Taxes: HBL has failed to pay the following Real Estate Tax payments:
  - a. Real Estate Taxes for the period 07/01/19 - 12/31/19, specifically the Tenant's prorated portion thereof, (exclusive of late fees, costs, penalties and interest per municipal regulations and per the Lease), totaling \$61,456.39.
  - b. Real Estate Taxes for the period Jan. 01, 2020 - June 30, 2020 totaling \$121,587.12

Att: Lizer Josefovic  
January 7, 2020  
Page 2

3. LOI Para 6) b), and Lease Section 5.2 – Payment of Utility Deposits and Municipal Maintenance Escrows: HBL has failed to pay the following Utility Deposits and Municipal Maintenance Escrows:
  - a. Utility Deposits totaling \$60,356.15
  - b. Municipal Maintenance Escrows totaling \$5,500.00
  
4. Lease Section 4.1, LOI Section 6) j) - Utility Charges: HBL has failed to pay the following Utility Charges:
  - a. ConEdison invoice paid by the Landlord to avoid power shutoff, in the amount of \$2,972.84.
  
5. Lease Article VI, including Section 6.2; LOI Para 6) h) - Delivery of Insurance Certificates:
  - a. HBL has failed to deliver certificates of insurance to Landlord in accordance with Article VI and Section 6.2 of the Lease.
  
6. Lease Section 7.4 (g) and (j) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility.
  - b. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider updated reimbursement rate sheets for the Facility.
  
7. Lease Section 7.4 (a) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required financial reporting required under the Lease.
  
8. Lease Section 7.4 (B) (vi) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required written reports providing an operational overview of significant events and circumstances at the Facility during each prior month of the Term of the Lease.
  
9. Lease Section 7.1(a)(ii), as amended by LOI Para 6) d) i) – Security Deposit:
  - a. HBL has failed or refused to deliver to the Landlord by December 1, 2019 the security deposit of \$1,000,000.00, to secure full and timely payment and performance of Tenant's obligations under the Lease.
  
10. Lease Section 7.1(a)(ii), as amended by LOI Para 6) e) – Additional Security Deposit:
  - a. HBL has failed to deliver the blocked account agreement prohibiting any liquidation of the of \$1,600,000.00 held by JPMorgan Chase Bank, N.A. in the controlled account number 3379737272.
  
11. Lease Section 4.1, 3.2 (c), and 9.1 (c) – Payment of Late Fees and Costs
  - a. HBL has failed to pay late fees and costs related to the above failures to pay its obligations under the Lease and the LOI in the timeframes required thereunder, as set forth in the attached accounting, totaling \$23,425.09

Attn: Lizer Josefovic  
January 7, 2020  
Page 3

A true and accurate accounting of the amounts due and owing under the Lease and the LOI is attached herewith.

By reason of the aforementioned material Defaults under the Lease and the LOI, the Landlord, hereby exercises its right under Section 16.1 of the Lease to terminate the Lease as well as Tenant's right of possession of the Leased Premises, effective January 13, 2020 at 5.00 PM NYC time.

**PLEASE TAKE FURTHER NOTICE**, that, in accordance with Section 16.1 of the Lease, all rent for the balance of the term of the Lease is accelerated, and pursuant to said lease provision, HBL is obligated to pay the Landlord \$84,073,989.91, being the present value of such accelerated rent, discounted at the rate of 6% *per annum*.

Landlord reserves all other rights and remedies at law or in equity as against the Tenant, all guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.

Landlord further reserves all rights arising from the Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 ("the Pledge"), including but not limited to all rights to enforce the Pledge through a private or public sale of the assignor's interest in Waterview Acquisition I, LLC or through a judicial foreclosure of the assignee's security interest therein.

Very truly yours,  
  
ALFRED E. DONNELLAN

**AUTHORIZED AND APPROVED:**

White Plains Health Care Properties I, LLC

  
Joshua Roccapriera  
Authorized Representative

cc: By Email (lizerj@watersedgeusa.com) & Federal Express  
Lizer Josefovic, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

HBL SNF, LLC

Notice Pg 224 of 237

Attn: Lizer Josefovic

January 7, 2020

Page 4

By Email (markn@cpjcmgt.com) & Federal Express

Mark Neuman, Guarantor, Individually

22 Lyncrest Drive

Monsey, NY 10952

By Email (mzafrin@mullp.com) & Federal Express

Michelman & Robinson

800 Third Avenue, 24<sup>th</sup> Floor

New York, NY 10022

Attn: *Mark Zafrin, Esq.*

By Federal Express

Gerald Neuman, individually

c/o HBL SNF, LLC

1280 Albany Post Road

Croton-on-Hudson, NY 10520

White Plains Health Care Properties I, LLC  
 c/o THE CONGRESS COMPANIES  
 General Construction, Construction Managers, Property Managers, Development Services  
 205709  
 One Peabody Executive Center  
 3 Deane Street  
 Peabody, MA 01960  
 Phone: 978-535-6000  
 Fax: 978-531-5701

7-Jan-19

**NOTICE OF AMOUNTS AND DELIVERABLES DUE UNDER LEASE & LOI of 11/20/19**

Gentlemen: Pursuant to the Lease and the LOI dated November 20, 2019 the following are due:

	<u>AMOUNTS PAYABLE</u>	<u>Due Date</u>	<u>Amt Due</u>	<u>Amounts Paid</u>	<u>Amt Past Due</u>
1	Rent January, 2020 (See Note 1 Below)	01/01/20	\$ 546,096.50	\$ 506,096.50	\$ 40,000.00
2	Rent 12/01/19 - 1/31/20	12/01/19	\$ 10,831.79	\$ -	\$ 10,831.79
	<b>SUBTOTAL RENT AND ADDITIONAL RENT:</b>		<b>\$ 556,928.29</b>	<b>\$ 506,096.50</b>	<b>\$ 50,831.79</b>
3	RE Taxes 7/1/19-12/31/19, Tenant portion: 09/30/19-12/31/19	12/31/19	\$ 61,456.59	\$ -	\$ 61,456.59
4	RE Taxes for the period 1/1/20 - 6/30/20	12/31/19	\$ 121,587.12	\$ -	\$ 121,587.12
	<b>SUBTOTAL REAL ESTATE TAXES</b>		<b>\$ 183,043.51</b>	<b>\$ -</b>	<b>\$ 183,043.51</b>
5	Utility Deposits	12/01/19	\$ 60,358.10	\$ -	\$ 60,358.10
6	Municipal Deposits	12/01/19	\$ 5,500.00	\$ -	\$ 5,500.00
7	Con Edison Electric Invoice	12/17/19	\$ 2,972.84	\$ -	\$ 2,972.84
	<b>Subtotal</b>		<b>\$ 68,829.94</b>	<b>\$ -</b>	<b>\$ 68,829.94</b>
	<b>TOTAL RENT, RE TAXES, &amp; OTHER</b>		<b>\$ 808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 302,704.24</b>
8	Security Deposit 1st payment	12/01/19	\$ 1,000,000.00	\$ -	\$ 1,000,000.00
	<b>TOTAL AMTS DUE EXCLUDING LATE FEES &amp; COSTS</b>		<b>\$ 1,808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 1,302,704.24</b>
9	Interest on past due real estate taxes on a per-diem basis;	12/15/19	\$ 3,039.58	\$ -	\$ 3,039.58
10	Late Fees of 5% on Items 1,2,3,5,6,7	12/15/19	\$ 9,055.96	\$ -	\$ 9,055.96
11	Interest on Items 1,2,3,5 & 6 at the Owner's Rate (Prime+5%)	12/15/19	\$ 11,329.55	\$ -	\$ 11,329.55
	<b>TOTAL LATE FEES AND COSTS</b>		<b>\$ 23,425.09</b>	<b>\$ -</b>	<b>\$ 23,425.09</b>
	<b>TOTAL AMOUNTS DUE</b>		<b>\$ 1,832,225.83</b>	<b>\$ 506,096.50</b>	<b>\$ 1,326,129.33</b>

**ADDITIONAL NOTICE OF ITEMS DUE:** As required per the Lease and LOI, please provide the following:

- 1 Notice is hereby made to that Jan. 2020 & all subsequent Rent shall be due in the amount of: \$546,096.50, calculated as: \$506,096.50 rent plus \$40,000.00 additional rent 2nd Notice
- 2 Notice is hereby made to provide all Medicare and Medicaid provider Agreements and rates. 2nd Notice
- 3 Notice is hereby made to provide Annual Budget, Capital Expenditures, Operating Budget, Annual Financial Reporting, monthly financial reporting Financial Reporting, Variance Reporting Unaudited Financial Reports
- 4 Notice is hereby made to provide per a written report of significant events at the facility including: Copies of all documents, reports, licenses and certificates from NY DOH pertaining to the Operations of the Facility 2nd Notice
- 5 Notice is hereby made to provide Evidence of insurance, including all required coverages under the lease, and all additional insureds. 2nd Notice



**Marisa Warsaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 1:37 PM  
**To:** Marisa Warsaw  
**Subject:** FedEx Shipment 779498448443 Delivered

# Your package has been delivered

Tracking # 779498448443

Ship date: Tue, 1/7/2020	Delivery date: Wed, 1/8/2020 1:34 pm
Marisa Warsaw	Mr. Mark Neuman
Colbello Donnellan Wolgast-	Mr. Mark Neuman
Wiso	22 LYNCREST DR
White Plains, NY 10601	MONSEY, NY 10952
US	US



## Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number: 779498448443

Status: Delivered: 01/08/2020 1:34  
 PW Signed for By: Signature not required

Reference: 0181980-001 MW 1/7/2020

Signed for by: Signature not required

Delivery location: MONSEY, NY

Delivered to: Residence

Service type: FedEx Standard Overnight®

Packaging type: FedEx® Envelope

Number of pieces: 1

Weight: 0.50 lb.

Special handling/Services: Deliver Weekday  
 Residential Delivery

Standard transit: 1/8/2020 by 8:00 am

FRANK J. NEAL 514-824-4208  
MARISA W. KASPER  
SERGIO J. DONNELLAN  
100 LEONARD AVE  
WHITE PLAINS, NY 10607  
ENTERED BY: SCS US

SHIP DATE 01/08/21  
ACTWGT: 9.15 LB  
CAG: 11487510974630000  
EEL SENDER

MR. LIZER JOSEFOVIC, GUARANTOR, IND  
MR. LIZER JOSEFOVIC, GUARANTOR, IND  
53 MARINER WAY

MONSEY NY 10952

(914) 824-4208  
F01

COPY



WED - 08 JAN 3:00P

STANDARD OVERNIGHT

7794 9836 3223

RES

10952

EH PSBA

NY-US SWF



NYSCEF DOC. NO. 6

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 10:37 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498363223 Delivered

# Your package has been delivered

Tracking # 779498363223

Ship date: Tue, 1/7/2020	Delivery date: Wed, 1/8/2020 10:35 am
Marisa Warshaw	Mr. Lizer Josefovic,
Dr. Deirdre Connellan Welngarten	Guarantor, Ind
Wise	Mr. Lizer Josefovic, Guarantor,
Wise Plains, NY 10801	Ind
US	33 Marina Way
	YONSEY, NY 10952
	JS



## Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	<u>779498363223</u>
Status:	Delivered: 01/08/2020 10:35 AM Signed for by: Signature not required
Reference:	0181060-00: NYW 1/7/2020
Signed for by:	Signature not required
Delivery location:	Monscy, NY
Delivered to:	Res Servco
Service type:	FedEx Standard Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	0.53 lb.
Special Handling/Services:	Deliver Weekday Residential Delivery
Standard transit:	1/8/2020 by 8:00 pm

INDONESIA (74) 814000  
MARTIN WAKS-USA  
SELBELL DON KELLAM WINGARTEN WEE  
CA LEONINGTON ALE

SHIP DATE-TIME  
ACT/AGE: 8-15 LB  
C/D: 11462706/AS/0001

WHITE PLAINS, NY 10622  
UNITED STATES

ALL SENDER

MR. LIZER JOSEFOVIC  
HBL SNF, LLC  
1280 ALBANY POST RD

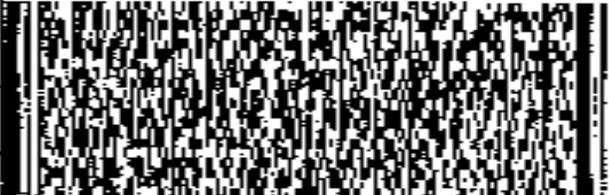
CROTON ON HUDSON NY 10520

949 857-2300 REF: 072000-001 10/10/2020

957 2111300842

COPY

WEIGHT: 11.45 LB (5.19 KG) DIMENSIONS: 11.00 X 11.00 X 11.00



WED - 08 JAN 3:00P  
STANDARD OVERNIGHT

TM# 7794 9823 5404

EH ANIA

10520  
NY-US SWF



NYSCEF DOC. NO. 6

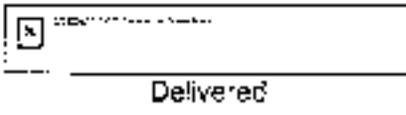
**Marisa Warsaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:33 AM  
**To:** Marisa Warsaw  
**Subject:** FedEx Shipment 779498235404 Delivered

# Your package has been delivered

Tracking # 779498235404

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 9:27 am
<b>Marisa Warsaw</b>	<b>Mr. Lizer Josefovic</b>
DelBelc Donnellan Wainwright Wise White Plains, NY 10601 US	HBL SNF, LLC 280 ALBANY POST RD CROTON ON HUDSON, NY 10520 US



## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498235404

**Status:** Delivered: 01/08/2020 09:27 AM  
Signed for by: Signature Release on file

**Reference:** 0161960-501 MW 1/7/2020

**Signed for by:** Signature Release on file

**Delivery location:** CROTON ON HUDSON, NY

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 3:00 pm

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All weights are estimated.

SHIP DATE: 08-18-20  
ACTWGT: 0.915  
CASH: 0.4675, 0.6050, 0.0000

SHIP DATE: 08-18-20  
ACTWGT: 0.915  
CASH: 0.4675, 0.6050, 0.0000

WHITE PLAINS, NY 10601  
UNITED STATES IS

BILL SENDER

TO: MR. GERALD NEUMAN  
CIO HBL SNF, LLC  
1280 ALBANY POST RD

567 JUS15206607

CROTON ON HUDSON NY 10520  
REF: 01236001 000 100000



WED - 08 JAN 3:00P  
STANDARD OVERNIGHT

TRACKING NO. 7794 9862 7521

EH ANIA

10520  
NY-US SWF



NYSCEF DOC. NO. 6

COPY

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498627521 Delivered

# Your package has been delivered

Tracking # 779498627521

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 9:27 am
Marisa Warshaw	Mr. Gerald Neuman
DolBello Donnellan Walngarten Wise White Plains, NY 10601 US	<input checked="" type="checkbox"/> Delivered c/o HBI, SNE, LLC 1280 ALBANY POST RD CROTON ON HUDSON, NY 10520 US

## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498627521

**Status:** Delivered- 01/08/2020 09:27  
 NY Signed for By: Signature Release on file

**Reference:** 0181900-001 VW 1/7/2020

**Signed for by:** Signature Release on file

**Delivery location:** CROTON ON HUDSON, NY

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 3:00 pm

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All weights are estimates

GREEN MESSA 7-6-01-1234  
DIRECTOR, NYSCEF  
FELISELO DOMINELLAN NEWARK, NJ  
10 LEONARD AVE

SHIP DATE: 01/08/2021  
ACTIVITY: 01/12/21  
CDO: 11/08/21 16:50:03

WEST PLAIN, NY 10681  
UNITED STATES

ALL SENDER

MARK ZAFRIN, ESQ.  
MICHELMAN & ROBINSON  
800 3RD AVE  
24TH FLOOR  
NEW YORK NY 10022

589 2401 02/05/21

COPY

COMPLIANCE WITH THE FEDERAL RULES



WED - 03 JAN 3:00P  
STANDARD OVERNIGHT

TRAK 7794 9853 9658

E3 JRBA

10022  
NY-US EWR



NYSCEF DOC. NO. 0

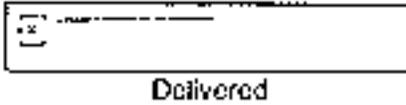
**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498539658 Delivered

# Your package has been delivered

Tracking # 779498539658

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 9:27 am
Marisa Warshaw	Mark Zafra, Esq.
Dolba's Donut on Washington	Michelman & Robinson
Wise	24th Floor
White Plains, NY 10601	800 3RD AVE
US	NEW YORK, NY 10022
	JS



## Shipment Facts

Our records indicate that the following package has been delivered.

**Tracking number:** 779498539658

**Status:** Delivered: 01/08/2020 09:27 AM  
Signed for by: E.ELAINE

**Reference:** 0181930-001 MW 07/2020

**Signed for by:** E.ELAINE

**Delivery location:** NEW YORK, NY

**Delivered to:** Receptions/Front Desk

**Service type:** FedEx Standard Overnight®

**Packaging type:** FedEx® Envelope

**Number of pieces:** 1

**Weight:** 0.50 lb.

**Special handling/Services:** Deliver Weekday

**Standard transit:** 1/8/2020 by 3:00 pm

 Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 9:32 AM CST on 01/08/2020.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

-----x  
WHITE PLAINS HEALTHCARE  
PROPERTIES I, L.L.C.

Plaintiff/Petitioner,

- against -

Index No. 60278/2020

HBL SNF, LLC, ET AL

Defendant/Respondent.  
-----x

**NOTICE OF ELECTRONIC FILING  
(Consensual Case)  
(Uniform Rule § 202.5-b)**

**You have received this Notice because:**

1) The Plaintiff/Petitioner, whose name is listed above, has filed this case using the New York State Courts E-filing system ("NYSCEF"), and

2) You are a Defendant/Respondent (a party) in this case.

● **If you are represented by an attorney:**

Give this Notice to your attorney. (Attorneys: see "Information for Attorneys" pg. 2).

● **If you are not represented by an attorney:**

You will be served with all documents in paper and you must serve and file your documents in paper, unless you choose to participate in e-filing.

**If you choose to participate in e-filing, you must have access to a computer and a scanner or other device to convert documents into electronic format, a connection to the internet, and an e-mail address to receive service of documents.**

The benefits of participating in e-filing include:

- serving and filing your documents electronically
- free access to view and print your e-filed documents
- limiting your number of trips to the courthouse
- paying any court fees on-line (credit card needed)

To register for e-filing or for more information about how e-filing works:

- visit: [www.nycourts.gov/efile-unrepresented](http://www.nycourts.gov/efile-unrepresented) or
- contact the Clerk's Office or Help Center at the court where the case was filed. Court contact information can be found at [www.nycourts.gov](http://www.nycourts.gov)

To find legal information to help you represent yourself visit [www.nycourthelp.gov](http://www.nycourthelp.gov)

### Information for Attorneys

An attorney representing a party who is served with this notice must either consent or decline consent to electronic filing and service through NYSCEF for this case.

Attorneys registered with NYSCEF may record their consent electronically in the manner provided at the NYSCEF site. Attorneys not registered with NYSCEF but intending to participate in e-filing must first create a NYSCEF account and obtain a user ID and password prior to recording their consent by going to [www.nycourts.gov/efile](http://www.nycourts.gov/efile)

Attorneys declining to consent must file with the court and serve on all parties of record a declination of consent.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov)).

Dated: 9/18/2020

WILLIAM V. COLEMAN

Name

ABREMS, FENSTERMAN

Firm Name



81 MAIN STREET, WHITE PLAINS NY

Address

914-607-7010

Phone

BCOLEMAN@ABRAMSLAW.COM

E-Mail

To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2/24/21

<< Return to [Search Results](#)

### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**

Case Type: **Commercial Division**

Case Status: **Active**

eFiling Status: **Full Participation Recorded**

Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

#### Narrow By Options

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

[Display Document List with Motion Folders](#)

Sort By:

#	Document	Filed By	Status
151	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
152	<a href="#">EXHIBIT(S)</a> - P (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
153	<a href="#">EXHIBIT(S)</a> - Q (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
154	<a href="#">EXHIBIT(S)</a> - R (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
155	<a href="#">EXHIBIT(S)</a> - S (Motion #5) <i>Bankruptcy Court Order</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
156	<a href="#">EXHIBIT(S)</a> - T (Motion #5) <i>Operating Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
157	<a href="#">EXHIBIT(S)</a> - U (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

#	Document	Received:	Status
158	<a href="#">EXHIBIT(S)</a> - V (Motion #5) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
159	<a href="#">EXHIBIT(S)</a> - W (Motion #5) <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
160	<a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
161	<a href="#">EXHIBIT(S)</a> - X (Motion #5) <i>Notification of Disposition of Collateral</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
162	<a href="#">EXHIBIT(S)</a> - Y (Motion #5) <i>June 10,2021 Letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
163	<a href="#">EXHIBIT(S)</a> - Z (Motion #5) <i>Publication</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
164	<a href="#">EXHIBIT(S)</a> - AA (Motion #5) <i>Terms of Sale</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
165	<a href="#">EXHIBIT(S)</a> - BB (Motion #5) <i>Amended and Restated Operating Agreement of Waterview</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
166	<a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affidavit of Howard Fensterman</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
167	<a href="#">EXHIBIT(S)</a> - CC (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
168	<a href="#">EXHIBIT(S)</a> - DD (Motion #5) <i>Fed Ex Receipt</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
169	<a href="#">MEMORANDUM OF LAW IN OPPOSITION</a> (Motion #5)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
170	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Supplemental Affidavit of Brett Bandazian in Partial Joinder and Support of Defendants'/Third-Party ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
171	<a href="#">EXHIBIT(S)</a> - 6 (Motion #5) <i>Exhibit 6 Certificate</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

172	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF CROSS-MOTION</a> (Motion #5) <i>Second Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants'/T ... show more</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
173	<a href="#">EXHIBIT(S)</a> - 7 (Motion #5) <i>Exhibit 7 - Article</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
174	<a href="#">ORDER TO SHOW CAUSE</a> (Motion #5)	Court User Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
175	<a href="#">NOTICE OF ENTRY</a>	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
176	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> *Corrected*	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
177	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> (Motion #5) *Corrected* <i>Notice of Appeal</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
178	<a href="#">COUNTY CLERK CERTIFICATION OF MINUTES</a>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
179	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 1 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
180	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 2 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
181	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/10/2021 Received: 08/10/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
182	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/13/2021 Received: 08/13/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
183	<a href="#">NOTICE OF MOTION</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
184	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affirmation of Alfred E. Donnellan, Esq.</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
185	<a href="#">EXHIBIT(S)</a> - 1 (Motion #6) <i>Summons &amp; Complaint - Westchester County action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Document

Filed By

Status

#	Document	Filed By	Status
186	<a href="#">EXHIBIT(S)</a> - 2 (Motion #6) <i>Answer with Counterclaims and Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
187	<a href="#">EXHIBIT(S)</a> - 3 (Motion #6) <i>Amended Verified Complaint 2020.11.30</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
188	<a href="#">EXHIBIT(S)</a> - 4 (Motion #6) <i>Reply to Counterclaims and Answer to Third-Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
189	<a href="#">EXHIBIT(S)</a> - 5 (Motion #6) <i>First Amended Verified Complaint 2021.03.22</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
190	<a href="#">EXHIBIT(S)</a> - 6 (Motion #6) <i>Summons &amp; Complaint - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
191	<a href="#">EXHIBIT(S)</a> - 7 (Motion #6) <i>Answer - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
192	<a href="#">EXHIBIT(S)</a> - 8 (Motion #6) <i>Answer of MCB - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
193	<a href="#">EXHIBIT(S)</a> - 9 (Motion #6) <i>Decision and Order 2021.04.08</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
194	<a href="#">EXHIBIT(S)</a> - 10 (Motion #6) <i>First Amended Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
195	<a href="#">EXHIBIT(S)</a> - 11 (Motion #6) <i>Notice to Admit with exhibits</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
196	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of William Nicholson</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
197	<a href="#">EXHIBIT(S)</a> - 12 (Motion #6) <i>Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
198	<a href="#">EXHIBIT(S)</a> - 13 (Motion #6) <i>Development Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
199	<a href="#">EXHIBIT(S)</a> - 14 (Motion #6) <i>Jozefovic Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>
200	<a href="#">EXHIBIT(S)</a> - 15 (Motion #6) <i>Neuman Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<a href="#">Processed</a> <a href="#">Confirmation Notice</a>

201	<a href="#">EXHIBIT(S)</a> - 16 (Motion #6) <i>Pledge Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
202	<a href="#">EXHIBIT(S)</a> - 17 (Motion #6) <i>Letter of Intent</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
203	<a href="#">EXHIBIT(S)</a> - 18 (Motion #6) <i>White Plains TCO</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
204	<a href="#">EXHIBIT(S)</a> - 19 (Motion #6) <i>AIA form G704</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
205	<a href="#">EXHIBIT(S)</a> - 20 (Motion #6) <i>NYSDOH letter 2019.12.02</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
206	<a href="#">EXHIBIT(S)</a> - 21 (Motion #6) <i>NYSDOH email 2019.10.01</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
207	<a href="#">EXHIBIT(S)</a> - 22 (Motion #6) <i>Term Sheet 2015.11.20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
208	<a href="#">EXHIBIT(S)</a> - 23 (Motion #6) <i>Jozefovic Affidavit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
209	<a href="#">EXHIBIT(S)</a> - 35 (Motion #6) <i>Operating Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
210	<a href="#">EXHIBIT(S)</a> - 36 (Motion #6) <i>Zafrin e-mail dated 4-11-17</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
211	<a href="#">EXHIBIT(S)</a> - 37 (Motion #6) <i>Estoppel Certificate to Security Benefit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
212	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Edward Tabor</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
213	<a href="#">EXHIBIT(S)</a> - 24 (Motion #6) <i>Itemization of amounts due under lease and LOI</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
214	<a href="#">EXHIBIT(S)</a> - 25 (Motion #6) <i>List of Rents &amp; Late Charges</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
215	<a href="#">EXHIBIT(S)</a> - 26 (Motion #6) <i>Notice of Default</i> # <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

Status

216	<a href="#">EXHIBIT(S)</a> - 27 (Motion #6) <i>Accelerated Rent (NPV)</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
217	<a href="#">EXHIBIT(S)</a> - 28 (Motion #6) <i>Professional Fees</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
218	<a href="#">EXHIBIT(S)</a> - 29 (Motion #6) <i>Security Benefit Notice of Default dated 4-16-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
219	<a href="#">EXHIBIT(S)</a> - 30 (Motion #6) <i>Notice of Default 5-22-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
220	<a href="#">EXHIBIT(S)</a> - 31 (Motion #6) <i>Complaint in Security Benefit Foreclosure Action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
221	<a href="#">EXHIBIT(S)</a> - 32 (Motion #6) <i>Itemization of Amounts Due</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
222	<a href="#">EXHIBIT(S)</a> - 33 (Motion #6) <i>Unreimbursed Deposits and Payments</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
223	<a href="#">EXHIBIT(S)</a> - 38 (Motion #6) <i>Payment of Real Estate Taxes</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
224	<a href="#">EXHIBIT(S)</a> - 39 (Motion #6) <i>Certificates of Insurance</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
225	<a href="#">EXHIBIT(S)</a> - 40 (Motion #6) <i>Tenant Insurance Analysis</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Exhibit 2

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

**VERIFIED ANSWER  
WITH AFFIRMATIVE  
DEFENSES, COUNTER-  
CLAIMS AND THIRD-  
PARTY COMPLAINT**

Defendants and  
Third-Party Plaintiff,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

-----X

Defendants, HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and  
MARK NEUMAN (collectively, “Defendants”), by and through their counsel Michelman &  
Robinson, LLP, hereby assert the following verified answer with affirmative defenses,  
counterclaims, and third-party complaint and allege upon information and belief as follows:

**ANSWER TO COMPLAINT**

1. Defendants deny the allegations in paragraphs “1,” “2,” and “3.”
2. Defendants admit the allegations in paragraphs “4” through “11.”
3. Defendants deny the allegations in paragraphs “12” and “13.”
4. In response to the allegations in paragraphs “14” through “20,” Defendants assert

that the document speaks for itself.

5. Defendants admit the allegations in paragraphs “21” and “22.”
6. In response to the allegations in paragraph “23,” Defendants assert that the document speaks for itself.
7. Defendants deny the allegations in paragraphs “24,” “25,” and “26.”
8. In response to the allegations in paragraphs “27” through “32,” Defendants assert that the document speaks for itself.
9. Defendants deny the allegations in paragraph “33.”
10. In response to the allegations in paragraphs “34” through “37,” Defendants assert that the document speaks for itself.
11. Defendants deny the allegations in paragraphs “38” through “53.”
12. In response to the allegations in paragraph “54,” Defendants assert that the document speaks for itself.
13. Defendants admit the allegations in paragraph “55.”
14. In response to the allegations in paragraphs “56” through “59,” Defendants assert that the document speaks for itself.
15. Defendants deny the allegations in paragraphs “60,” “61,” and “62.”
16. Defendants lack sufficient information to form a belief regarding the allegations and, on that basis, deny the allegations in paragraphs “63” and “64.”
17. Defendants deny the allegations in paragraph “65.”
18. In response to the allegations in paragraphs “66” and “67,” Defendants assert that the document speaks for itself.
19. Defendants deny the allegations in paragraphs “68” through “75.”

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

20. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “75” as if fully set forth herein.

21. Defendants deny the allegations in paragraphs “76” and “77.”

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

22. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “77” as if fully set forth herein.

23. Defendants deny the allegations in paragraphs “78” and “79.”

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

24. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “79” as if fully set forth herein.

25. Defendants deny the allegations in paragraphs “80” and “81.”

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

26. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “81” as if fully set forth herein.

27. Defendants deny the allegations in paragraphs “82” and “83.”

**AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses, without admitting that Defendants would bear the burden of proof on any of these or any other affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE  
(Plaintiff's Breach)**

1. Plaintiff's claims for relief are barred, in whole or in part, because plaintiff is in breach of its obligations under the Lease and the integrated development agreements.

**SECOND AFFIRMATIVE DEFENSE  
(Failure to Perform)**

2. Plaintiff failed to perform its obligations under the Lease and integrated Project documents and is not entitled to performance by the Defendants.

**THIRD AFFIRMATIVE DEFENSE  
(Terms Too Indefinite To Enforce)**

3. Certain terms within the Lease which plaintiff seeks to enforce are not clear and not definite and are therefore unenforceable.

**FOURTH AFFIRMATIVE DEFENSE  
(Payment)**

4. Defendants have made various substantial pre-payments of rent which have not been credited to their account.

**FIFTH AFFIRMATIVE DEFENSE  
(Not Entitled to Enforcement)**

5. Plaintiff's failure to deliver the Project in compliance with NYSDOH approvals renders the Lease unenforceable.

**SIXTH AFFIRMATIVE DEFENSE  
(Offsets)**

6. Defendants are entitled to substantial offsets against the rents due under the Lease.

**SEVENTH AFFIRMATIVE DEFENSE  
(Fraud In The Inducement)**

7. Plaintiff induced the Defendants to enter into the Lease and guarantee agreements by making fraudulent representations and failing to disclose material facts.

**EIGHTH AFFIRMATIVE DEFENSE  
(Waiver)**

8. Plaintiff has accepted performance by Defendants and waives any and all right to sue for breach of contract.

**NINTH AFFIRMATIVE DEFENSE  
(Bad Faith/Unclean Hands)**

9. The plaintiff is not entitled to the relief it seeks as it has acted in bad faith and with unclean hands.

**TENTH AFFIRMATIVE DEFENSE  
(Other Affirmative Defenses)**

10. Defendants reserve the right to supplement or amend this Verified Answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this litigation.

**COUNTERCLAIMS AGAINST WHITE PLAINS  
HEALTHCARE PROPERTIES I, LLC  
AND  
THIRD-PARTY CLAIMS AGAINST CCC EQUITIES, LLC,  
PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, AND WILLIAM NICHOLSON**

Now and for their counterclaims against plaintiff and third-party complaint against third-party defendants, Defendants, upon information and belief, allege the following:

1. CCC Equities, LLC is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

2. Project Equity Consulting is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

3. The Congress Companies is a corporation duly organized and existing under the laws of the State of Massachusetts with an address and place of business at 2 Bourbon Street, West Peabody Executive Center, Peabody, Massachusetts 01960 and regularly conducts business within the State of New York.

4. Howard Fensterman is an individual residing at 4 Pond Lane, Sands Point, New York 11050 with a business address and place of business at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

5. Through the period complained of herein, Fensterman acted as both a principal in the transaction and legal counsel to certain parties including the defendant Lizer Jozefovic.

6. William Nicholson is an individual residing at 12 Long Meadow Drive, Ipswich, Massachusetts 01938 with a business address and place of business at 2 Bourbon Street, West Peabody Executive Center, Suite 200, Peabody, Massachusetts 01960.

7. This case involves the development of a new state-of-the-art 160-bed skilled nursing facility on Church Street in White Plains, New York (the "Facility.")

8. The Facility was proposed by the defendant, HBL SNF, LLC, and its principals Lizer Jozefovic and Mark Newman (the “Jozefovic Team”) to the New York State Department of Health (“NYSDOH”) in August 2009.

9. The Facility is dedicated to providing specialized services to “difficult to place patients,” including but not limited to, patients who exhibit psychiatric behaviors, patients who are undocumented, patients with developmental and physical disabilities, and patients who have no means of financial support and require charity care.

10. The Facility was intentionally located in White Plains to service high-density minority and high-density poverty populations as compared to surrounding regions.

11. In order to obtain a Certificate of Need from NYSDOH, the Jozefovic Team acquired skilled nursing bed licenses from other area nursing facilities including Hebrew Hospital Home of Westchester, Bethel Nursing Home, and Taylor Care Center.

12. After full review of the Jozefovic Team’s application, NYSDOH determined that the Jozefovic Team was a successful operator of nursing facilities that are authorized to care for the elderly and individuals with long-term physical care needs and has an established history of achieving high occupancy at the facilities it operated.

13. NYSDOH further determined that the Facility was unique and necessary as it provided care to patients not accepted by other facilities because of their special needs.

14. At the time the Jozefovic Team proposed the Facility, the Plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and the third-party defendants Howard Fensterman (“Fensterman”), William Nicholson (“Nicholson”), and their companies CCC Equities LLC (“CCCE”), Project Equity Construction (“PEC”), and The Congress Companies (“Congress”), approached the Jozefovic Team and proposed that they act as developers for the new Facility.

15. Led by third-party defendant Fensterman, these parties represented that they were capable of performing all aspects of development of the Facility including construction and financing (hereafter “the Project.”)

16. In fact, the Project costs for the Facility presented to NYSDOH by the Jozefovic Team were costs calculated and submitted by Fensterman and Nicholson.

17. Importantly, these costs established a total Project cost of \$56, 631,759.

18. The Project costs for the Facility were itemized by Fensterman and Nicholson as follows:

Land acquisition	\$ 4,528,333
New construction	\$37,282,722
Design Contingency	\$ 1,864,136
Construction Contingency	\$ 1,864,136
Architect/Engineering Fees	\$ 2,982,618
Construction Manager Fees	\$ 745,654
Other Fees (Consultant)	\$ 750,000
Movable Equipment	\$ 1,480,000
Financing Costs	\$ 2,112,000
Interim Interest Expense	\$ 2,710,400
CON Application Fee	\$ 2,000
CON Processing Fee	\$ 309,760
Total Project Cost	\$56,631,759

19. Many of these costs were to be paid to Fensterman and Nicholson directly, as well as Fensterman’s law firm, and other costs to their entities as fees, interest costs, and other Project expenses.

20. In addition, Fensterman and Nicholson represented that they could arrange for 100% of the Project financing.

21. More specifically, Fensterman and Nicholson specifically represented and agreed in writing that they could secure a HUD insured mortgage in the amount of \$42,240,000 with an interest rate of 5.5% and a term of thirty (30) years.

22. A description of this mortgage was included in the projected Medicaid Reimbursement submitted to NYSDOH as part of the Project feasibility forecast.

23. Furthermore, Fensterman represented that he could provide the necessary project equity in the amount of \$9,863,246 through his company CCC Equities, LLC.

24. The Jozefovic Team presented this financing arrangement to NYSDOH in support of its request for approval of the Facility and these costs became part of NYSDOH's Project approval.

25. Given that Fensterman and Nicholson agreed to develop, finance, and own the Project, the Jozefovic Team agreed to enter into a Lease Agreement to occupy and operate the Facility.

26. To accomplish this, Fensterman and Nicholson proposed that their company White Plains Healthcare Properties I, LLC become the landlord for the operating company owned by the Jozefovic Team known as HBL SNF, LLC.

27. The Lease was to be for a twenty (20) year term.

28. The rent was to be calculated as an amount equal to the debt service of the HUD insured mortgage to be obtained by Fensterman and Nicholson plus a return of cash equity to WPHP on the account of the equity contributions through CCCE.

29. The annual rent proposed by Fensterman and Nicholson and presented to NYSDOH equaled \$4,318,000 annually or \$360,000 per month.

30. The amount of annual rent as calculated above was eligible for reimbursement to HBL SNF, LLC through the NYSDOH.

31. The Project as proposed to the NYSDOH was to be completed in approximately twenty (20) months.

32. The NYSDOH gave approval for the Project on the terms described above in October 2012.

33. Throughout the NYSDOH application process, the Jozefovic Team relied upon representations made by Fensterman and Nicholson.

34. However, shortly after receiving approval from NYSDOH, the Jozefovic Team learned that Fensterman and Nicholson did not have the capital necessary to commence or complete the Project as presented.

35. As a result of this lack of capital the Project was delayed for years.

36. In an attempt to overcome this lack of capital, on November 15, 2015, HBL SNF, LLC entered into a Development Agreement with White Plains Healthcare Properties I, LLC (the “Development Agreement.”)

37. On the same date, HBL SNF, LLC entered into a Lease with White Plains Healthcare Properties I, LLC (the “Lease”) for the Facility in order to enable WPHP to obtain its Project financing.

38. The Development Agreement and Lease are essential parts of the same transaction and are constitute integrated agreements.

39. Pursuant to the Development Agreement, the Project was to be “turn-key” meaning that the plaintiff and third-party defendants would deliver a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place in accordance with the approval granted by NYSDOH.

40. However, because Fensterman and Nicholson lacked sufficient capital to complete the Project on a turn-key basis, they induced the Jozefovic Team to withdraw its equity from

another nursing facility which it owned and operated known as Waterview Nursing Home and to contribute that equity to the Project so that the Project could move forward in 2016.

41. In particular, the Jozefovic Team made the following capital contributions to the Project as memorialized in a Term Sheet dated November 20, 2015:

- a) \$2,200,000 paid to WPHP to be used by Congress for pre-development costs;
- b) \$197,072 to CCC Equities, LLC to be used in the discretion of Fensterman;
- c) \$1,595,368.32 into a control account in the name of HBL SNF.

42. Despite repeated requests since 2015, Fensterman, Nicholson, Congress, and CCCE have failed or refused to provide an accounting of the use of the predevelopment and discretionary funds paid to them.

43. In consideration for the \$2,200,000 contribution to WPHP, WPHP agreed that these funds constituted a loan to WPHP to be repaid to HBL SNF, LLC.

44. No provision was made for the payment of interest on the loan notwithstanding that WPHP had the use of such funds since 2015.

45. WPHP agreed to repay the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") in the amount of \$1,500,000 for the Project and by giving HBL SNF, LLC a future credit against Lease payments.

46. When advancing these funds to Fensterman, Nicholson, CCC Equities and Congress, the Jozefovic Team anticipated that the Facility would be delivered in September 2017.

47. The Facility was not delivered until December 2019.

48. Despite repeated requests, WPHP has never provided an accounting for purchases of the required FF&E or any documentation evidencing repayment of \$1,500,000 of the loan amount to HBL SNF, LLC.

49. In the absence of such an accounting, HBL SNF, LLC cannot determine how much of its loan amount, if any, has been repaid and how much of the remaining loan balance should be credited to current Lease payments.

50. In addition, accrued interest on the \$2,200,000 loan must be calculated from November 2015 and either paid to HBL SNF, LLC or credited to payments due under the Lease.

51. The Development Agreement required that the Project be substantially completed within twenty-two (22) months or before September 2017.

52. The plaintiff breached its obligations to HBL SNF, LLC by failing to complete the Project until December 2019.

53. The delay in completing the Project caused HBL SNF, LLC to lose substantial revenue.

54. In addition, by delivering the Project in December 2019, HBL SNF, LLC encountered market conditions during its start-up phase in 2020 caused by the COVID-19 pandemic which adversely affected HBL SNF LLC's operations as it has nursing homes throughout the region.

55. HBL SNF, LLC would not have encountered these adverse financial conditions but not for the delay caused by plaintiff and third-party defendants.

56. In addition to the Project being completed more than two (2) years late, plaintiff and third-party defendants delivered the Project well over budget.

57. The Development Agreement required the plaintiff to enter into a construction contract with Congress and to secure a 100% performance bond to guarantee the performance of the construction contract.

58. However, unbeknownst to HBL SNF, LLC, Congress could not secure a performance bond.

59. Fensterman and Nicholson never disclosed to HBL SNF, LLC or any of its principals that Congress could not obtain a bond.

60. As a result, WPHP entered into a contract without approval or consent from HBL SNF, LLC for a creation of a joint venture agreement with a third-party contractor.

61. The joint venture, among other reasons, added substantial costs to the Project.

62. These substantial additional costs exceeded the capital expenditures approved by NYSDOH and are not reimbursable through NYSDOH.

63. Upon information and belief, Congress's inability to secure the performance bond is related to certain judgments taken against its principal Nicholson arising from claims for diversion of project funds in a skilled nursing project located in Milwaukee, Wisconsin dating back to 2015, the time when the Jozefovic Team advanced monies to Nicholson and Congress.

64. Neither Fensterman nor Nicholson disclosed these adverse proceedings to the Jozefovic Team.

65. In fact, Nicholson was adjudged to have committed conversion and civil theft in the amount of \$1,903,452, and that judgement was affirmed on appeal to the Seventh Circuit Court of Appeals.

66. The Development Agreement required that plaintiff and third-party defendants deliver the Project at the costs approved by NYSDOH.

67. Only in the event of a change order, authorized by HBL SNF, LLC, would HBL SNF, LLC have responsibility for any cost higher than the cost approved by the NYSDOH.

68. There were no approved change orders.

69. The approved Project cost is \$57,000,000.
70. The plaintiff and third-party defendants caused the Project to exceed the approved costs by more than \$5,000,000.
71. The plaintiff and third-party defendants breached their obligations to HBL SNF, LLC under the Development Agreement by causing the Project to be over budget.
72. As a result, HBL SNF, LLC is not eligible for reimbursement of its rent payments as originally intended - a loss of eligibility that will cause substantial harm to HBL SNF, LLC.
73. Given these costs overruns and the loss of eligibility for reimbursement, the Lease is unenforceable.
74. As part of the “turn-key” delivery of the Project, plaintiff was obligated to provide permanent financing for the Project on the terms of the HUD insured loan submitted by plaintiff as part of the Project approved by NYSDOH.
75. The plaintiff and third-party defendants have failed to provide such permanent financing and are in breach of the Development Agreement and the Lease.
76. In connection with the permanent financing, the plaintiff and third-party defendants were required to demonstrate sufficient equity invested in the Project for HUD or any other lender of permanent financing to grant a thirty (30) year loan to the Project.
77. Plaintiff and third-party defendants have failed to demonstrate sufficient equity in the Project.
78. Upon information and belief, Fensterman procured financial contributions from individual third parties who contributed capital to CCCE to meet the equity requirement.
79. Although this capital is required to be and has, in fact, been represented by Fensterman to be in the nature of equity, upon information and belief, these contributions from

individual third-parties are loans at high rates of interest which are overdue as a result of the Project delays.

80. Fensterman, CCCE, and plaintiff have caused additional financial burden to the Project and have attempted to pass along to HBL SNF, LLC and the Jozefovic Team these higher interest costs.

81. The Project cost overruns and the higher finance costs due to the delay in delivering the Project, together with the lack of sufficient equity, have prevented the Project from securing permanent financing.

82. The plaintiff and third-party defendants have advised HBL SNF, LLC that they have initiated this lawsuit because they are in default of their current loan agreements.

83. As of this date, plaintiff and third-party defendants have been unable to provide to the Jozefovic Team an accurate Project accounting of Project expenditures and have refused to provide information concerning the Project financing.

84. As of this date, plaintiff and third-party defendants have been unable to procure the HUD insured financing which they represented they could secure and is required by NYSDOH Project approval.

85. As of this date, the Project does not comply with the approval issued by the NYSDOH.

86. As a result of the failure to deliver the Project on the terms approved by NYSDOH, HBL SNF, LLC cannot be reimbursed for the cost of the Facility as intended by the Development Agreement and the Lease and HBL SNF, LLC and its principals have suffered financial harm as a result.

87. Throughout the development process, WPHP, Fensterman, Nicholson and Congress have made false representations to the Jozefovic Team and have taken adverse actions which have adversely affected the business of HBL SNF, LLC.

**AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST WPHP,  
CCCE, CONGRESS, AND FENSTERMAN  
(DEMAND FOR ACCOUNTING)**

88. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “87” with the same force and effect as if fully set forth herein.

89. HBL SNF, LLC, Lizer Jozefovic and Mark Neuman had a trust-based relationship with Fensterman, Nicholson, and WPHP.

90. Given that relationship, HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman advanced monies to WPHP and Fensterman prior to commencement of the Project in order to allow the Project to proceed.

91. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman are entitled to an accounting of the use of the funds advanced for the Project.

**AS AND FOR A SECOND CAUSE OF ACTION AS AGAINST WPHP  
(PAYMENT OF INTEREST)**

92. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “91” with the same force and effect as if fully set forth herein.

93. HBL SNF, LLC is entitled to imputed interest on the \$2,200,000 made to WPHP loan from November 2015 to present.

**AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST WPHP  
(BREACH OF CONTRACT)**

94. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “93” with the same force and effect as if fully set forth herein.

95. WPHP breached the Development Agreement and the Lease.

96. As a result of such breach, HBL SNF, LLC has been damaged by the loss of reimbursable capital expenditures and has incurred other costs due to the nonperformance of WPHP.

97. In addition, HBL SNF, LLC has lost funds and continues to lose revenues as a result of Project delays.

**AS AND FOR A FOURTH CAUSE OF ACTION  
AS AGAINST FENSTERMAN AND NICHOLSON  
(FRAUD IN THE INDUCEMENT)**

98. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “97” with the same force and effect as if fully set forth herein.

99. Third-party defendants Fensterman and Nicholson fraudulently induced HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman to enter into the Development Agreement, the Lease, and the Guaranty.

100. Fensterman and Nicholson misrepresented the Project costs.

101. Fensterman and Nicholson misrepresented their ability to secure permanent HUD financing.

102. Fensterman and Nicholson misrepresented their ability to complete the Project.

103. Fensterman misrepresented the capital contributions made to CCCE to satisfy the equity requirement for the Project.

104. Fensterman and Nicholson failed to disclose the claimant civil proceeding against Nicholson for civil theft.

105. By reason of such fraud in the inducement, Defendants Lizer Jozefovic and Mark Neuman have no obligations under the guarantees.

106. By reason of such fraud in the inducement, HBL SNF, LLC has suffered financial damages.

**AS AND FOR A FIFTH CAUSE OF ACTION  
AS AGAINST ALL THIRD-PARTY DEFENDANTS  
(BAD FAITH)**

107. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “106” with the same force and effect as if fully set forth herein.

108. As alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.

109. As a result of such bad faith dealings, HBL SNF, LLC has suffered damages in an amount not less than \$15,000,000.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(FRAUD)**

110. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “109” with the same force and effect as if fully set forth herein.

111. The misrepresentations and non-disclosures by Fensterman and Nicholson and third-party defendants constitute fraud.

112. WPHP, Fensterman and Nicholson new such statements were false.

113. WPHP, Fensterman and Nicholson made such statements to deceive HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman.

114. HBL SNF, LLC has been damaged by such fraudulent conduct.

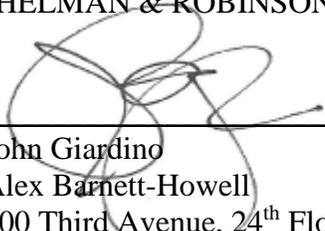
**WHEREFORE**, Defendants and Third-Party Plaintiffs deny generally and specifically that it committed any wrongdoing and demand:

- 1) A determination that the amount of rent payable under the Lease be modified by any sums not reimbursable by the NYSDOH and offset by prior payments and accrued interest;
- 2) The Guaranty Agreements be nullified;
- 3) Monetary damages in an amount to be determined;
- 4) Attorneys' fees, and
- 5) Such other relief as the Court deems appropriate.

Dated: New York, New York

November 5, 2020

MICHELMAN & ROBINSON, LLP

By: 

John Giardino  
Alex Barnett-Howell  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10022  
(212) 730-7700  
[jgiardino@mrlp.com](mailto:jgiardino@mrlp.com)  
[abarnett-howell@mrlp.com](mailto:abarnett-howell@mrlp.com)  
*Attorneys for Defendants*

**VERIFICATION BY ATTORNEY**

JOHN GIARDINO, being an attorney duly admitted to practice in the courts of New York, affirms the following under penalties of perjury:

I am an attorney for Defendants HBL-SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARK NEUMAN, in the above entitled action and have read the foregoing Verified Answer and know the contents thereof; that the same is true upon information and belief, and that as to those matters I believe them to be true.

I further state that the grounds of my belief as to all matters in the Verified Answer are based upon the file maintained by my office and conference and telephone conferences with Defendants. This verification is made pursuant to the provisions of RPAPL 741 because Defendants was not available to sign the same at the time the Verified Answer was prepared.

Dated: New York, New York  
November 5, 2020

  
\_\_\_\_\_  
JOHN GIARDINO, ESQ.

# Exhibit

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

<p>WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, Plaintiff.</p> <p>-- against --</p> <p>HBL SNF, LLC, LIZER JOZEOFVIC A/K/A LIZER JOZEOFVIC and MARK NEUMAN, Defendants.</p>
---

Index No. 60278/2020

**AMENDED VERIFIED  
COMPLAINT**

Plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties"), by its attorneys, DeBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, for its amended verified complaint against defendants, HBL SNF, LLC ("HBL"), Lizer Jozefovic a/k/a Lizer Jozefovic ("Jozefovic") and Mark Neuman ("Neuman"), alleges:

**NATURE OF THE CASE**

1. This action concerns HBL's material default of its obligations under an amended and restated operating lease dated as of November 19, 2015 (the "Lease"), by which WPH Properties leased to HBL a brand new, state-of-the-art, 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York.

2. WPH Properties had constructed the nursing facility and entered into the Lease with HBL, dated November 19, 2015. The Lease was amended and restated in 2017. It provided that HBL would operate the facility for 30 years. The Lease commenced on September 30, 2019. HBL took possession of the facility on September 30, 2019. By the end of October 2019, HBL had

defaulted.

3. On January 7, 2020, WPH Properties served notice of default and elected to terminate the Lease and accelerate all rents due. This action seeks to recover from HBL the Rent it owes and the other damages its defaults have caused and to enforce the unconditional guaranties of HBL's performance under the Lease given by Neuman and Jozefovic.

**PARTIES AND VENUE**

4. WPH Properties is a limited liability company duly organized and existing under the laws of the State of Massachusetts, with its principal place of business at 2 Bourbon Street, Suite 200, Peabody, Massachusetts. WPH Properties is duly authorized to do business in the State of New York.

5. HBL was and is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 537 Route 22, Purdys, New York.

6. Jozefovic is an individual residing at 53 Mariner Way, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

7. Neuman is an individual residing at 22 Lyncrest Drive, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

8. Pursuant to CPLR § 503(a), venue is properly designated in Westchester County based on the residences of WPH Properties and HBL, because a substantial part of the events giving rise to the claim occurred in Westchester County and because HBL and WPH Properties agreed in the Lease that any action or proceeding arising out of the Lease be brought in Westchester County. Lease § 20.1(b).

**FACTS**

9. WPH Properties is and was at all relevant times the owner of the real property known as 116-120 Church Street, White Plains, New York (the "Real Property").

10. WPH Properties constructed a brand new, state-of-the-art, 160-bed skilled nursing facility on the Real Property.

**THE LEASE**

11. In 2017, WPH Properties, as landlord, and HBL, as tenant, entered into the amended and restated Lease, dated as of November 19, 2015, under which WPH Properties leased to HBL the Real Property and the improvements to be constructed on the Real Property, together with other assets, all as defined in Section 2.1 of the Lease (the "Facility"). A true and accurate copy of the Lease is annexed to this complaint as Exhibit 1 and is incorporated into this complaint by reference.

12. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019.

13. HBL entered into possession of the Facility on September 30, 2019.

14. The Lease provided for a term of 30 years, with three 10-year options to the tenant, unless sooner terminated. Exhibit 1, Lease, § 3.1.

15. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 (the "Fixed Rent"). Exhibit 1, Lease, § 3.2.

16. The Lease also obligated HBL to pay WPH Properties other amounts which are defined as "Additional Rent." Fixed Rent and Additional Rent are referred to collectively as "Rent."

17. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Premises during the Term. Exhibit 1, Lease, § 4.1.

18. The Lease obligated HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit 1, Lease, § 4.2.

19. The Lease obligated HBL to keep the Premises in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses relating to the Premises. Exhibit 1, Lease, § 5.2.

20. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit 1, Lease, § 7.1.

21. A true and accurate copy of the Jozefovic Guaranty is annexed to this complaint as Exhibit 2.

22. A true and accurate copy of the Neuman Guaranty is annexed to this complaint as Exhibit 3.

23. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

24. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Jozefovic without the necessity of any notice of

nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Jozefovic expressly waived.

25. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

26. The Neuman Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

27. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an agreement by Capital Funding Group by which Capital Funding Group agreed to allow HBL to draw down on its credit line each month so as to enable Capital Funding Group to pay the Fixed Rent each month directly to WPH Properties on the commencement date and for the following 11 months. Exhibit 1, Lease, § 7.1.

28. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease. Exhibit 1, Lease, § 7.1.

29. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, \$1,600,000 as an additional security deposit. Exhibit 1, Lease, § 7.1.

30. The Lease obligated HBL to provide WPH Properties all reports, statements and

inspections as defined in the Lease, including all Medicare, Medicaid and other provider agreements and reimbursement rates for the Facility, updated reimbursement rates, financial reporting and written reports providing an operational overview of significant events and circumstances on a monthly basis, Exhibit I, Lease, § 7.4.

31. The Lease obligated HBL to maintain working capital accounts in specified amounts, Exhibit I, Lease, § 7.7.

32. The Lease provides that HBL will be in default of the Lease if, among other things, (i) HBL fails to pay any installment of Rent within five days of the date when Rent was due; (ii) HBL defaults in the prompt and full performance of any other of its obligations and fails to correct that failure within 30 days of receipt of written notice from WPH Properties of the default; (iii) HBL fails to give WPH Properties timely notice or timely deliver copies of documents as required by Section 7.4 of the Lease; (iv) HBL defaults or breaches the provisions of Section 7.4(b); (v) a Guarantor defaults beyond expiration of any applicable cure period; or (vi) any governmental authority assesses a fine or penalty against HBL in an amount in excess of \$75,000, Exhibit I, Lease, § 16.1.

33. WPH Properties performed all of the conditions on its part required by the Lease.

34. The Lease provides in Section 16.1 that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent.

35. Section 16.1 of the Lease also provides that upon the occurrence of a default, and in addition to all of the other remedies provided for in the Lease, WPH Properties is immediately

entitled to retain the security deposit required by Section 7.1 of the Lease and HBL has no further claim, right, title or interest therein to the extent of WPH Properties' claims.

36. Section 16.1 of the Lease also provides that upon the occurrence of a default and the commencement of an action for Rent or for any other amount due under the Lease, HBL must pay to WPH Properties all of the expenses, including reasonable attorneys' fees, incurred by WPH Properties to enforce the Lease.

37. In addition, under the terms of the Lease, HBL's continuation in occupancy after termination does not constitute a renewal of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 201.13.

**THE JOZEFOVIC SECURITY AGREEMENT**

38. On August 11, 2017 Jozefovic executed a Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Jozefovic Security Agreement"), assigning to WPH Properties' nominee a first and superior security interest in Jozefovic's interest in Waterview Acquisition I, LLC (the "Jozefovic Waterview Collateral") in order to secure the obligations under the Jozefovic Security Agreement and under the Lease. A true and accurate copy of the Jozefovic Security Agreement is annexed to this complaint as Exhibit 4.

39. The Jozefovic Security Agreement provides that Jozefovic has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of the Jozefovic Waterview Collateral. Exhibit 4, Jozefovic Security Agreement § 3

40. The Jozefovic Security Agreement further provides that Jozefovic agrees not to subsequently further amend or voluntarily permit the amendment of the Waterview Acquisition I,

LLC Operating Agreement that would in any manner materially adversely affect the Jozefovic Security Agreement and or the rights of WPH Properties. Exhibit 4, Jozefovic Security Agreement § 4

41. On September 15, 2020 WPH Properties duly perfected its security interest with respect to the Jozefovic Waterview Collateral by filing a UCC financing statement.

42. Upon information and belief, in or around December 2019, Jozefovic assigned the Jozefovic Waterview Collateral to Metropolitan Commercial Bank ("MCB") to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

43. Upon information and belief, to effectuate Jozefovic's assignment of the Jozefovic Waterview Collateral to MCB, Jozefovic agreed to and voluntarily permitted the amendment of the Waterview Acquisition I, LLC Operating Agreement.

44. Jozefovic breached his obligations under the Jozefovic Security Agreement by agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and assigning the Jozefovic Waterview Collateral to MCB.

45. Jozefovic further breached the Jozefovic Security Agreement by failing to take all of the necessary steps to add Howard Fensterman, a principal of WPH Properties, as a co-signatory to the JP Morgan Chase accounts identified therein as required by the Jozefovic Security Agreement.

46. Jozefovic and HBL breached their obligation to post the \$1,600,000 additional security deposit required by the Jozefovic Security Agreement and the Lease.

47. Jozefovic's moving of funds into a separate account that he controls does not satisfy the obligation to post the \$1.6 million additional security deposit as required by the Jozefovic

Security Agreement and the Lease.

48. Jozefovic's and HBL's failure to satisfy the obligation to post the \$1.6 million additional security deposit constitutes a breach of the Jozefovic Security Agreement and a breach of the Lease.

49. The Jozefovic Security Agreement provides that Jozefovic pledges, assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member of Waterview Acquisition I, LLC to WPH Properties in order to secure the obligations under the Jozefovic Security Agreement and under the Lease

50. Pursuant to the remedies granted to WPH Properties under the UCC and the Jozefovic Security Agreement, in the event of a default, WPH Properties is entitled, among other remedies, to dispose of the Jozefovic Waterview Collateral at a public sale.

51. Jozefovic breached the Jozefovic Security Agreement and materially and adversely affected the Jozefovic Waterview Collateral and the rights of WPH Properties by (i) agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and (ii) assigning the Jozefovic Waterview Collateral to MCB to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

52. As a result of Jozefovic breaching the Jozefovic Security Agreement by amending the operating agreement and assigning the Jozefovic Waterview Collateral to MCB, any purchaser of the Jozefovic Waterview Collateral at public sale by WPH Properties will purchase the Jozefovic Waterview Collateral subject to MCB's senior security interest in the collateral.

53. Jozefovic's breach of the Jozefovic Security Agreement therefore has caused WPH Properties damages in the amount of \$3,000,000, the amount of Jozefovic's obligation to MCB

secured by Jozefovic's illicit assignment of the same collateral to MCB.

**HBL BREACHED ITS OBLIGATIONS UNDER THE LEASE**

54. HBL failed to perform its obligations, materially defaulting under the Lease, almost immediately after taking possession of the Premises.

55. HBL failed to pay Rent as required by the Lease.

56. HBL failed to pay real estate taxes as required by the Lease.

57. HBL failed to pay utility deposits as required by the Lease.

58. HBL failed to pay municipal maintenance escrows as required by the Lease.

59. HBL failed to pay utility charges as required by the Lease.

60. HBL failed or refused to deliver certificates of insurance as required by the Lease.

61. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility, as required by the Lease.

62. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider updated rate sheets, as required by the Lease.

63. HBL failed to deliver to WPH Properties the required financial reporting, as required by the Lease.

64. HBL failed to deliver to WPH Properties the required written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease, as required by the Lease.

65. HBL failed or refused to deliver to WPH Properties the security deposits, as required by the Lease.

66. HBL failed to deliver and maintain the required credit line in an amount equal to

12 months' rent, as required by the Lease.

67. HBL failed to have and maintain the working capital account required by the Lease.

68. HBL failed to pay late fees and costs, as required by the Lease.

**THE LETTER OF INTENT**

69. After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease, despite HBL's default.

70. On November 20, 2019, WPH Properties and HBL entered into a Letter of Intent (the "LOI") in which WPH Properties and HBL agreed that WPH Properties would sell the Facility for \$73,000,000 to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties or its designees would have a 22.5 percent interest.

71. A true and accurate copy of the LOI is annexed to this complaint as **Exhibit 5**.

72. The LOI provides for the Lease to be amended to require that HBL pay the November 2019 rent by November 15, 2019, the December rent by December 5, 2019 and all real estate taxes and utility payments by December 1, 2019, that by December 5, 2019 HBL reimburse WPH Properties for \$65,856 in municipal and utility deposits, that HBL enter into a Deposit Account Control Agreement with MNB requiring MNB to draw on the account first to pay the rent.

73. The LOI further provides for the Lease to be amended so that the \$3,700,000 security deposit required by Section 7.1(a)(ii) is reduced to \$2,000,000, \$1,000,000 of which was required to be paid by HBL on or before December 1, 2019 or the date on which WPH Properties obtained a permanent certificate of occupancy for the Facility (which was granted on November 14, 2019), whichever was later, and the balance of which was required to be paid on April 1, 2020.

which was the Closing date required by the LOI.

74. In addition, the LOI provides for the Lease to be amended so that in lieu of providing the additional \$1,000,000 in security required by Section 7.1(a)(iii) of the Lease, HBL would be required to enter into an agreement with JP Morgan Chase Bank prohibiting liquidation of that account until the second \$1,000,000 in security required by the LOI had been paid.

75. The LOI also provides for the Lease to be amended to require HBL to obtain a single working capital line of credit in the amount of \$8,000,000 by December 1, 2019.

76. HBL defaulted and breached its obligations under the LOI by failing to pay rent, failing to pay the municipal and utility payments to WPH Properties, failing to pay the real estate taxes and utility payments, failing to enter into the Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank, by failing to pay the first \$1,000,000 security deposit as required by the LOI and by failing to obtain the \$8,000,000 working capital credit line, and by failing to meet the required Closing date of April 1, 2020.

77. WPH Properties performed all conditions on its part required by the LOI.

78. Solely as a result of HBL's breach of the LOI, WPH Properties did not sell the property to the Delaware Statutory Trust, causing damage to WPH Properties, and WPH Properties incurred interest and late charges on its loans, all of which are the direct result of HBL's breach of the LOI.

**NOTICE OF DEFAULT, TERMINATION OF THE LEASE AND ACCELERATION OF RENT**

79. On January 7, 2020, while the LOI was in effect, WPH Properties served a "Notice of Default And Landlord's Election To Terminate Lease And Accelerate All Rents Due For The Balance of the Lease Term" upon HBL (the "Notice of Default").

80. A true and accurate copy of the Notice of Default is annexed to this complaint as Exhibit 6 and incorporated into this complaint by reference.

81. The Notice of Default contains a true and accurate accounting of the amounts then due and owing under the Lease and L.OI.

82. The Notice of Default gave HBL notice that by reason of HBL's defaults under the Lease, WPH Properties had exercised its right under Section 16.1 of the Lease to terminate the Lease, effective January 13, 2020.

83. The Notice of Default further gave HBL notice that pursuant to Section 16.1 of the Lease all Rent for the balance of the Term was accelerated and HBL became obligated to pay WPH Properties the present value of the accelerated rent, discounted at a rate of 6% per annum.

84. HBL continued, and still continues, to occupy the Premises, despite WPH Properties' termination of the Lease.

85. Because HBL has held over after its default resulted in termination of the Lease, HBL is a tenant month-to-month at a rent equal to 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

86. HBL has failed to perform its obligations as a tenant month-to-month by failing to pay rent in the amount of 300% of the most recent Rent payable by HBL under the Lease, remitting only the base rent which had been payable before WPH Properties terminated the Lease.

87. HBL is in default with respect to its obligations under the Lease and its obligations as a month-to-month tenant following termination of the Lease effective January 13, 2020.

**AMOUNTS DUE**

88. As a result of HBL's defaults, HBL is obligated to pay to WPH Properties, as of

August 25, 2020, the sum of \$113,832,987.54 (the "Amounts Due"), as follows: (i) holdover rent and rent, \$7,096,182.79; (ii) municipal and utility deposits, \$26,725.35; (iii) security and working capital deposits, \$9,800,000.00; (iv) late fees, default fees, costs and professional fees, \$1,948,753.00; and (v) accelerated rent, \$94,961,326.40.

89. HBL is obligated to pay to WPH Properties the Amounts Due in full, plus any amounts that have accrued since August 25, 2020.

90. HBL has failed or refused to pay the Amounts Due.

91. WPH Properties has fully performed all obligations required to be performed on its part with respect to the Lease, the LOI, HBL's month-to-month tenancy after the termination of the Lease, the Jozefovic Guaranty, the Neuman Guaranty, the HBL Security Agreement, the Jozefovic HBL Security Agreement and the Neuman HBL Security Agreement.

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

92. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "91" with the same force and effect as if fully set forth here.

93. By reason of HBL's material default and breach of its obligations pursuant to the Lease and its obligations as a month-to-month tenant after termination of the lease, WPH Properties is entitled to judgment against HBL for the Amounts Due, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law.

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

94. WPH Properties repeats and re-alleges each and every allegation set forth in

paragraphs "1" through "93" with the same force and effect as if fully set forth here.

95. By reason of HBL's material default and breach of its obligations pursuant to the LOI, WPH Properties is entitled to judgment against HBL in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

96. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "95" with the same force and effect as if fully set forth here.

97. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic for the Amounts Due pursuant to the terms of the Jozefovic Guaranty.

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

98. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "97" with the same force and effect as if fully set forth here.

99. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Neuman for the Amounts Due pursuant to the terms of the Neuman Guaranty.

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

100. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "99" with the same force and effect as if fully set forth here.

101. By reason of Jozefovic's default in the performance of his obligations under the Jozefovic Security Agreement and HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic in the amount of \$3,000,000.00.

WHEREFORE, WPH Properties demands judgment as follows:

1. On its First cause of action, against HBI, in the amount of \$113,832,987.54, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

2. On its Second Cause of Action, against HBI, in an amount to be determined at trial; and

3. On its Third Cause of Action, against Jozefovic in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

4. On its Fourth Cause of Action, against Neuman in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

5. On its Fifth Cause of Action, against Jozefovic in the amount of \$3,000,000.00; and

6. On all causes of action, awarding costs, disbursements and attorneys' fees against HBI, pursuant to the provisions of the Lease and against Jozefovic and Neuman pursuant to the provisions of the Jozefovic Guaranty and the Neuman Guaranty; and

7. Awarding such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York

November 19, 2020

DILBERTO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

By:  .....  
Alfred E. Donnellan, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

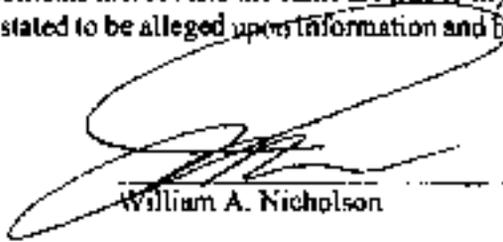
ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO,  
FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
Robert A. Spolzin, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the annexed Amended Verified Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

  
William A. Nicholson

Sworn to before me this  
10th day of November 2020

  
Notary Public



# Exhibit

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

- against -

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Index No. 60278/2020

VERIFIED ANSWER TO  
THIRD-PARTY  
COMPLAINT

Third-Party Defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (the "Third-Party Defendants"), by their attorneys DeBello, Donnellan Weingarten Wise & Wiederkehr, LLP, as and for its Answer of the Third-Party Complaint of Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic a/k/a Lizer Jozefovic and Mark Neuman, respectfully state and allege as follows:

1. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1 of the Third-Party Complaint.
2. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 2 of the Third-Party Complaint.

3. **Third-Party Defendants deny the allegations set forth in paragraph 3 of the Third-Party Complaint.**

4. **Third-Party Defendants admit the allegations set forth in paragraph 4 of the Third-Party Complaint.**

5. **Third-Party Defendants deny the allegations set forth in paragraph 5 of the Third-Party Complaint.**

6. **Third-Party Defendants admit the allegations set forth in paragraph 6 of the Third-Party Complaint.**

7. **Third-Party Defendants admit the allegations set forth in paragraph 7 of the Third-Party Complaint.**

8. **Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 8 of the Third-Party Complaint.**

9. **Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 9 of the Third-Party Complaint.**

10. **Third-Party Defendants deny the allegations set forth in paragraph 10 of the Third-Party Complaint.**

11. **Third-Party Defendants admit the allegations set forth in paragraph 11 of the Third-Party Complaint.**

12. **Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 12 of the Third-Party Complaint.**

13. **Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 13 of the Third-Party Complaint.**

14. Third-Party Defendants deny the allegations set forth in paragraph 14 of the Third-Party Complaint except to admit that WHP Properties acted as developer for the new Facility.

15. Third-Party Defendants deny the allegations set forth in paragraph 15 of the Third-Party Complaint and refer to the terms of the Development Agreement.

16. Third-Party Defendants deny the allegations set forth in paragraph 16 of the Third-Party Complaint.

17. Third-Party Defendants deny the allegations set forth in paragraph 17 of the Third-Party Complaint except Third-Party Defendants admit that, at one point in time, non-final projected costs were estimated to be \$56,631,759.

18. Third-Party Defendants deny the allegations set forth in paragraph 18 of the Third-Party Complaint except Third-Party Defendants admit that, at one point in time, non-final projected costs were estimated to be those listed in the allegations set forth in paragraph 18 of the Third-Party Complaint.

19. Third-Party Defendants deny the allegations set forth in paragraph 19 of the Third-Party Complaint.

20. Third-Party Defendants deny the allegations set forth in paragraph 20 of the Third-Party Complaint.

21. Third-Party Defendants deny the allegations set forth in paragraph 21 of the Third-Party Complaint.

22. Third-Party Defendants admit the allegations set forth in paragraph 22 of the Third-Party Complaint.

23. Third-Party Defendants deny the allegations set forth in paragraph 23 of the Third-Party Complaint except Third-Party Defendants admit that CCC Equities, LLC provided \$9,863,246.

24. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 24 of the Third-Party Complaint.

25. Third-Party Defendants deny the allegations set forth in paragraph 25 of the Third-Party Complaint except Third-Party Defendants admit that the Jozefovic Team entered into a lease agreement with WHP Properties, and an amended and restated lease thereto, to occupy and operate the Facility.

26. Third-Party Defendants deny the allegations set forth in paragraph 26 of the Third-Party Complaint except that Third-Party Defendants admits that WHP Properties executed a lease, and an amended and restated lease thereto, as landlord.

27. Third-Party Defendants deny the allegations set forth in paragraph 27 of the Third-Party Complaint except that Third-Party Defendants state that the Lease referenced in paragraph 27 speaks for itself.

28. Third-Party Defendants deny the allegations set forth in paragraph 28 of the Third-Party Complaint.

29. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 28 of the Third-Party Complaint.

30. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 30 of the Third-Party Complaint.

31. Third-Party Defendants deny the allegations set forth in paragraph 31 of the Third-Party Complaint.

32. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 32 of the Third-Party Complaint.

33. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 33 of the Third-Party Complaint.

34. Third-Party Defendants deny the allegations set forth in paragraph 34 of the Third-Party Complaint.

35. Third-Party Defendants deny the allegations set forth in paragraph 35 of the Third-Party Complaint.

36. Third-Party Defendants deny the allegations set forth in paragraph 34 of the Third-Party Complaint except that Third-Party Defendants admit that HBL SNF LLC and Third-Party Defendants entered into the Development Agreement.

37. Third-Party Defendants deny the allegations set forth in paragraph 34 of the Third-Party Complaint except that Third-Party Defendants admit that HBL SNF LLC and Third-Party Defendants entered into a lease and an amended and restated lease thereto.

38. No response is required as to paragraph 38 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 38 of the Third-Party Complaint and the term Lease as defined in the Third-Party Complaint.

39. Third-Party Defendants deny the allegations set forth in paragraph 39 of the Third-Party Complaint and Third-Party Defendants state that the Development Agreement speaks for itself.

40. Third-Party Defendants deny the allegations set forth in paragraph 40 of the Third-Party Complaint.

- 41. Third-Party Defendants admit the allegations set forth in paragraph 41 of the Third-Party Complaint.
- 42. Third-Party Defendants deny the allegations set forth in paragraph 42 of the Third-Party Complaint.
- 43. Third-Party Defendants deny the allegations set forth in paragraph 43 of the Third-Party Complaint.
- 44. Third-Party Defendants deny the allegations set forth in paragraph 44 of the Third-Party Complaint.
- 45. Third-Party Defendants deny the allegations set forth in paragraph 45 of the Third-Party Complaint.
- 46. Third-Party Defendants deny the allegations set forth in paragraph 46 of the Third-Party Complaint.
- 47. Third-Party Defendants deny the allegations set forth in paragraph 47 of the Third-Party Complaint.
- 48. Third-Party Defendants deny the allegations set forth in paragraph 48 of the Third-Party Complaint.
- 49. Third-Party Defendants deny the allegations set forth in paragraph 49 of the Third-Party Complaint.
- 50. Third-Party Defendants deny the allegations set forth in paragraph 50 of the Third-Party Complaint.
- 51. Third-Party Defendants deny the allegations set forth in paragraph 51 of the Third-Party Complaint.

52. Third-Party Defendants deny the allegations set forth in paragraph 52 of the Third-Party Complaint.

53. Third-Party Defendants deny the allegations set forth in paragraph 53 of the Third-Party Complaint.

54. Third-Party Defendants deny the allegations set forth in paragraph 54 of the Third-Party Complaint.

55. Third-Party Defendants deny the allegations set forth in paragraph 55 of the Third-Party Complaint.

56. Third-Party Defendants deny the allegations set forth in paragraph 56 of the Third-Party Complaint.

57. Third-Party Defendants deny the allegations set forth in paragraph 57 of the Third-Party Complaint except that Third-Party Defendants state that the Development Agreement speaks for itself.

58. Third-Party Defendants deny the allegations set forth in paragraph 58 of the Third-Party Complaint.

59. Third-Party Defendants deny the allegations set forth in paragraph 59 of the Third-Party Complaint.

60. Third-Party Defendants deny the allegations set forth in paragraph 60 of the Third-Party Complaint.

61. Third-Party Defendants deny the allegations set forth in paragraph 61 of the Third-Party Complaint.

62. Third-Party Defendants deny the allegations set forth in paragraph 62 of the Third-Party Complaint.

63. Third-Party Defendants deny the allegations set forth in paragraph 63 of the Third-Party Complaint.

64. Third-Party Defendants deny the allegations set forth in paragraph 64 of the Third-Party Complaint.

65. Third-Party Defendants deny the allegations set forth in paragraph 65 of the Third-Party Complaint.

66. Third-Party Defendants deny the allegations set forth in paragraph 66 of the Third-Party Complaint.

67. Third-Party Defendants deny the allegations set forth in paragraph 67 of the Third-Party Complaint.

68. Third-Party Defendants deny the allegations set forth in paragraph 68 of the Third-Party Complaint.

69. Third-Party Defendants deny the allegations set forth in paragraph 69 of the Third-Party Complaint.

70. Third-Party Defendants deny the allegations set forth in paragraph 70 of the Third-Party Complaint.

71. No response is required as to paragraph 71 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 71 of the Third-Party Complaint.

72. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 72 of the Third-Party Complaint.

73. Third-Party Defendants deny the allegations set forth in paragraph 73 of the Third-Party Complaint.

74. Third-Party Defendants deny the allegations set forth in paragraph 74 of the Third-Party Complaint.

75. Third-Party Defendants deny the allegations set forth in paragraph 75 of the Third-Party Complaint.

76. Third-Party Defendants deny the allegations set forth in paragraph 76 of the Third-Party Complaint.

77. Third-Party Defendants deny the allegations set forth in paragraph 77 of the Third-Party Complaint.

78. Third-Party Defendants deny the allegations set forth in paragraph 78 of the Third-Party Complaint except Third-Party Defendants admit that CCCE procured financial contributions from third parties.

79. Third-Party Defendants deny the allegations set forth in paragraph 79 of the Third-Party Complaint.

80. Third-Party Defendants deny the allegations set forth in paragraph 80 of the Third-Party Complaint.

81. Third-Party Defendants deny the allegations set forth in paragraph 81 of the Third-Party Complaint.

82. Third-Party Defendants deny the allegations set forth in paragraph 82 of the Third-Party Complaint.

83. Third-Party Defendants deny the allegations set forth in paragraph 83 of the Third-Party Complaint.

84. Third-Party Defendants deny the allegations set forth in paragraph 84 of the Third-Party Complaint.

85. Third-Party Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 85 of the Third-Party Complaint.

86. Third-Party Defendants deny the allegations set forth in paragraph 86 of the Third-Party Complaint.

87. Third-Party Defendants deny the allegations set forth in paragraph 87 of the Third-Party Complaint.

**AS TO THE FIRST COUNTERCLAIM**

88. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth at length.

89. No response is required as to paragraph 89 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 89 of the Third-Party Complaint.

90. No response is required as to paragraph 90 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 90 of the Third-Party Complaint.

91. No response is required as to paragraph 91 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 91 of the Third-Party Complaint.

**AS TO THE SECOND COUNTERCLAIM**

92. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth length.

93. No response is required as to paragraph 93 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 93 of the Third-Party Complaint.

**AS TO THE THIRD COUNTERCLAIM**

94. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth.

95. No response is required as to paragraph 95 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 95 of the Third-Party Complaint.

96. No response is required as to paragraph 96 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 96 of the Third-Party Complaint.

97. No response is required as to paragraph 97 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 97 of the Third-Party Complaint.

**AS TO THE FOURTH COUNTERCLAIM**

98. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth.

99. No response is required as to paragraph 99 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 99 of the Third-Party Complaint.

100. No response is required as to paragraph 100 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 100 of the Third-Party Complaint.

101. No response is required as to paragraph 101 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 101 of the Third-Party Complaint.

102. No response is required as to paragraph 102 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 102 of the Third-Party Complaint.

103. No response is required as to paragraph 103 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 103 of the Third-Party Complaint.

104. Third-Party Defendants deny the allegations set forth in paragraph 87 of the Third-Party Complaint.

105. No response is required as to paragraph 105 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 105 of the Third-Party Complaint.

106. No response is required as to paragraph 106 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 106 of the Third-Party Complaint.

**AS TO THE FIFTH COUNTERCLAIM**

107. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth.

108. No response is required as to paragraph 108 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 108 of the Third-Party Complaint.

109. No response is required as to paragraph 109 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 109 of the Third-Party Complaint.

**AS TO THE SIXTH COUNTERCLAIM**

110. Third-Party Defendants repeat and reasserts the denials set forth above with the same force and effect as if fully set forth.

111. No response is required as to paragraph 111 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 111 of the Third-Party Complaint.

112. Third-Party Defendants deny the allegations set forth in paragraph 112 of the Third-Party Complaint.

113. Third-Party Defendants deny the allegations set forth in paragraph 113 of the Third-Party Complaint.

114. No response is required as to paragraph 114 of the Third-Party Complaint because it states a legal conclusion. To the extent that a response is required, Third-Party Defendants deny the allegations set forth in paragraph 114 of the Third-Party Complaint.

**AS AND FOR A FIRST AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

115. The Third-Party Plaintiffs do not have personal jurisdiction over the Third-Party Defendants.

**AS AND FOR A SECOND AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

116. The Third-Party Complaint is barred, in whole or in part, by the doctrine of laches.

**AS AND FOR A THIRD AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

117. The Third-Party Complaint is barred, in whole or in part, by the doctrine of equitable estoppel.

**AS AND FOR A FOURTH AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

118. The Third-Party Complaint is barred, in whole or in part, by Third-Party Plaintiffs' failure to satisfy the conditions precedent and to perform its own obligations under the parties' Agreements.

**AS AND FOR A FIFTH AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

119. The Third-Party Complaint is barred, in whole or in part, by the doctrine of unclean hands and bad faith.

**AS AND FOR A SIXTH AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

120. The Third-Party Complaint is barred, in whole or in part, because of Third-Party Plaintiffs' failure to mitigate its purported damages.

**AS AND FOR A SEVENTH AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

121. Any damages purportedly incurred by Third-Party Plaintiffs, as alleged in the Third-Party Complaint, are the result of Third-Party Plaintiffs' own acts and/or omissions, or that

of its principals, directors, officers, employees or agents, and not as the result of Third-Party Defendants' conduct.

**AS AND FOR AN EIGHTH AFFIRMATIVE  
DEFENSE TO THE THIRD-PARTY COMPLAINT**

122. The Third-Party Complaint fails to state any cause of action

**AS AND FOR A NINTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

123. The Third-Party Complaint is barred, in whole or in part, because of Third-Party Plaintiffs' release of the Third-Party Defendants' obligations in the agreements at issue in the litigation.

WHEREFORE, Third-Party Defendants demand Judgment against Third-Party Plaintiffs: (1) dismissing the Third-Party Complaint; and (2) such other, further and different relief as to the Court may seem just, proper and equitable.

Dated: White Plains, New York  
December 11, 2020

DEL BELLO DONNELLAN WEINGARTEN WISE &  
WIEDERKREHR, LLP  
*Lead Counsel for Third-Party Defendants*

By: *Isl Alfred E. Donnellan*

Alfred E. Donnellan, Esq.  
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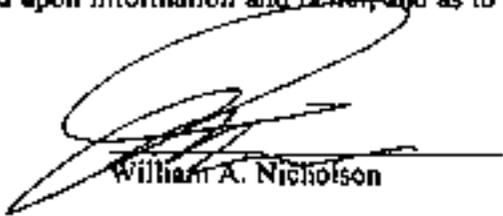
TO:  
John Giardino, Esq.  
Alex Barnett-Howell, Esq.  
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800 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10022  
Phone: (212) 730-7700  
*Attorneys for Defendants HBL SNF, LLC.*  
*Lizer Jozefovic and Mark Neuman*

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am a named Third-Party Defendant. I have read the annexed Verified Answer to Third-Party Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

  
William A. Nicholson

Sworn to before me this  
14<sup>th</sup> day of December 2020

  
Notary Public



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

- against -

HBL SNF, LLC, LIZER JOZEOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN and WILLIAM  
NICHOLSON,

Third-Party Defendants,

Index No. 60278/2020

VERIFIED REPLY TO  
COUNTERCLAIMS

Plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties"), by its attorneys DelBello, Donnellan Weingarten Wise & Wiederkehr, LLP, as and for its Reply to the Counterclaims of the Defendants HBL SNF, LLC, Lizer Jozefovic ~~a/k/a~~ Lizer Jozofovic and Mark Neuman, respectfully states and alleges as follows:

1. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1 of the Counterclaims.
2. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 2 of the Counterclaims.
3. WPH Properties denies the allegations set forth in paragraph 3 of the Counterclaims.

4. WPH Properties admits the allegations set forth in paragraph 4 of the Counterclaims.

5. WPH Properties denies the allegations set forth in paragraph 5 of the Counterclaims.

6. WPH Properties admits the allegations set forth in paragraph 6 of the Counterclaims.

7. WPH Properties admits the allegations set forth in paragraph 7 of the Counterclaims.

8. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 8 of the Counterclaims.

9. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 9 of the Counterclaims.

10. WPH Properties denies the allegations set forth in paragraph 10 of the Counterclaims.

11. WPH Properties admits the allegations set forth in paragraph 11 of the Counterclaims.

12. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 12 of the Counterclaims.

13. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 13 of the Counterclaims.

14. WPH Properties denies the allegations set forth in paragraph 14 of the Counterclaims except to admit that WHP Properties acted as developer for the new Facility.

15. WPH Properties denies the allegations set forth in paragraph 15 of the Counterclaims and refers to the terms of the Development Agreement.

16. WPH Properties denies the allegations set forth in paragraph 16 of the Counterclaims.

17. WPH Properties denies the allegations set forth in paragraph 17 of the Counterclaims except WPH Properties admits that, at one point in time, non-final projected costs were estimated to be \$56,631,759.

18. WPH Properties denies the allegations set forth in paragraph 18 of the Counterclaims except WPH Properties admits that, at one point in time, non-final projected costs were estimated to be those listed in the allegations set forth in paragraph 18 of the Counterclaims.

19. WPH Properties denies the allegations set forth in paragraph 19 of the Counterclaims.

20. WPH Properties denies the allegations set forth in paragraph 20 of the Counterclaims.

21. WPH Properties denies the allegations set forth in paragraph 21 of the Counterclaims.

22. WPH Properties admits the allegations set forth in paragraph 22 of the Counterclaims.

23. WPH Properties denies the allegations set forth in paragraph 23 of the Counterclaims except WPH Properties admits that CCC Equities, LLC provided \$9,863,246.

24. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 24 of the Counterclaims.

25. WPH Properties denies the allegations set forth in paragraph 25 of the Counterclaims except WPH Properties admits that the Jozefovic Team entered into a lease agreement, and an amended and restated lease thereto, to occupy and operate the Facility.

26. WPH Properties denies the allegations set forth in paragraph 26 of the Counterclaims except that WPH Properties admits that it executed a lease, and an amended and restated lease thereto, as landlord.

27. WPH Properties denies the allegations set forth in paragraph 27 of the Counterclaims except that WPH Properties states that the Lease referenced in paragraph 27 speaks for itself.

28. WPH Properties denies the allegations set forth in paragraph 28 of the Counterclaims.

29. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 28 of the Counterclaims.

30. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 30 of the Counterclaims.

31. WPH Properties denies the allegations set forth in paragraph 31 of the Counterclaims.

32. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 32 of the Counterclaims.

33. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 33 of the Counterclaims.

34. WPH Properties denies the allegations set forth in paragraph 34 of the Counterclaims.

35. WPH Properties denies the allegations set forth in paragraph 35 of the Counterclaims.

36. WPH Properties denies the allegations set forth in paragraph 34 of the Counterclaims except that WPH Properties admits that HBL SNF LLC and WPH Properties entered into the Development Agreement.

37. WPH Properties denies the allegations set forth in paragraph 34 of the Counterclaims except that WPH Properties admits that HBL SNF LLC and WPH Properties entered into a lease and an amended and restated lease thereto.

38. No response is required as to paragraph 38 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 38 of the Counterclaims and the term Lease as defined in the Counterclaims.

39. WPH Properties denies the allegations set forth in paragraph 39 of the Counterclaims and WPH Properties states that the Development Agreement speaks for itself.

40. WPH Properties denies the allegations set forth in paragraph 40 of the Counterclaims.

41. WPH Properties admits the allegations set forth in paragraph 41 of the Counterclaims.

42. WPH Properties denies the allegations set forth in paragraph 42 of the Counterclaims.

43. WPH Properties denies the allegations set forth in paragraph 43 of the Counterclaims.

44. WPH Properties denies the allegations set forth in paragraph 44 of the Counterclaims.

45. WPH Properties denies the allegations set forth in paragraph 45 of the Counterclaims.

46. WPH Properties denies the allegations set forth in paragraph 46 of the Counterclaims.

47. WPH Properties denies the allegations set forth in paragraph 47 of the Counterclaims.

48. WPH Properties denies the allegations set forth in paragraph 48 of the Counterclaims.

49. WPH Properties denies the allegations set forth in paragraph 49 of the Counterclaims.

50. WPH Properties denies the allegations set forth in paragraph 50 of the Counterclaims.

51. WPH Properties denies the allegations set forth in paragraph 51 of the Counterclaims.

52. WPH Properties denies the allegations set forth in paragraph 52 of the Counterclaims.

53. WPH Properties denies the allegations set forth in paragraph 53 of the Counterclaims.

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55. WPH Properties denies the allegations set forth in paragraph 55 of the Counterclaims.

56. WPH Properties denies the allegations set forth in paragraph 56 of the Counterclaims.

57. WPH Properties denies the allegations set forth in paragraph 57 of the Counterclaims except that WPH Properties states that the Development Agreement speaks for itself.

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66. WPH Properties denies the allegations set forth in paragraph 66 of the Counterclaims.

67. WPH Properties denies the allegations set forth in paragraph 67 of the Counterclaims.

68. WPH Properties denies the allegations set forth in paragraph 68 of the Counterclaims.

69. WPH Properties denies the allegations set forth in paragraph 69 of the Counterclaims.

70. WPH Properties denies the allegations set forth in paragraph 70 of the Counterclaims.

71. No response is required as to paragraph 71 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 71 of the Counterclaims.

72. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 72 of the Counterclaims.

73. WPH Properties denies the allegations set forth in paragraph 73 of the Counterclaims.

74. WPH Properties denies the allegations set forth in paragraph 74 of the Counterclaims.

75. WPH Properties denies the allegations set forth in paragraph 75 of the Counterclaims.

76. WPH Properties denies the allegations set forth in paragraph 76 of the Counterclaims.

77. WPH Properties denies the allegations set forth in paragraph 77 of the Counterclaims.

78. WPH Properties denies the allegations set forth in paragraph 78 of the Counterclaims except WPH Properties admits that CCCB procured financial contributions from third parties.

79. WPH Properties denies the allegations set forth in paragraph 79 of the Counterclaims.

80. WPH Properties denies the allegations set forth in paragraph 80 of the Counterclaims.

81. WPH Properties denies the allegations set forth in paragraph 81 of the Counterclaims.

82. WPH Properties denies the allegations set forth in paragraph 82 of the Counterclaims.

83. WPH Properties denies the allegations set forth in paragraph 83 of the Counterclaims.

84. WPH Properties denies the allegations set forth in paragraph 84 of the Counterclaims.

85. WPH Properties denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 85 of the Counterclaims.

86. WPH Properties denies the allegations set forth in paragraph 86 of the Counterclaims.

87. WPH Properties denies the allegations set forth in paragraph 87 of the Counterclaims.

**AS TO THE FIRST COUNTERCLAIM**

88. WPH Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth at length.

89. No response is required as to paragraph 89 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 89 of the Counterclaims.

90. No response is required as to paragraph 90 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 90 of the Counterclaims.

91. No response is required as to paragraph 91 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 91 of the Counterclaims.

**AS TO THE SECOND COUNTERCLAIM**

92. WPH Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth length.

93. No response is required as to paragraph 93 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 93 of the Counterclaims.

**AS TO THE THIRD COUNTERCLAIM**

94. WPH Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth.

95. No response is required as to paragraph 95 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 95 of the Counterclaims.

96. No response is required as to paragraph 96 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 96 of the Counterclaims.

97. No response is required as to paragraph 97 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 97 of the Counterclaims.

**AS TO THE FOURTH COUNTERCLAIM**

98. WHP Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth.

99. No response is required as to paragraph 99 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 99 of the Counterclaims.

100. No response is required as to paragraph 100 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 100 of the Counterclaims.

101. No response is required as to paragraph 101 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 101 of the Counterclaims.

102. No response is required as to paragraph 102 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 102 of the Counterclaims.

103. No response is required as to paragraph 103 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 103 of the Counterclaims.

104. WPH Properties denies the allegations set forth in paragraph 87 of the Counterclaims.

105. No response is required as to paragraph 105 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 105 of the Counterclaims.

106. No response is required as to paragraph 106 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 106 of the Counterclaims.

**AS TO THE FIFTH COUNTERCLAIM**

107. WHP Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth.

108. No response is required as to paragraph 108 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 108 of the Counterclaims.

109. No response is required as to paragraph 109 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 109 of the Counterclaims.

**AS TO THE SIXTH COUNTERCLAIM**

110. WPH Properties repeats and reasserts the denials set forth above with the same force and effect as if fully set forth.

111. No response is required as to paragraph 111 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 111 of the Counterclaims.

112. WPH Properties denies the allegations set forth in paragraph 112 of the Counterclaims.

113. WPH Properties denies the allegations set forth in paragraph 113 of the Counterclaims.

114. No response is required as to paragraph 114 of the Counterclaims because it states a legal conclusion. To the extent that a response is required, WPH Properties denies the allegations set forth in paragraph 114 of the Counterclaims.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE COUNTERCLAIMS**

115. The Counterclaims fail to state any cause of action.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE COUNTERCLAIMS**

116. The Counterclaims are barred, in whole or in part, by the doctrine of laches.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE COUNTERCLAIMS**

117. The Counterclaims are barred, in whole or in part, by the doctrine of equitable estoppel.

**AS AND FOR A FOURTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

118. The Counterclaims are barred, in whole or in part, by Defendants' failure to satisfy the conditions precedent and to perform its own obligations under the parties' Agreements.

**AS AND FOR A FIFTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

119. The Counterclaims are barred, in whole or in part, by the doctrine of unclean hands and had faith.

**AS AND FOR A SIXTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

120. The Counterclaims are barred, in whole or in part, because of Defendants' failure to mitigate its purported damages.

**AS AND FOR A SEVENTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

121. Any damages purportedly incurred by Defendants, as alleged in the Counterclaims, are the result of Defendants' own acts and/or omissions, or that of its principals, directors, officers, employees or agents, and not as the result of WHP Properties' conduct.

**AS AND FOR AN EIGHTH AFFIRMATIVE  
DEFENSE TO THE COUNTERCLAIMS**

122. The Counterclaims are barred, in whole or in part, because of Defendants' release of Plaintiff's obligations in the agreements at issue in the litigation.

**WHEREFORE**, WHP Properties demands Judgment as prayed for in the Complaint, and Judgment against Defendants: (1) dismissing the Counterclaims contained in Defendants Verified Answer; and (2) such other, further and different relief as to the Court may seem just, proper and equitable.

Dated: White Plains, New York  
December 11, 2020

DEL BELLO DONNELLAN WEINGARTEN WISE &  
WIEDERKEHR, L.L.P.  
*Lead Counsel for Plaintiff White Plains Healthcare  
Properties I, LLC*

By: /s/ Alfred E. Donnellan

Alfred E. Donnellan, Esq.  
Nelida Lara, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

ABRAMS, FENSTERMAN, FENSTERMAN,  
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*Co-Counsel for Plaintiff White Plains Healthcare  
Properties I, LLC*  
Robert A. Spolzino, Esq.  
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TO:

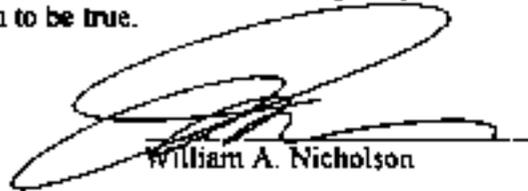
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*Attorneys for Defendants HBL SNF, LLC,  
Lizer Jozefovic and Mark Neuman*

VERIFICATION

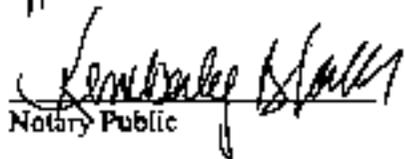
COMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the annexed Verified Reply to Counterclaims, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

  
William A. Nicholson

Sworn to before me this  
11th day of December 2020

  
Notary Public



# Exhibit

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
Plaintiff,  
  
-- against --  
  
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZEFOVIC and MARK NEUMAN,  
Defendants.

Index No. 60278/2020

**FIRST AMENDED  
VERIFIED COMPLAINT**

Plaintiff, White Plains Healthcare Properties I, LLC ("WPH Properties"), by its attorneys, DeHelle, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, for its amended verified complaint against defendants, HBL SNF, LLC ("HBL"), Lizer Jozefovic a/k/a Lizer Jozefovic ("Jozefovic") and Mark Neuman ("Neuman"), alleges:

**NATURE OF THE CASE**

1. This action concerns HBL's material default of its obligations under an amended and restated operating lease dated as of November 19, 2015 (the "Lease"), by which WPH Properties leased to HBL a brand new, state-of-the-art, 160-bed skilled nursing facility that WPH Properties constructed at 116-120 Church Street, White Plains, New York.
2. WPH Properties had constructed the nursing facility and entered into the Lease with HBL, dated November 19, 2015. The Lease was amended and restated in 2017. It provided that HBL would operate the facility for 30 years. The Lease commenced on September 30, 2019. HBL took possession of the facility on September 30, 2019. By the end of October 2019, HBL had

defaulted.

3. On January 7, 2020, WPH Properties served notice of default and elected to terminate the Lease and accelerate all rents due. This action seeks to recover from HBL the Rent it owes and the other damages its defaults have caused and to enforce the unconditional guaranties of HBL's performance under the Lease given by Neuman and Jozefovic.

**PARTIES AND VENUE**

4. WPH Properties is a limited liability company duly organized and existing under the laws of the State of Massachusetts, with its principal place of business at 2 Bourbon Street, Suite 200, Peabody, Massachusetts. WPH Properties is duly authorized to do business in the State of New York.

5. HBL was and is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 537 Route 22, Purdys, New York.

6. Jozefovic is an individual residing at 53 Mariner Way, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

7. Neuman is an individual residing at 22 Lyncrest Drive, Monsey, New York, with a business address and place of business at HBL, 537 Route 22, Purdys, New York.

8. Pursuant to CPLR § 503(a), venue is properly designated in Westchester County based on the residences of WPH Properties and HBL, because a substantial part of the events giving rise to the claim occurred in Westchester County and because HBL and WPH Properties agreed in the Lease that any action or proceeding arising out of the Lease be brought in Westchester County. Lease § 20.1(b).

### FACTS

9. WPH Properties is and was at all relevant times the owner of the real property known as 116-120 Church Street, White Plains, New York (the "Real Property").

10. WPH Properties constructed a brand new, state-of-the-art, 160-bed skilled nursing facility on the Real Property.

### THE LEASE

11. In 2017, WPH Properties, as landlord, and HBL, as tenant, entered into the amended and restated Lease, dated as of November 19, 2015, under which WPH Properties leased to HBL the Real Property and the improvements to be constructed on the Real Property, together with other assets, all as defined in Section 2.1 of the Lease (the "Facility"). A true and accurate copy of the Lease is annexed to this complaint as Exhibit 1 and is incorporated into this complaint by reference.

12. WPH Properties obtained a certificate of occupancy for the Facility on August 22, 2019.

13. HBL entered into possession of the Facility on September 30, 2019.

14. The Lease provided for a term of 30 years, with three 10-year options to the tenant, unless sooner terminated. Exhibit 1, Lease, § 3.1.

15. The Lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 (the "Fixed Rent"). Exhibit 1, Lease, § 3.2

16. The Lease also obligated HBL to pay WPH Properties other amounts which are defined as "Additional Rent." Fixed Rent and Additional Rent are referred to collectively as "Rent."

17. The Lease obligated HBL to pay all charges for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Premises during the Term. Exhibit 1, Lease, § 4.1.

18. The Lease obligated HBL to pay, before penalties are incurred, all real estate taxes, assessments, utility charges and other taxes. Exhibit 1, Lease, § 4.2.

19. The Lease obligated HBL to keep the Premises in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses relating to the Premises. Exhibit 1, Lease, § 5.2.

20. The Lease obligated HBL to deliver a guarantee of all obligations owed by HBL under the Lease from Jozefovic (the "Jozefovic Guaranty") and from Neuman (the "Neuman Guaranty"). Exhibit 1, Lease, § 7.1.

21. A true and accurate copy of the Jozefovic Guaranty is annexed to this complaint as Exhibit 2.

22. A true and accurate copy of the Neuman Guaranty is annexed to this complaint as Exhibit 3.

23. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

24. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Jozefovic without the necessity of any notice of

nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Jozefovic expressly waived

25. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guaranteed the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the Lease, whether due by acceleration or otherwise, and the full, timely and complete performance of all obligations to be performed by HBL under the Lease, including obligations that survive termination of the Lease.

26. The Neuman Guaranty is an absolute and unconditional guaranty of payment and of performance and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

27. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an agreement by Capital Funding Group by which Capital Funding Group agreed to allow HBL to draw down on its credit line each month so as to enable Capital Funding Group to pay the Fixed Rent each month directly to WPH Properties on the commencement date and for the following 11 months. Exhibit 1, Lease, § 7.1.

28. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the Lease. Exhibit 1, Lease, § 7.1

29. The Lease obligated HBL to deliver to WPH Properties, before the commencement date of the Lease, \$1,600,000 as an additional security deposit. Exhibit 1, Lease, § 7.1.

30. The Lease obligated HBL to provide WPH Properties all reports, statements and

inspections as defined in the Lease, including all Medicare, Medicaid and other provider agreements and reimbursement rates for the Facility, updated reimbursement rates, financial reporting and written reports providing an operational overview of significant events and circumstances on a monthly basis. Exhibit 1, Lease, § 7.4.

31. The Lease obligated HBL to maintain working capital accounts in specified amounts. Exhibit 1, Lease, § 7.7.

32. The Lease provides that HBL will be in default of the Lease if, among other things, (i) HBL fails to pay any installment of Rent within five days of the date when Rent was due; (ii) HBL defaults in the prompt and full performance of any other of its obligations and fails to correct that failure within 30 days of receipt of written notice from WPH Properties of the default; (iii) HBL fails to give WPH Properties timely notice or timely deliver copies of documents as required by Section 7.4 of the Lease; (iv) HBL defaults or breaches the provisions of Section 7.4(b); (v) a Guarantor defaults beyond expiration of any applicable cure period; or (vi) any governmental authority assesses a fine or penalty against HBL in an amount in excess of \$75,000. Exhibit 1, Lease, § 16.1.

33. WPH Properties performed all of the conditions on its part required by the Lease.

34. The Lease provides in Section 16.1 that upon the occurrence of a default by HBL, WPH Properties may, upon five days written notice, terminate the Lease, accelerate the payment of all Rent for the balance of the Term and declare the Rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent.

35. Section 16.1 of the Lease also provides that upon the occurrence of a default, and in addition to all of the other remedies provided for in the Lease, WPH Properties is immediately

entitled to retain the security deposit required by Section 7.1 of the Lease and HBL has no further claim, right, title or interest therein to the extent of WPH Properties' claims.

36. Section 16.1 of the Lease also provides that upon the occurrence of a default and the commencement of an action for Rent or for any other amount due under the Lease, HBL must pay to WPH Properties all of the expenses, including reasonable attorneys' fees, incurred by WPH Properties to enforce the Lease.

37. In addition, under the terms of the Lease, HBL's continuation in occupancy after termination does not constitute a renewal of the Lease, but HBL becomes a tenant month-to-month for a rental of 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

**THE JOZEFOVIC SECURITY AGREEMENT**

38. On August 11, 2017 Jozefovic executed a Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Jozefovic Security Agreement"), assigning to WPH Properties' nominee a first and superior security interest in Jozefovic's interest in Waterview Acquisition I, LLC (the "Jozefovic Waterview Collateral") in order to secure the obligations under the Jozefovic Security Agreement and under the Lease. A true and accurate copy of the Jozefovic Security Agreement is annexed to this complaint as Exhibit 4.

39. The Jozefovic Security Agreement provides that Jozefovic has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of the Jozefovic Waterview Collateral. Exhibit 4, Jozefovic Security Agreement § 3

40. The Jozefovic Security Agreement further provides that Jozefovic agrees not to subsequently further amend or voluntarily permit the amendment of the Waterview Acquisition I,

LLC Operating Agreement that would in any manner materially adversely affect the Jozefovic Security Agreement and/or the rights of WPH Properties, Exhibit 4, Jozefovic Security Agreement § 4

41. On September 15, 2020 WPH Properties duly perfected its security interest with respect to the Jozefovic Waterview Collateral by filing a UCC financing statement.

42. Upon information and belief, in or around December 2019, Jozefovic assigned the Jozefovic Waterview Collateral to Metropolitan Commercial Bank ("MCB") to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

43. Upon information and belief, to effectuate Jozefovic's assignment of the Jozefovic Waterview Collateral to MCB, Jozefovic agreed to and voluntarily permitted the amendment of the Waterview Acquisition I, LLC Operating Agreement.

44. Jozefovic breached his obligations under the Jozefovic Security Agreement by agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement and assigning the Jozefovic Waterview Collateral to MCB.

45. Jozefovic further breached the Jozefovic Security Agreement by failing to take all of the necessary steps to add Howard Fensterman, a principal of WPH Properties, as a co-signatory to the JP Morgan Chase accounts identified therein as required by the Jozefovic Security Agreement.

46. Jozefovic and HBL breached their obligation to post the \$1,600,000 additional security deposit required by the Jozefovic Security Agreement and the Lease.

47. Jozefovic's moving of funds into a separate account that he controls does not satisfy the obligation to post the \$1.6 million additional security deposit as required by the Jozefovic

Security Agreement and the Lease.

48. Jozefovic's and HBL's failure to satisfy the obligation to post the \$1.6 million additional security deposit constitutes a breach of the Jozefovic Security Agreement and a breach of the Lease.

49. The Jozefovic Security Agreement provides that Jozefovic pledges, assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member of Waterview Acquisition I, LLC to WPH Properties in order to secure the obligations under the Jozefovic Security Agreement and under the Lease.

50. Pursuant to the remedies granted to WPH Properties under the UCC and the Jozefovic Security Agreement, in the event of a default, WPH Properties is entitled, among other remedies, to dispose of the Jozefovic Waterview Collateral at a public sale.

51. Jozefovic breached the Jozefovic Security Agreement and materially and adversely affected the Jozefovic Waterview Collateral and the rights of WPH Properties by (i) agreeing to and voluntarily permitting the amendment of the Waterview Acquisition I, LLC Operating Agreement; and (ii) assigning the Jozefovic Waterview Collateral to MCB to secure Jozefovic's obligation to repay a \$3,000,000 loan from MCB to Jozefovic.

52. As a result of Jozefovic breaching the Jozefovic Security Agreement by amending the operating agreement and assigning the Jozefovic Waterview Collateral to MCB, any purchaser of the Jozefovic Waterview Collateral at public sale by WPH Properties will purchase the Jozefovic Waterview Collateral subject to MCB's senior security interest in the collateral.

53. Jozefovic's breach of the Jozefovic Security Agreement therefore has caused WPH Properties damages in the amount of \$3,000,000, the amount of Jozefovic's obligation to MCB.

secured by Jozefovic's illicit assignment of the same collateral to MCB.

**HBL BREACHED ITS OBLIGATIONS UNDER THE LEASE**

54. HBL failed to perform its obligations, materially defaulting under the Lease, almost immediately after taking possession of the Premises.

55. HBL failed to pay Rent as required by the Lease.

56. HBL failed to pay real estate taxes as required by the Lease.

57. HBL failed to pay utility deposits as required by the Lease.

58. HBL failed to pay municipal maintenance escrows as required by the Lease.

59. HBL failed to pay utility charges as required by the Lease.

60. HBL failed or refused to deliver certificates of insurance as required by the Lease.

61. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility, as required by the Lease.

62. HBL failed to deliver to WPH Properties all Medicare, Medicaid and other provider updated rate sheets, as required by the Lease.

63. HBL failed to deliver to WPH Properties the required financial reporting, as required by the Lease.

64. HBL failed to deliver to WPH Properties the required written reporting providing an operational overview of significant events and circumstances at the Facility during each prior month of the term of the Lease, as required by the Lease.

65. HBL failed or refused to deliver to WPH Properties the security deposits, as required by the Lease.

66. HBL failed to deliver and maintain the required credit line in an amount equal to

12 months' rent, as required by the Lease.

67. HBL failed to have and maintain the working capital account required by the Lease.

68. HBL failed to pay late fees and costs, as required by the Lease.

THE LETTER OF INTENT

69. After HBL defaulted, WPH Properties negotiated in good faith with HBL in an attempt to avoid termination of the Lease, despite HBL's default

70. On November 20, 2019, WPH Properties and HBL entered into a Letter of Intent (the "LOI") in which WPH Properties and HBL agreed that WPH Properties would sell the Facility for \$73,000,000 to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties or its designees would have a 22.5 percent interest.

71. A true and accurate copy of the LOI is annexed to this complaint as Exhibit 5.

72. The LOI provides for the Lease to be amended to require that HBL pay the November 2019 rent by November 18, 2019, the December rent by December 5, 2019 and all real estate taxes and utility payments by December 1, 2019, that by December 5, 2019 HBL reimburse WPH Properties for \$65,856 in municipal and utility deposits, that HBL enter into a Deposit Account Control Agreement with MNB requiring MNB to draw on the account first to pay the rent.

73. The LOI further provides for the Lease to be amended so that the \$3,700,000 security deposit required by Section 7.1(a)(ii) is reduced to \$2,000,000, \$1,000,000 of which was required to be paid by HBL on or before December 1, 2019 or the date on which WPH Properties obtained a permanent certificate of occupancy for the Facility (which was granted on November 14, 2019), whichever was later, and the balance of which was required to be paid on April 1, 2020,

which was the Closing date required by the LOI.

74. In addition, the LOI provides for the Lease to be amended so that in lieu of providing the additional \$1,600,000 in security required by Section 7.1(a)(iii) of the Lease, HBL would be required to enter into an agreement with JP Morgan Chase Bank prohibiting liquidation of that account until the second \$1,000,000 in security required by the LOI had been paid.

75. The LOI also provides for the Lease to be amended to require HBL to obtain a single working capital line of credit in the amount of \$8,000,000 by December 1, 2019.

76. HBL defaulted and breached its obligations under the LOI by failing to pay rent, failing to pay the municipal and utility payments to WPH Properties, failing to pay the real estate taxes and utility payments, failing to enter into the Deposit Account Control Agreement, failing to enter into the agreement with JP Morgan Chase Bank, by failing to pay the first \$1,000,000 security deposit as required by the LOI and by failing to obtain the \$8,000,000 working capital credit line, and by failing to meet the required Closing date of April 1, 2020.

77. WPH Properties performed all conditions on its part required by the LOI.

78. Solely as a result of HBL's breach of the LOI, WPH Properties did not sell the property to the Delaware Statutory Trust, causing damage to WPH Properties, and WPH Properties incurred interest and late charges on its loans, all of which are the direct result of HBL's breach of the LOI.

**NOTICE OF DEFAULT, TERMINATION OF THE LEASE AND ACCELERATION OF RENT**

79. On January 7, 2020, while the LOI was in effect, WPH Properties served a "Notice of Default And Landlord's Election To Terminate Lease And Accelerate All Rents Due For The Balance of the Lease Term" upon HBL (the "Notice of Default").

80. A true and accurate copy of the Notice of Default is annexed to this complaint as Exhibit 6 and incorporated into this complaint by reference.

81. The Notice of Default contains a true and accurate accounting of the amounts then due and owing under the Lease and LOE.

82. The Notice of Default gave HBL notice that by reason of HBL's defaults under the Lease, WPH Properties had exercised its right under Section 16.1 of the Lease to terminate the Lease, effective January 13, 2020.

83. The Notice of Default further gave HBL notice that pursuant to Section 16.1 of the Lease all Rent for the balance of the Term was accelerated and HBL became obligated to pay WPH Properties the present value of the accelerated rent, discounted at a rate of 6% per annum.

84. HBL continued, and still continues, to occupy the Premises, despite WPH Properties' termination of the Lease.

85. Because HBL has held over after its default resulted in termination of the Lease, HBL is a tenant month-to-month at a rent equal to 300% of the most recent Rent payable by HBL under the Lease. Exhibit 1, Lease, § 20.13.

86. HBL has failed to perform its obligations as a tenant month-to-month by failing to pay rent in the amount of 300% of the most recent Rent payable by HBL under the Lease, remitting only the base rent which had been payable before WPH Properties terminated the Lease.

87. HBL is in default with respect to its obligations under the Lease and its obligations as a month-to-month tenant following termination of the Lease effective January 13, 2020.

AMOUNTS DUE

88. As a result of HBL's defaults, HBL is obligated to pay to WPH Properties, as of

August 25, 2020, the sum of \$113,832,987.54 (the "Amounts Due"), as follows: (i) holdover rent and rent, \$7,096,182.79; (ii) municipal and utility deposits, \$26,725.35; (iii) security and working capital deposits, \$9,800,000.00; (iv) late fees, default fees, costs and professional fees, \$1,948,753.00; and (v) accelerated rent, \$94,961,326.40.

89. HBL is obligated to pay to WPH Properties the Amounts Due in full, plus any amounts that have accrued since August 25, 2020.

90. HBL has failed or refused to pay the Amounts Due.

91. WPH Properties has fully performed all obligations required to be performed on its part with respect to the Lease, the LOI, HBL's month-to-month tenancy after the termination of the Lease, the Jozefovic Guaranty, the Neuman Guaranty, the HBL Security Agreement, the Jozefovic HBL Security Agreement and the Neuman HBL Security Agreement.

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

92. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "91" with the same force and effect as if fully set forth here.

93. By reason of HBL's material default and breach of its obligations pursuant to the Lease and its obligations as a month-to-month tenant after termination of the lease, WPH Properties is entitled to judgment against HBL for the Amounts Due, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law.

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

94. WPH Properties repeats and re-alleges each and every allegation set forth in

paragraphs "1" through "93" with the same force and effect as if fully set forth here.

95. By reason of HBL's material default and breach of its obligations pursuant to the LOI, WPH Properties is entitled to judgment against HBL in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

96. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "95" with the same force and effect as if fully set forth here.

97. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic for the Amounts Due pursuant to the terms of the Jozefovic Guaranty.

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

98. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "97" with the same force and effect as if fully set forth here.

99. By reason of HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Neuman for the Amounts Due pursuant to the terms of the Neuman Guaranty.

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

100. WPH Properties repeats and re-alleges each and every allegation set forth in paragraphs "1" through "99" with the same force and effect as if fully set forth here.

101. By reason of Jozefovic's default in the performance of his obligations under the Jozefovic Security Agreement and HBL's default in the performance of its obligations under the Lease, WPH Properties is entitled to judgment against Jozefovic in the amount of \$3,000,000.00.

WHEREFORE, WPII Properties demands judgment as follows.

1. On its First cause of action, against HBI, in the amount of \$113,832,987.54, together with the other and further amounts that may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law, and

2. On its Second Cause of Action, against HBI, in an amount to be determined at trial; and

3. On its Third Cause of Action, against Juzefovic in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

4. On its Fourth Cause of Action, against Neuman in the amount of \$113,832,987.54, together with the other and further amounts that have come due since August 25, 2020 and may come due between the date of this complaint and the entry of judgment, plus interest from the date of the default as provided by law; and

5. On its Fifth Cause of Action, against Juzefovic in the amount of \$3,000,000.00; and

6. On all causes of action, awarding costs, disbursements and attorneys' fees against HBI, pursuant to the provisions of the Lease and against Juzefovic and Neuman pursuant to the provisions of the Juzefovic Guaranty and the Neuman Guaranty; and

7. Awarding such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
March 19, 2021

DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKUEH, LLP  
*Lead Counsel for Plaintiff White Plains Healthcare Properties I, LLC*

By: *Alfred E. Donnellan*  
Alfred E. Donnellan, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO,  
FERRARA, WOLF & CARONE, LLP  
*Co-Counsel for Plaintiff White Plains Healthcare Properties I, LLC*  
Robert A. Spolzino, Esq.  
81 Main Street, Suite 306  
White Plains, New York 10601  
(914) 607-7010

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF ESSEX )

William A. Nicholson, being duly sworn, deposes and says:

I am the Manager of plaintiff, White Plains Healthcare Properties I, LLC. I have read the annexed Amended Verified Complaint, know the contents thereof and the same are true to my own knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.

*[Handwritten Signature]*  
William A. Nicholson

Sworn to before me this  
14<sup>th</sup> day of March 2021

*[Handwritten Signature]*  
Notary Public



# Exhibit

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LIZER JOZEFOVIC,

Plaintiff,

-vs-

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.  
-----X

**SUMMONS**

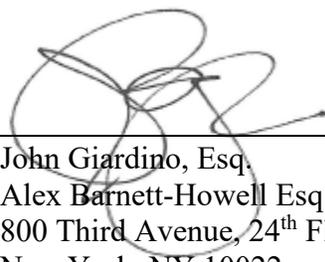
TO THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if the summons is not personally delivered to you within the State of New York). If you fail to appear or answer, judgment will be taken against you by default of the relief demanded herein.

The Plaintiff designates New York County as the place of trial.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
 \_\_\_\_\_  
 John Giardino, Esq.  
 Alex Barnett-Howell Esq.  
 800 Third Avenue, 24<sup>th</sup> Floor  
 New York, NY 10022  
 (212) 730-7700  
 jgiardino@mrlp.com  
 abarnett-howell@mrlp.com  
*Attorneys for Plaintiff*

Defendants' Addresses:

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC

2 Bourbon Street

Peabody, Massachusetts 01960

HOWARD FENSTERMAN

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP

3 Dakota Dr., Suite 300

Lake Success, NY 11042

METROPOLITAN COMMERCIAL BANK

99 Park Avenue, Fourth Floor

New York, New York 10016

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
LIZER JOZEFOVIC,

Plaintiff,

Index No.

-vs-

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK,

Defendants.

-----X

**COMPLAINT**

Plaintiff Lizer Jozefovic (“Plaintiff”), by his attorneys Michelman & Robinson, LLP, brings his complaint against Defendants White Plains Healthcare Properties I, LLC (“WPHP”), Howard Fensterman (“Mr. Fensterman”), and Metropolitan Commercial Bank (“MCB”), alleging upon information and belief the following:

**INTRODUCTION**

1. This is an action to halt the dissemination of false and harmful statements as well as to prevent the fraudulent sale and to clarify the ownership of a limited liability company.
2. Plaintiff is the majority owner of Waterview Acquisition I, LLC.
3. Plaintiff previously entered into a collateral assignment, which established a rent security account for the White Plains Skilled Nursing Facility.
4. Plaintiff performed all obligations under the collateral assignment, which was acknowledged and documented by Mr. Fensterman.
5. Plaintiff subsequently assigned his interest in Waterview Acquisition I, LLC to MCB, as part of a financing arrangement, which both WPHP and Mr. Fensterman were aware of.

6. On October 6, 2020, WPHP and Mr. Fensterman issued a purported Notification of Disposition of Collateral, which stated that Plaintiff was a “debtor” and announced that Plaintiff’s interest in Waterview Acquisition I, LLC would be sold at “public auction” on October 30, 2020 (the “Notification”).

7. The Notification is entirely false: Plaintiff is not now, and has never been, indebted to WPHP or Mr. Fensterman, and WPHP and Mr. Fensterman have no right or ability to sell the Plaintiff’s interest in Waterview Acquisition I, LLC. Any attempt to do so is false, improper, and in breach of the collateral assignment.

8. Moreover, the Notification was designed to inflict maximum damage, as it was widely broadcast to Plaintiff’s business partners and other interested parties, harming Plaintiff’s reputation and ability to operate his facilities.

9. Moreover, Mr. Fensterman has represented Plaintiff previously, and continues to represent Plaintiff in a variety of matters, making his decision to act directly against Plaintiff’s interests bizarre, improper, and actionable.

10. Moreover, if WPHP and Mr. Fensterman continue with a fraudulent sale, as stated in the Notification, it will harm Plaintiff’s business and operations, as well as potential third parties who improperly attempt to purchase Plaintiff’s interest.

#### **THE PARTIES**

11. Plaintiff Lizer Jozefovic is a resident of the State of New York.
12. Defendant White Plains Healthcare Properties I, LLC is a foreign limited liability company that regularly conducts business in the State of New York.
13. Defendant Howard Fensterman is a resident of the State of New York and regularly conducts business in the State of New York.

14. Defendant Metropolitan Commercial Bank is a commercial bank with its headquarters located at 99 Park Ave, New York, NY 10016 and regularly conducts business in the State of New York.

15. This Court has jurisdiction over all causes of action asserted herein because all causes of action asserted herein arise out of conduct undertaken by defendants in the State of New York.

16. Each defendant has sufficient minimum contacts with the State of New York and has otherwise intentionally availed himself/itself of the State of New York so as to render the exercise of jurisdiction over it by the State of New York court consistent with traditional notions of fair play and substantial justice.

**FACTUAL ALLEGATIONS**

**The Collateral Assignment**

17. Plaintiff has a 70% share of Waterview Acquisition I, LLC (the “Membership Interest”), making him the majority owner.

18. Plaintiff previously entered into a collateral assignment, which established a rent security account for the White Plains Skilled Nursing Facility (the “Collateral Assignment”).

19. The Collateral Assignment states, in relevant part:

- a. Under Paragraph 2, upon the deposit of \$1,600,000 into the rent security account, the “assignment shall automatically terminate and be void and of no further effect”;
- b. Under Section 13, the exercise of the White Plains Health Care Properties LLC’s (the “Assignee”) rights is limited to a violation of the “terms and provisions concerning the maintenance of the account...”; and

c. Under Section 13(c), any proceeds derived from the disposition of the collateral must be applied to the rent security account.

20. In November 2015, Plaintiff deposited \$1,595,031.44 into Chase Account ending in xxxx-xxx-xxxx-7272 to establish the rent security (the “Rent Security”).

21. The funds for the Rent Security were derived from the refinancing of the Waterview real property.

22. At that time, both Gerald Billow, Esq an attorney at Posternak, Blankstein & Lund LLP, in Boston and Greg Stollar, Esq. of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (“Abrams, Fensterman LLP”), attorneys for WPHP and Mr. Fensterman, were directly informed that the Rent Security had been established, satisfying the Collateral Assignment requirements.

23. Moreover, Mr. Fensterman was personally aware of the Rent Security and that the Collateral Assignment had been satisfied, as he and his legal counsel were informed of the creation of the account, and the money to fund the account was wired from Abrams, Fensterman LLP after Plaintiff established the account and made arrangements for Mr. Fensterman to be a signatory.

24. On December 14, 2015, Mr. Fensterman signed the Business Account Signature Form.

25. In 2017, the Rent Security was transferred to the Chase account ending in xxxx-xxx-xxxx-0885 by resolution of Waterview Acquisition I, LLC.

26. The resolution and account holder certification form were tendered to Mr. Fensterman.

27. As a result of Plaintiff's performance, all relevant obligations under the Collateral Assignment were completely satisfied by the provision of the Rent Security, automatically terminating the Collateral Assignment and rendering it void pursuant to its own provisions.

**Assignment of the Membership Interest to MCB**

28. At the time of the Collateral Assignment, the Operating Agreement of Waterview Acquisition I, LLC did not permit its members to assign their membership interests.

29. At that time, the Operating Agreement of Waterview Acquisition I, LLC stated, in relevant part:

- a. Articles 5 and 6 did not provide for any assignment of the Membership Interest;
- b. Article 12 specifically prohibited an assignment of the Membership Interest to Mr. Fensterman as Nominee of White Plains Healthcare Properties LLC.

30. Mr. Fensterman is aware of these facts, as well as the limitations on transferring and assigning the Membership Interest, as Mr. Fensterman and his firm Abrams, Fensterman LLP acted as counsel to Waterview Acquisition I, LLC in its formation and execution of its operating agreement.

31. However, the Operating Agreement of Waterview was subsequently amended in order to authorize Plaintiff, as the majority member, to assign his interest.

32. In December 2019, Plaintiff assigned the Membership Interest to MCB in connection with a \$3,000,000.00 loan as part of a financing arrangement to provide working capital to benefit the White Plains project, most of which was paid in the form of rent to Defendants WPHP and Mr. Fensterman.

33. Currently, MCB has perfected its security interest in the Membership Interest and maintains physical possession of the membership certificates evidencing Plaintiff's ownership of interests in Waterview Acquisition I, LLC.

34. Mr. Fensterman knew of the approved of the loan from and assignment to MCB, as the proceeds have been used to pay rent on the White Plains Nursing Home.

35. Moreover, Mr. Fensterman has continued to represent Waterview Acquisition I, LLC to the present date, and has recently tendered bills and asked for payment for certain litigation matters.

36. Moreover, Mr. Fensterman previously acted as Plaintiff's personal counsel, during which time he represented Plaintiff in matters related to the corporate compliance and collection matters for all of Plaintiff's nursing homes.

#### **Distribution of the Notification and Resulting Harm**

37. On October 6, 2020, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP ("DDW LLP") issued a purported Notification of Disposition of Collateral, dated October 6, 2020, which announced the intention to sell the Membership Interest at "public auction" (the "Notification").

38. The Notification was first sent on October 6, 2020 by Mr. Fensterman "as nominee for White Plains Health Care Properties, LLC."

39. The Notification claims to be based upon the Collateral Assignment.

40. The Notification states that Plaintiff is a "debtor" and that the Membership Interest will be sold "to the highest qualified public bidder in public" at 10:00 am on Friday, October 30, 2020 at DDW LLP.

41. Since then, Defendants WPHP and Mr. Fensterman have distributed the notice to multiple hospital operators across the state, as well as Plaintiff’s current and potential colleagues and business partners.

42. Plaintiff has received multiple calls inquiring about the alleged “debt” claimed in the Notification.

43. Plaintiff has never received any funds from WPHP or Mr. Fensterman. Therefore, neither Waterview Acquisition I, LLC nor Plaintiff owes any money to WPHP as there is no debt, and Plaintiff is not and cannot be a debtor.

44. Moreover, since 2015, Plaintiff has given WPHP and Mr. Fensterman over \$4.6 million in a combination of loans, unallocated payments, and a down-payment for the purchase of a building.

45. Moreover, since September 2019, Plaintiff has paid rent of over \$6 million.

46. In Plaintiff’s business, the public allegation of unpaid debts is very serious and damaging and has negatively impacted Plaintiff’s standing in the business and banking communities.

47. On October 16, 2020, Plaintiff, through counsel, attempted to contact Alfred E. Donnellan, Esq. (“Mr. Donnellan), the Managing Partner at DDW LLP, to confirm by October 20, 2020 that the Notification has been withdrawn and that there will be no attempts to proceed against the Membership Interest.

48. Neither Mr. Donnellan nor Mr. Fensterman have responded.

49. Plaintiff has been irreparably harmed by the Notification and any purported sale of the Membership Interest, and this harm will continue until the Notification is withdrawn and a correction is issued.

50. The wide dissemination of the false claims in the Notification has damaged Plaintiff's reputation and standing within the nursing home community.

51. Moreover, Plaintiff has been questioned by lenders and other interested parties as to the viability of his business concerns.

52. Moreover, the publication of the Notification has materially affected admissions to Plaintiff's facilities.

53. Moreover, if WPHP and Mr. Fensterman continue with a wrongful and fraudulent sale of the Membership Interest, it will disastrously and irreparably harm Plaintiff and potential third-parties who attempt to purchase the Membership Interest based upon a non-existent debt and without the ability to do so.

54. This action is brought to seek redress for WPHP and Mr. Fenster's harmful conduct, and to clarify ownership of the Membership Interest as to MCB.

**FIRST CAUSE OF ACTION**  
**Declaratory Judgment**  
**(All Defendants)**

55. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

56. The Collateral Assignment states that it is automatically terminated upon the establishment of the Rent Security.

57. Plaintiff properly established the Rent Security, pursuant to the requirements of the Collateral Assignment.

58. Defendants have personal knowledge that the Collateral Assignment was satisfied and is therefore null and void.

59. Plaintiff properly assigned the Membership Interest to MCB.

60. Defendants have personal knowledge that the Membership Interest has been assigned to MCB.

61. Plaintiff requests that the Court issue a declaratory judgment finding that: the Collateral Assignment is null and void following the establishment of the Rent Security; that the Membership Interest has been assigned to MCB; that Plaintiff is not indebted to WPHP or Mr. Fensterman; and consequently that WPHP and Mr. Fensterman have no right or claim to the Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest.

**SECOND CAUSE OF ACTION**  
**Breach of Contract**  
**(WPHP and Mr. Fensterman)**

62. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

63. Plaintiff and WPHP entered into the Collateral Assignment

64. Plaintiff has performed all conditions, covenants, and promises required to be performed by Plaintiff in accordance with the terms of the Collateral Assignment alleged herein.

65. Specifically, Plaintiff established the Rent Security pursuant to the terms of the Collateral Assignment, resulting in the termination of the Collateral Assignment and rendering it void pursuant to its own provisions.

66. Defendants have personal knowledge that the Rent Security has been established, and that the Collateral Assignment has been terminated.

67. WPHP and Mr. Fensterman issued the Notification in breach of the Collateral Assignment.

68. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

69. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**THIRD CAUSE OF ACTION**

**Fraud  
(WPHP and Mr. Fensterman)**

70. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

71. WPHP and Mr. Fensterman have made multiple false statements regarding the Plaintiff and the Membership Interest.

72. Specifically, WPHP and Mr. Fensterman issued the Notification claiming that Plaintiff was a debtor, and that the Membership Interest would be sold to satisfy the debt.

73. However, Plaintiff is not indebted to WPHP and Mr. Fensterman, and WPHP and Mr. Fensterman have no right to sell the Membership Interest.

74. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

75. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**THIRD CAUSE OF ACTION**  
**Defamation**  
**(WPHP and Mr. Fensterman)**

76. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

77. On October 6, 2020, WPHP and Mr. Fensterman caused the Notification to be issued.

78. The Notification claims that Plaintiff is a “debtor,” and that WPHP, Mr. Fensterman, and DDW LLP will sell the Membership Interest at a public auction to satisfy Plaintiff’s debts. These statements are false.

79. WPHP and Mr. Fensterman knew that the statements in the Notification were false at the time the Notification was issued.

80. The Notification was widely distributed to Plaintiff’s current and potential colleagues and business partners.

81. As a direct and proximate result of the foregoing conduct by WPHP and Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

82. WPHP and Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**FOURTH CAUSE OF ACTION**  
**Breach of Fiduciary Duty**  
**(Mr. Fensterman)**

83. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

84. At all relevant times, as Plaintiff's former and current legal representative, Mr. Fensterman owed fiduciary duties to Plaintiff, including the duties of loyalty, good faith, and care.

85. Mr. Fensterman breached his fiduciary duties to Plaintiff by issuing the Notification.

86. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

87. Mr. Fensterman's conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**FIFTH CAUSE OF ACTION**  
**Legal Malpractice**  
**(Mr. Fensterman)**

88. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

89. Mr. Fensterman acted as legal counsel to Plaintiff, both during and after the Collateral Assignment.

90. Mr. Fensterman was required to represent Plaintiff's interests without conflict.

91. Mr. Fensterman abused his position as Plaintiff's legal counsel and acted in direct opposition to Plaintiff's interests by issuing the Notification.

92. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

93. Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

**SIXTH CAUSE OF ACTION**  
**Judiciary Law Section 487**  
**(Mr. Fensterman)**

94. Plaintiff repeats and incorporates by reference each of the foregoing allegations as though fully set forth herein.

95. Mr. Fensterman acted as legal counsel to Plaintiff, both during and after the Collateral Assignment.

96. Mr. Fensterman acted deceitfully by issuing the Notification in an attempt to fraudulently sell the Membership Interest and to harm Plaintiff, his own client.

97. Mr. Fensterman intends to receive compensation from other parties, including WPHP, by acting against Plaintiff’s interests.

98. As a direct and proximate result of the foregoing conduct by Mr. Fensterman, Plaintiff has suffered damages in an amount subject to proof at trial.

99. Mr. Fensterman’s conduct, as alleged above, was willful, malicious and intentional and done for the purpose of depriving Plaintiff of property or legal rights or otherwise causing injury, and, therefore, was despicable conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of Plaintiff’s rights, so as to justify an award of exemplary and punitive damages in an amount to be established at trial.

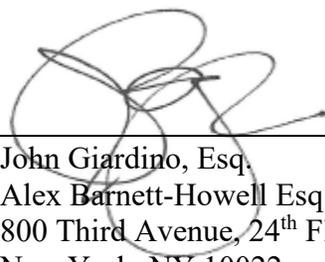
**PRAYER FOR RELIEF**

Wherefore, Plaintiff Lizer Jozefovic prays for judgment against Defendants White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank as follows:

1. On the First Cause of Action, an order declaring that:
  - a. The Collateral Assignment is null and void following the establishment of the Rent Security;
  - b. The Membership Interest has been properly assigned to MCB;
  - c. Plaintiff is not indebted to WPHP or Mr. Fensterman; and
  - d. WPHP and Mr. Fensterman have no right or claim to the Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest;
2. On the Second, Third, and Fourth, Fifth, and Sixth Causes of Action herein, for compensatory and consequential damages in in an amount subject to proof at trial;
3. For punitive damages;
4. For recovery of attorney's fees as provided by law, contract, or statute;
5. For pre-judgment interest at the maximum rate permitted by law;
6. For costs incurred; and
7. For any other and further relief as the court may deem proper.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:  \_\_\_\_\_

John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
(212) 730-7700  
jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Plaintiff Lizer Jozefovic*

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all issues so triable in this action.

Dated: October 22, 2020

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_  
John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
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jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Plaintiff Lizer Jozefovic*

# Exhibit

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

LIZER JOZEFOVIC,  
  
Plaintiff,  
  
- against -  
  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN and METROPOLITAN  
COMMERCIAL BANK,  
  
Defendants.

Index No. 655549/2020

VERIFIED ANSWER

Defendants, White Plains Healthcare Properties I, LLC ("WPH Properties") and Howard Fensterman ("Fensterman"), by their attorneys, DeBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP, for their answer to the complaint of plaintiff, Lizer Jozefovic ("Jozefovic") allege:

1. Deny the allegations in paragraph 1 of the complaint and refer all questions of law to the court.
2. Admit the allegations in paragraph 2 of the complaint
3. Admit that Jozefovic entered into a collateral assignment, deny that Jozefovic satisfied his obligation with respect to the rent security account and deny that the collateral assignment established the rent security account alleged in paragraph 3 of the complaint.
4. Deny the allegations in paragraph 4 of the complaint.
5. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 5 of the complaint and refer all questions of law to the court.
6. Admit the allegations in paragraph 6 of the complaint, except state that, although Jozefovic is indebted to defendant as guarantor, the alleged Notification truthfully referred to Jozefovic as "debtor" only as that term is defined in UCC 9-102, as a person having an interest,

other than a security interest or other lien, in the collateral, whether or not the person is an obligor.

7. Deny the allegations in paragraph 7 of the complaint.

8. Deny the allegations in paragraph 8 of the complaint.

9. Deny the allegations in paragraph 9 of the complaint.

10. Deny the allegations in paragraph 10 of the complaint.

11. Admit the allegations in paragraph 11 of the complaint.

12. Admit the allegations in paragraph 12 of the complaint.

13. Admit the allegations in paragraph 13 of the complaint.

14. Admit the allegations in paragraph 14 of the complaint, upon information and belief.

15. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 15 of the complaint and refer all questions of law to the court.

16. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 16 of the complaint and refer all questions of law to the court.

17. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 17 of the complaint and refer all questions of law to the court, except admit, upon information and belief that Jozefovic has a 71% share of Waterview Acquisition I, LLC based on plaintiff's representations in the Collateral Assignment.

18. Deny the allegations in paragraph 18 of the complaint except admit that Jozefovic entered into a collateral assignment, deny that Jozefovic satisfied his obligation with respect to the rent security account and deny that the collateral assignment established the rent security account.

19. Deny the allegations in paragraph 19 of the complaint, except admit that paragraph

19 of the complaint contains selected quotations from the Collateral Assignment, refer the court to the entire Collateral Assignment for the terms, interpretation and full meaning thereof and refer all questions of law to the court.

20. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 20 of the complaint.

21. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 21 of the complaint.

22. Deny the allegations in paragraph 22 of the complaint.

23. Deny the allegations in paragraph 23 of the complaint.

24. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 24 of the complaint.

25. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 25 of the complaint.

26. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 26 of the complaint.

27. Deny the allegations in paragraph 27 of the complaint.

28. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 28 of the complaint.

29. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 29 of the complaint.

30. Deny the allegations in paragraph 30 of the complaint.

31. Deny knowledge or information sufficient to form a belief as to the allegations in

paragraph 31 of the complaint.

32. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 32 of the complaint and refer all questions of law to the court.

33. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 33 of the complaint and refer all questions of law to the court.

34. Deny the allegations in paragraph 34 of the complaint.

35. Deny the allegations in paragraph 35 of the complaint.

36. Deny the allegations in paragraph 36 of the complaint.

37. Admit the allegations in paragraph 37 of the complaint.

38. Admit the allegations in paragraph 38 of the complaint.

39. Admit the allegations in paragraph 39 of the complaint.

40. Deny the allegations in paragraph 40 of the complaint except admit that, although Jozefovic is indebted to defendant as guarantor, the alleged Notification truthfully referred to Jozefovic as "debtor" only as that term is defined in UCC 9-102, as a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor, admit that paragraph 40 contains selected quotations from the Notification and refer the court to the entire Notification for the terms, interpretation and full meaning thereof and refer all questions of law to the court.

41. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 41 of the complaint, except admit that defendant sent a letter to 622 targeted recipients, including every nursing home listed on the New York State Department of Health's website and known investors in the nursing home industry, notifying them of the sale.

42. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 42 of the complaint.

43. Deny the allegations in paragraph 43 of the complaint.

44. Deny the allegations in paragraph 44 of the complaint.

45. Deny the allegations in paragraph 45 of the complaint.

46. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 46 of the complaint.

47. Deny the allegations in paragraph 47 of the complaint except admit that on October 16, 2020, Plaintiff, through counsel sent a letter to Alfred E. Donnellan, the Managing Partner at DDW LLP.

48. Deny the allegations in paragraph 48 of the complaint.

49. Deny the allegations in paragraph 49 of the complaint.

50. Deny the allegations in paragraph 50 of the complaint.

51. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 51 of the complaint.

52. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 52 of the complaint.

53. Deny the allegations in paragraph 53 of the complaint and deny that the alleged sale is wrongful or fraudulent.

54. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 54 of the complaint as to why Jozefovic brought this action and deny that Jozefovic is entitled to the relief requested.

§

55. Repeat and reallege each and every response to paragraphs 1 through 54 of the complaint in response to the allegations in paragraph 55 of the complaint.

56. Deny the allegations in paragraph 56 of the complaint, refer the court to the entire Collateral Assignment for the terms, interpretation and full meaning thereof and refer all questions of law to the court.

57. Deny the allegations in paragraph 57 of the complaint.

58. Deny the allegations in paragraph 58 of the complaint.

59. Deny the allegations in paragraph 59 of the complaint.

60. Deny the allegations in paragraph 60 of the complaint.

61. Deny the allegations in paragraph 61 of the complaint and deny that Jozefovic is entitled to the declaratory judgment requested in paragraph 61 of the complaint.

62. Repeat and reallege each and every response to paragraphs 1 through 61 of the complaint in response to the allegations in paragraph 62 of the complaint.

63. Admit the allegations in paragraph 63 of the complaint and admit that Jozefovic and Fensterman, as nominee for WPH Properties, entered into the Collateral Assignment.

64. Deny the allegations in paragraph 64 of the complaint.

65. Deny the allegations in paragraph 65 of the complaint.

66. Deny the allegations in paragraph 66 of the complaint.

67. Deny the allegations in paragraph 67 of the complaint.

68. Deny the allegations in paragraph 68 of the complaint.

69. Deny the allegations in paragraph 69 of the complaint.

70. Repeat and reallege each and every response to paragraphs 1 through 69 of the

complaint in response to the allegations in paragraph 70 of the complaint.

71. Deny the allegations in paragraph 71 of the complaint.

72. Deny the allegations in paragraph 72 of the complaint.

73. Deny the allegations in paragraph 73 of the complaint.

74. Deny the allegations in paragraph 74 of the complaint.

75. Deny the allegations in paragraph 75 of the complaint.

76. Repeat and reallege each and every response to paragraphs 1 through 75 of the complaint in response to the allegations in paragraph 76 of the complaint.

77. Admit the allegations in paragraph 77 of the complaint.

78. Deny the allegations in paragraph 78 of the complaint except admit that, although Jozefovic is indebted to defendant as guarantor, the alleged Notification truthfully referred to Jozefovic as "debtor" only as that term is defined in UCC 9-102, as a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor.

79. Deny the allegations in paragraph 79 of the complaint.

80. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 80 of the complaint, except admit that defendant sent a letter to 622 targeted recipients, including every nursing home listed on the New York State Department of Health's website and known investors in the nursing home industry, notifying them of the sale.

81. Deny the allegations in paragraph 81 of the complaint.

82. Deny the allegations in paragraph 82 of the complaint.

83. Repeat and reallege each and every response to paragraphs 1 through 82 of the complaint in response to the allegations in paragraph 83 of the complaint.

84. Deny the allegations in paragraph 84 of the complaint.

85. Deny the allegations in paragraph 85 of the complaint.

86. Deny the allegations in paragraph 86 of the complaint.

87. Deny the allegations in paragraph 87 of the complaint.

88. Repeat and reallege each and every response to paragraphs 1 through 87 of the complaint in response to the allegations in paragraph 88 of the complaint.

89. Deny the allegations in paragraph 89 of the complaint.

90. Deny the allegations in paragraph 90 of the complaint.

91. Deny the allegations in paragraph 91 of the complaint.

92. Deny the allegations in paragraph 92 of the complaint.

93. Deny the allegations in paragraph 93 of the complaint.

94. Repeat and reallege each and every response to paragraphs 1 through 93 of the complaint in response to the allegations in paragraph 94 of the complaint.

95. Deny the allegations in paragraph 95 of the complaint.

96. Deny the allegations in paragraph 96 of the complaint.

97. Deny the allegations in paragraph 97 of the complaint.

98. Deny the allegations in paragraph 98 of the complaint.

99. Deny the allegations in paragraph 99 of the complaint.

100. Deny the allegations alleged under the heading "Prayer For Relief" in the complaint and deny that Jozefovic is entitled to the relief requested in sub-paragraphs 1 through 7 thereof.

**FIRST AFFIRMATIVE DEFENSE**

101. The court is without jurisdiction over the persons of one or more of the Defendants.

**SECOND AFFIRMATIVE DEFENSE**

102. Jozefovic's claims are untimely and/or barred by the applicable statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

103. Jozefovic's complaint fails to state a valid claim upon which relief can be granted.

**FOURTH AFFIRMATIVE DEFENSE**

104. Jozefovic's complaint is barred, in whole or in part, by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

105. Jozefovic's complaint is barred, in whole or in part, because Jozefovic breached the Collateral Assignment by failing to take all of the necessary steps to add Fensterman as a co-signatory to the Chase accounts alleged in the complaint as required by the Collateral Assignment.

**SIXTH AFFIRMATIVE DEFENSE**

106. Jozefovic's complaint is barred, in whole or in part because Jozefovic breached his obligations under the Collateral Assignment and HBL-SNF Inc. ("HBL") breached its obligations under the lease (the "Lease") for the White Plains Nursing Facility between WPH Properties, as landlord and HBL, as tenant. The Collateral Assignment provides that HBL is an entity controlled by Jozefovic.

107. On September 18, 2020, WPH Properties commenced an action entitled *White Plains Healthcare Properties I, LLC v. HBL, SNF, LLC, Lizer Jozefovic a/k/a Lizer Jozefovic and*

*Mark Neuman*, Index No. 60278:2020 in Supreme Court, Westchester County (the "Westchester County Action"), seeking, *inter alia*, recovery against HBL for HBL's material breach of its obligations under the Lease and against Jozefovic to enforce Jozefovic's guaranty of HBL's obligations under the Lease.

108. HBL breached its obligations under the Lease by failing to pay rent, failing to pay real estate taxes, failing to pay utility charges, utility deposits and municipal maintenance escrows, and failing to pay security deposits, including the \$1,600,000 additional security deposit alleged in the complaint.

109. Neither Jozefovic nor HBL satisfied their obligation to post the required \$1,600,000 additional security deposit alleged in the complaint. Jozefovic's moving of funds into a separate account that he controls does not satisfy the additional security obligations under the Collateral Assignment and the Lease. Failure to satisfy the additional security obligations constitutes a breach of the Collateral Assignment and a breach of the Lease.

110. The Collateral Assignment provides that Jozefovic pledges, assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member of Waterview Acquisition I, LLC to WPH Properties in order to secure the obligations under the Collateral Assignment and under the Lease.

111. Pursuant to the remedies granted to WPH Properties under the UCC and the Collateral Assignment in the event of a default, WPH Properties is entitled to dispose of the collateral at a public sale.

**SEVENTH AFFIRMATIVE DEFENSE**

112. The Notification of Disposition of Collateral dated October 6, 2020 satisfies all

requirements for a notice of sale under N.Y.U.C.C. § 9-613 and is sufficient as a matter of law because it is in the form set forth in N.Y.U.C.C. § 9-613(e).

**EIGHTH AFFIRMATIVE DEFENSE**

113. WPH Properties complied with all UCC Article 9 requirements relating to disposition of collateral, including those relating to notice, commercial reasonableness and public disposition. Every aspect of the noticed sale of Jozefovic's Waterview membership interest has been and will continue to be commercially reasonable.

114. WPH Properties fully complied with all UCC Article 9 notice requirements and scheduled the sale on 24 days' notice, more notice than is required under the Collateral Assignment or N.Y.U.C.C. § 9-612(e).

115. WPH Properties advertised the sale by publishing a Notice of Secured Party Public Auction concerning the sale in the Westchester Business Journal, inviting interested parties to request the Terms of Sale.

116. WPH Properties sent a letter to 622 targeted recipients including every nursing home listed on the New York State Department of Health's website and known investors in the nursing home industry notifying them of the sale. That letter invited interested parties to request the Terms of Sale and to become qualified bidders. The sale also satisfies UCC Article 9 requirements for a "public disposition".

**NINTH AFFIRMATIVE DEFENSE**

117. N.Y.U.C.C. § 9-610(a) provides that upon default any secured party may sell, lease, license, or otherwise dispose of any or all collateral. The UCC does not provide that only the most senior secured creditor may conduct a sale. N.Y.U.C.C. § 9-610, Official Comment 5, provides

that disposition rights are not limited to first-priority security interests and any secured party as to whom there has been a default has the right to dispose of collateral.

118. The UCC does not require that a notice of an Article 9 sale of collateral specify whether there is another perfected security interest in the collateral being sold. WPH Properties complied with the N.Y.U.C.C. § 9-611(e)(3)(B) requirement that a junior creditor must notify other creditors with perfected security interests in the collateral of the sale and the Terms of Sale provided to interested bidders state that Jozefovic's Waterview membership interest is being sold subject to Metropolitan Commercial Bank's security interest.

TENTH AFFIRMATIVE DEFENSE

119. The Waterview resolution attached to the Collateral Assignment was executed by all the members of Waterview and provides that the "action is taken pursuant to the applicable New York limited liability company statutory laws and the operating agreement of the Company, by the written consent of a majority of its members and managers of the Company" and that the managers of Waterview were authorized, directed and empowered to execute any agreements required to effectuate the terms of the resolution.

120. The Waterview resolution clearly authorizes Waterview and its managers to enter into the Collateral Assignment, which set forth Jozefovic's obligations with respect to the Chase accounts alleged in the complaint and pledged Jozefovic's the Waterview Membership Interest as collateral. The provisions of the resolution, dated the same day as the Collateral Assignment, clearly and unambiguously show that all of the members of Waterview were aware of and consented to the Collateral Assignment.

WHEREFORE, defendants respectfully request that the Court deny the relief sought in the complaint and dismiss the complaint in its entirety.

Dated: White Plains, New York  
November 18, 2020

DLI BILLO DONNELLAN WINGARTEN  
WISE & WIEDERKIND, LLP  
*Attorneys for Defendants*  
*White Plains Healthcare Properties I, LLC*  
*and Howard Fensterman*

By:  \_\_\_\_\_  
Alfred J. Donnellan, Esq.  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Tel.: (914) 681-0200

To: Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> floor  
New York, New York 10022

Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019

VERIFICATION

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF WESTCHESTER )

Alfred E. Donnellan, being duly sworn, deposes and says:

I am a partner of the law firm DellBello Donnellan Weingarten Wise & Wiederkehr, LLP, attorneys for Defendants White Plains Healthcare Properties I, LLC and Howard Fensterman in the above referenced action. I have read the annexed Verified Answer, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. I make this verification instead of said Defendants because Defendants maintains its office outside of the County in which my office is located.

  
ALFRED E. DONNELLAN

Sworn to before me this  
18<sup>th</sup> day of November, 2020



NOTARY PUBLIC

TERESA L. PICILLO  
Notary Public, State of New York  
No. 4815928  
Qualified in Westchester County  
Commission Expires February 18, 2022 

# Exhibit

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

-----	X	
LIZER JOZEFOVIC,	:	Index No. : 655549/2020
	:	
Plaintiff,	:	<b><u>ANSWER WITH CROSS-CLAIM</u></b>
	:	
v.	:	
	:	
WHITE PLAINS HEALTHCARE PROPERTIES	:	
I, LLC, HOWARD FENSTERMAN, and	:	
METROPOLITAN COMMERCIAL BANK,	:	
	:	
Defendants.	:	
-----	X	

Defendant Metropolitan Commercial Bank ("MCB"), by its attorneys, Winuels Marx Lane & Mittendorf, LLP, as and for its Verified Answer With Cross-Claim in response to the Summons and Complaint, dated October 22, 2020 (the "Complaint"), filed by plaintiff Lizer Jozefovic ("Plaintiff"), alleges as follows:

**INTRODUCTION**

1. No response is necessary to the allegations in paragraph 1 of the Complaint. To the extent that a response is necessary, MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint.
2. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint.
3. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint.
4. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint.

5. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint, except admits that Plaintiff assigned his interest in Waterview Acquisition 1, LLC to MCB as part of a financing arrangement.

6. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint, except denies the allegations in paragraph 6 of the Complaint concerning the contents of the purported Notification of Disposition of Collateral and respectfully refers the Court to the document for the terms thereof.

7. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint, except admits that defendants White Plains Healthcare Properties 1, LLC ("WPHP") and Howard Fensterman ("Fensterman") have no right or ability to sell Plaintiff's interest in Waterview Acquisition 1, LLC, and respectfully refers all questions of law to the Court.

8. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint.

9. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint.

10. MCB admits the allegations in paragraph 10 of the Complaint.

**THE PARTIES**

11. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint.

12. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint.

13. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint.

14. MCB admits the allegations in paragraph 14 of the Complaint.

15. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint, and respectfully refers all questions of law to the Court.

16. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint, and respectfully refers all questions of law to the Court.

**FACTUAL ALLEGATIONS**

**The Collateral Assignment**

17. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint.

18. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint.

19. MCB denies the allegations in paragraph 19 of the Complaint and respectfully refers the Court to the Collateral Assignment for the terms thereof.

20. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint.

21. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint.

22. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint, and respectfully refers all questions of law to the Court.

23. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Complaint.

24. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint.

25. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint.

26. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint.

27. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Complaint, and respectfully refers all questions of law to the Court.

**Assignment of the Membership Interest to MCB**

28. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint.

29. MCB denies the allegations in paragraph 29 of the Complaint and respectfully refers the Court to the then governing Operating Agreement of Waterview Acquisition 1, LLC for the terms thereof.

30. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint.

31. MCB admits the allegations in paragraph 31 of the Complaint.

32. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Complaint, except admits that in December 2019, Plaintiff assigned the Membership Interest to MCB in connection with a \$3,000,000.00 loan as part of a financing arrangement.

33. MCB admits the allegations in paragraph 33 of the Complaint.

34. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Complaint.

35. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Complaint.

36. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Complaint.

**Distribution of the Notification and Resulting Harm**

37. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

38. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations the allegations in paragraph 38 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

39. MCB denies the allegations in paragraph 39 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

40. MCB denies the allegations in paragraph 40 of the Complaint and respectfully refers the Court to the Notification of Disposition of Collateral for the terms thereof.

41. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Complaint.

42. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the Complaint.

43. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 of the Complaint.

44. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Complaint.

45. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 of the Complaint.

46. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the Complaint.

47. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Complaint.

48. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 of the Complaint.

49. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 of the Complaint.

50. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaint.

51. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 of the Complaint.

52. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 of the Complaint.

53. MCB admits the allegations in paragraph 53 of the Complaint.

54. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 of the Complaint.

**FIRST CAUSE OF ACTION**  
**Declaratory Judgment**  
**(All Defendants)**

55. In response to paragraph 55 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 54 with the same force and effect as though fully set forth herein.

56. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Complaint and respectfully refers the Court to the Collateral Assignment for the terms thereof.

57. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 of the Complaint.

58. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 of the Complaint.

59. MCB admits the allegations in paragraph 59 of the Complaint.

60. MCB admits the allegations in paragraph 60 of the Complaint.

61. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 of the Complaint, except admits that (a) the Membership Interest has been assigned to MCB and (b) WPHP and Mr. Fensterman have no right or claim to the

Membership Interest, nor can WPHP, Mr. Fensterman, or DDW LLP sell or otherwise transfer the Membership Interest.

**SECOND CAUSE OF ACTION**  
**Breach of Contract**  
**(WPHP and Mr. Fensterman)**

62. In response to paragraph 62 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 61 with the same force and effect as though fully set forth herein.

63. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 of the Complaint.

64. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 of the Complaint.

65. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint.

66. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the Complaint.

67. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 of the Complaint.

68. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 of the Complaint.

69. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 69 of the Complaint.

**THIRD CAUSE OF ACTION**  
**Fraud**  
**(WPHP and Mr. Fensterman)**

70. In response to paragraph 70 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 69 with the same force and effect as though fully set forth herein.

71. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Complaint.

72. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 72 of the Complaint, except denies the allegations concerning the content of the Notification, and respectfully refers the Court to the Notification for the contents thereof.

73. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 of the Complaint, except admits that WPHP and Fensterman have no right to sell the Membership Interest.

74. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 74 of the Complaint.

75. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 75 of the Complaint.

**THIRD /SIC/ CAUSE OF ACTION**  
**Defamation**  
**(WPHP and Mr. Fensterman)**

76. In response to paragraph 76 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 75 with the same force and effect as though fully set forth herein.

77. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77 of the Complaint.

78. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78 of the Complaint, except denies the allegations concerning the content of the Notification, and respectfully refers the Court to the Notification for the contents thereof.

79. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 of the Complaint.

80. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 80 of the Complaint.

81. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 of the Complaint.

82. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 82 of the Complaint.

**FOURTH /SIC/ CAUSE OF ACTION**  
**Breach of Fiduciary Duty**  
**(Mr. Fensterman)**

83. In response to paragraph 83 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 82 with the same force and effect as though fully set forth herein.

84. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 of the Complaint and respectfully refers all questions of law to the Court.

85. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 85 of the Complaint.

86. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86 of the Complaint.

87. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87 of the Complaint.

**FIFTH [SIC] CAUSE OF ACTION**  
**Legal Malpractice**  
**(Mr. Fensterman)**

88. In response to paragraph 88 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 87 with the same force and effect as though fully set forth herein.

89. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 89 of the Complaint.

90. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 90 of the Complaint and respectfully refers all questions of law to the Court.

91. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91 of the Complaint and respectfully refers all questions of law to the Court.

92. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92 of the Complaint.

93. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93 of the Complaint.

**SIXTH /SIC/ CAUSE OF ACTION**  
**Judiciary Law Section 487**  
**(Mr. Fensterman)**

94. In response to paragraph 94 of the Complaint, MCB repeats and reiterates each and every response to the allegations contained in paragraphs 1 through 93 with the same force and effect as though fully set forth herein.

95. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 95 of the Complaint.

96. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 of the Complaint.

97. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 97 of the Complaint.

98. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 98 of the Complaint.

99. MCB denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 99 of the Complaint.

**DEFENSES**

100. MCB reserves the right to rely upon any of the following or any additional defenses to the extent that such defenses are supported by information developed through discovery or evidence at trial. MCB presently has insufficient knowledge or information upon which to form a belief as to whether there may be, as yet unstated, defenses available to MCB and thus, expressly reserves the right to (a) amend or supplement this answer, defenses and all other pleadings, and (b) assert any and all additional defenses under any applicable federal and state law in the event that discovery indicates such defenses would be appropriate. By asserting the matters below, MCB

does not admit that Plaintiff is relieved of his burden to prove each element of its claims and the damages or relief sought.

**AS AND FOR A FIRST DEFENSE**

101. MCB has a fully perfected security interest in the Membership Interest and the certificates constituting the Membership Interest that is senior to all other persons.

**AS AND FOR A SECOND DEFENSE**

102. MCB has a possessory right in the certificates constituting the Membership Interest that is superior to all other persons.

**AS AND FOR A THIRD DEFENSE**

103. Given that MCB is the creditor with the fully perfected senior secured interest in the Membership Interests and certificates constituting the Membership Interest, and also has possession of the certificates (and cannot be dispossessed of same), defendants WPHP and Fensterman cannot conduct a commercially reasonable sale of the Membership Interest and thus, they cannot proceed with a sale of said Membership Interest.

**AS AND FOR A FOURTH DEFENSE**

104. Upon information and belief, WPHP and Fensterman never had a valid security interest in the Membership Interest and thus, they cannot foreclose or sell same.

**AS AND FOR A FIFTH DEFENSE**

105. Upon information and belief, assuming *arguendo* WPHP and Fensterman had a valid security interest in the Membership Interest, said security interest has since terminated and thus, they cannot foreclose or sell same.

**AS AND FOR A CROSS-CLAIM  
AGAINST WHITE PLAINS HEALTHCARE  
PROPERTIES I, LLC AND HOWARD FENSTERMAN  
(Declaratory Judgment)**

106. MCB repeats and re-alleges the foregoing paragraphs as though fully set forth herein.

**MCB's Security Interest in the Membership Interest**

107. On or about December 19, 2019, MCB loaned \$3 million to, among others, Waterview Acquisition I, LLC ("Waterview") and in connection therewith Waterview executed and delivered to MCB a Promissory Note and Loan Agreement each dated December 19, 2019.

108. To secure repayment of Waterview's obligations to MCB, among other things, Plaintiff executed and delivered to MCB a Guaranty Of Payment dated December 19, 2019 (the "Guaranty").

109. Plaintiff secured his obligations under his Guaranty by executing and delivering to MCB, among other things, the Assignment And Pledge Of Membership Interests dated December 19, 2019 (the "Pledge Agreement").

110. Pursuant to the Pledge Agreement, Plaintiff, among other things, "pledge[d], collateral[ly] assign[ed], transfer[red] and convey[ed], and grant[ed] a security interest in and lien on, in favor of [MCB], all of [Plaintiff's] right, title and interest in, to, and under ... , whether now owned or existing or hereafter acquired or arising [ Seventy and one-tenths percentage (70.1%) of the membership interests ... owned by HERBERT JOZEFOVIC ... in WATERVIEW ACQUISITION I, LLC ....]". In other words, by the Pledge Agreement, Plaintiff pledged his Membership Interests to MCB.

111. To authorize, permit and facilitate the pledge of Plaintiff's Membership Interests to MCB, Plaintiff's Membership Interests were certificated (the "Certificates") and the Amended

And Restated Operating Agreement Of Waterview Acquisition I, LLC was amended pursuant to the Second Amendment To Amended And Restated Operating Agreement Of Waterview Acquisition I, LLC dated December 19, 2019 (collectively, the "Operating Agreement"). After obtaining a senior secured interest in Plaintiff's Membership Interests and Certificates, MCB fully perfected same by filing a UCC Financing Statement on December 23, 2019 and taking possession of the Certificates.

112. All of Plaintiff's rights and interests in and to the Membership Interests are merged with and in the Certificates.

**The Certificates**

113. MCB remains in possession of the Certificates.

114. MCB has a possessory interest in the Certificates that is superior to all other persons and thus, cannot be dispossessed of the Certificates.

115. The Certificates, moreover, states as follows: "This certifies that Herbert Lizer Jozefovic is the registered owner of Seventy and 1/10 (70.1%) Percent of the membership in the Limited Liability Company transferable only on the books of the Company in accordance with the Company's Operating Agreement and pursuant to the provisions of Section 2801-a(4)(b) of the New York State Public Health Law."

116. Pursuant to Article XII of Waterview's Operating Agreement, a pledge or transfer of a membership interest is prohibited absent consent of the Public Health Council of the State of New York and the members of Waterview.

117. Likewise, Section 2801-a(4)(b) of the New York State Public Health Law requires the consent of the New York Public Health and Health Planning Council.

**The Notice of Sale**

118. On or about October 6, 2020, MCB and its counsel Windels Marx Lane & Mittendorf, LLP received a Notification Of Disposition Of Collateral pursuant to which WPHP and Fensterman purported to sell WPHP's interests in and to Plaintiff's Membership Interests and Certificates (the "Notice of Sale").

119. The Notice of Sale allegedly relates to an August 11, 2017 collateral assignment, pledge and security agreement between Plaintiff and WPHP. However, WPHP did not file a UCC Financing Statement until September 15, 2020.

120. Even if WPHP and Fensterman were to have a valid security interest in the Membership Interest, it would be junior to MCB's security interest by virtue of the fact that MCB perfected its interest before WPHP's September 15, 2020 UCC Financing Statement.

**The UCC Requires that any Sale be "Commercially Reasonable"**

121. Pursuant to NY UCC 9-610(b), "Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable."

122. In order to conduct a commercially reasonable sale of the Membership Interests, WPHP and Fensterman must have possession of the Certificates.

**Declaratory Relief is Necessary**

123. As evidenced by the Notice of Sale, and the subsequent refusal by WPHP and Fensterman to withdraw the Notice of Sale, there exists a genuine controversy and dispute as to whether WPHP and Fensterman have the authority to sell Plaintiff's Membership Interest given that (a) WPHP and Fensterman never had a security interest in the Membership Interests and if they did, then said security interest long ago terminated, and even if they did and still have a security interest in the Membership Interests, then (b) (i) MCB has a fully perfected security

interest in the Membership Interest and Certificates that is senior to all other persons, (ii) MCB is in possession of the Certificates, (iii) MCB has a possessory right in the Certificates that is superior to all other persons, (iv) MCB cannot be dispossessed of the Certificates given its superior possessory right in same, (v) the Certificates limit any transfer of same except in compliance with the Operating Agreement, which requires the consent of Waterview's members, and the Public Health Law, which requires the consent of the Public Health Council; (vi) all of Plaintiff's rights and interests in and to the Membership Interests are merged with and in the Certificates, and (vii) in order to conduct a commercially reasonable sale, WPHP and Fensterman must have possession of the Certificates.

124. A judicial determination of these issues is necessary.

125. This controversy is ripe, genuine, actually justiciable and MCB has no adequate remedy at law.

126. MCB is entitled to a declaratory judgment stating that WPHP and Fensterman are prohibited from selling Plaintiff's Membership Interest pursuant to the Notice of Sale or otherwise because: (a) WPHP and Fensterman never had a security interest in the Membership Interests and if they did, then said security interest long ago terminated, and even if they did and still have a security interest in the Membership Interests, then (b) (i) MCB has a fully perfected security interest in the Membership Interest and Certificates that is senior to all other persons, (ii) MCB is in possession of the Certificates, (iii) MCB has a possessory right in the Certificates that is superior to all other persons, (iv) MCB cannot be dispossessed of the Certificates given its superior possessory right in same, (v) the Certificates limit any transfer of same except in compliance with the Operating Agreement, which requires the consent of Waterview's members, and the Public Health Law, which requires the consent of the Public Health Council; (vi) all of Plaintiff's rights

and interests in and to the Membership Interests are merged with and in the Certificates, and (viii) in order to conduct a commercially reasonable sale, WPHP and Fensterman must have possession of the Certificates.

127. **WHEREFORE**, MCB demands judgment as follows:

(a) Granting Plaintiff's request for a judgment declaring that (i) the Collateral Assignment to WPHP and Fensterman is null and void following the establishment of the Rent Security; (ii) the Membership Interest has been properly assigned to MCB; and (iii) WPHP and Fensterman have no right or claim to the Membership Interest, nor can WPHP, Fensterman, or counsel sell or otherwise transfer the Membership Interest;

(b) Granting MCB's request for a judgment declaring that WPHP and Fensterman are prohibited from selling Plaintiff's Membership Interest pursuant to the Notice of Sale or otherwise because: (1) WPHP and Fensterman never had a security interest in the Membership Interests and if they did, then said security interest long ago terminated, and even if they did and still have a security interest in the Membership Interests, then (2) (i) MCB has a fully perfected security interest in the Membership Interest and Certificates that is senior to all other persons, (ii) MCB is in possession of the Certificates, (iii) MCB has a possessory right in the Certificates that is superior to all other persons, (iv) MCB cannot be dispossessed of the Certificates given its superior possessory right in same, (v) the Certificates limit any transfer of same except in compliance with the Operating Agreement, which requires the consent of Waterview's members, and the Public Health Law, which requires the consent of the Public Health Council; (vii) all of Plaintiff's rights and interests in

and to the Membership Interests are merged with and in the Certificates, and (viii) in order to conduct a commercially reasonable sale, WPHP and Fensterman must have possession of the Certificates; and

(c) Granting MCB such other relief as the Court may deem fair, just and proper.

Dated: January 8, 2020  
New York, New York

**WINDELS MARX LANE & MITTENDORF, LLP**

By:  \_\_\_\_\_  
Robert J. Malatak  
James Tracy  
156 West 56th Street  
New York, NY 10019  
Telephone: 212-237-1180  
Fax: 212-262-1215  
rjmalatak@windelsmarx.com  
jtracy@windelsmarx.com  
*Attorneys for Defendant/Cross Claimant  
Metropolitan Commercial Bank*

# Exhibit

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

-----X

LIZER JOZEFOVIC,  
Plaintiff,

- v -

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
HOWARD FENSTERMAN, and METROPOLITAN  
COMMERCIAL BANK

Defendants.  
-----X

INDEX NO. 655549/2020

MOTION DATE 01/04/2021,  
01/04/2021

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 86 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 7, 8, 9, 10, 11, 12, 13, 61, 62, 63, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 89 were read on this motion to/for CHANGE VENUE.

In this action seeking a declaratory judgment and damages in connection with claims sounding in, *inter alia*, breach of contract, fraud, defamation, breach of fiduciary duty, and legal malpractice, the plaintiff moves pursuant to CPLR 6301 for a preliminary injunction enjoining the defendants and their agents from publishing and distributing false statements about the plaintiff and from taking any action to transfer, assign, convey, or sell the plaintiff's membership interest in Waterview Acquisition I, LLC ("Waterview") (SEQ 001). The defendants White Plains Healthcare Properties I, LLC ("WPH Properties"), and Howard Fensterman ("Fensterman") oppose the motion and separately move pursuant to CPLR 511 and 602 to transfer this action to Westchester County and consolidate it with an action pending there entitled White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020 (the "Westchester Action") (SEQ 002). The plaintiff opposes the moving defendants' application. For the following reasons, the moving defendants' motion is granted and the plaintiff's motion is denied without prejudice.

WPH Properties is the developer and owner of a new skilled nursing facility located in Westchester County, New York (the "Facility"). The Facility is operated by HBL SNF, LLC ("HBL"), an entity controlled by the plaintiff. WPH Properties and HBL are parties to an operating lease dated November 19, 2015 (the "Lease"), under which WPH Properties leases the Facility to HBL, as tenant. The plaintiff and nonparty Marc Neuman, as principals of HBL, are HBL's guarantors under the Lease.

Section 7.1(a)(iii) of the Lease provides that HBL was to pay an additional security deposit in the amount of \$1.6 Million 60 days prior to the start of the lease period. As security for that payment, the plaintiff and WPH Properties entered into a collateral assignment agreement (the "Collateral Assignment Agreement"). Pursuant to the Collateral Assignment Agreement, the plaintiff assigned to WPH Properties his 71% membership interest in Waterview, an entity that owns another skilled nursing home in Westchester County (the "Waterview Interest"). The plaintiff also agreed to list Howard Fensterman, attorney for WPH Properties, as a signatory to a Waterview account with JP Morgan (the "Waterview account") where the \$1.6 Million was currently being held. The Collateral Assignment Agreement provided that:

"[u]pon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the [Waterview account] in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the [Waterview Interest] assigned to [WPH Properties] ...shall be automatically reassigned by [WPH Properties] to [the plaintiff] without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect."

The "Landlords Rent Security Account" is not a defined term in the Lease or the Collateral Assignment Agreement. The Collateral Assignment Agreement further provides that the exercise of WPH Properties' rights to sell the Waterview Interest as assignee is authorized upon the plaintiff's violation of the "terms and provisions concerning the maintenance of the [Waterview account]..."

The plaintiff avers that he satisfied his obligations under the Collateral Assignment Agreement and that as a result, the assignment terminated. In 2019, the plaintiff assigned the Waterview Interest to defendant Metropolitan Commercial Bank ("MCB") in connection with a \$3 Million loan as part of a financing arrangement to provide working capital to benefit the Facility, including through the payment of rent to WPH Properties.

On September 18, 2020, WPH Properties commenced the Westchester Action, in which it contends, *inter alia*, that HBL breached the Lease by failing to pay rent, municipal and utility deposits, real estate taxes, and other fees associated with the Facility, including the \$1.6 Million security deposit required by Section 7.1(a)(iii). On October 6, 2020, WPH Properties noticed a public sale of the Waterview Interest based upon the plaintiff's alleged default under the Collateral Assignment Agreement. On October 22, 2020, this action ensued.

"Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, 'unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right.'" Raboy v McCrory Corp., 210 AD2d 145 (1<sup>st</sup> Dept. 1994) (quoting Amtorg Trading Corp. v Broadway & 56th St. Assoc., 191 AD2d 212, 213 [1<sup>st</sup> Dept. 1993]). The movants correctly argue that consolidation is warranted here because this action and the Westchester Action share common questions of law and fact. See CPLR 602; DeSilva v Plot Realty, LLC, 85 AD3d 422 (1<sup>st</sup> Dept. 2011); Kern v Shandell, Blitz, Blitz & Bookson, 58 AD3d 487 (1<sup>st</sup> Dept. 2009).

The plaintiff opposes consolidation, observing that while the Westchester Action involves claims regarding HBL's performance of its obligations under the Lease and the plaintiff's performance under the guarantee he signed, the instant action involves claims regarding ownership of the Waterview Interest pursuant to the separate Collateral Assignment Agreement. However, this characterization of the actions ignores the fact that both (a) WPH Properties' claim in the Westchester Action that the additional security was not paid and (b) the plaintiff's central claim in this action that the Collateral Assignment Agreement automatically terminated turn on the same question: whether Section 7.1(a)(iii) of the Lease was effectuated. Allowing this question to proceed in two separate courts risks inconsistent results. Moreover, WPH Properties avers in its moving papers that it has amended its complaint in the Westchester Action to include a claim sounding in violation of the Collateral Assignment Agreement against the plaintiff. Finally, the plaintiff, who is a resident of Westchester County and a party to the Westchester Action, which was commenced prior to the instant action, would not suffer prejudice to any substantial right as a result of consolidation and transfer.

The court notes that transfer is also appropriate because it appears that venue is improper in New York County. CPLR 503 provides that "[e]xcept where otherwise prescribed by

law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff.” Here, the only entity residing in New York County is MCB, which the plaintiff has included as a defendant but against which the plaintiff has not asserted any claim. Conversely, several parties, including the plaintiff, reside in Westchester County. Since venue properly lies in Westchester County, the court declines to retain venue on the basis of MCB, a nominal defendant against whom there is no claim. See Espinoza v Concordia Intl. Forwarding Corp., 39 AD3d 258 (1<sup>st</sup> Dept. 2007).

The plaintiff’s motion for preliminary injunctive relief is denied without prejudice to renewal upon transfer and consolidation in Westchester County.

Accordingly, it is

ORDERED that the plaintiff’s motion pursuant to CPLR 6301 for a preliminary injunction (SEQ 001) is denied without prejudice to renewal upon the transfer and consolidation of this action in Westchester County; and it is further

ORDERED that the motion of White Plains Healthcare Properties I, LLC, and Howard Fensterman pursuant to CPLR 511 and 602 to transfer this action to Westchester County and consolidate it with an action pending there entitled White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020, (SEQ 002) is granted; and it is further

ORDERED this action, Lizer Jozefovic v White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank, Index No. 65549/2020, pending in the Supreme Court, New York County, shall be consolidated in the Supreme Court, Westchester County, with White Plains Healthcare Properties I, LLC v HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, Index No. 60278/2020; and it is further,

ORDERED that the consolidation shall take place under Westchester County Index No. 60278/2020; and it is further,

ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, Westchester County, for consolidation and shall mark his records to reflect such transfer; and it is further,

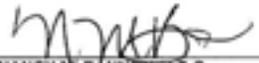
ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Westchester County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the moving defendants shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer and consolidation; and it is further

ORDERED that such service upon the Clerk of this Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the Decision and Order of the court.

<p><u>4/8/2021</u> DATE</p>	 HON. NANCY M. BANNON																	
<p>CHECK ONE:</p> <p>SEQ 001</p> <p>SEQ 002</p> <p>APPLICATION:</p> <p>CHECK IF APPROPRIATE:</p>	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"><input checked="" type="checkbox"/> CASE DISPOSED</td> <td style="width: 50%;"><input type="checkbox"/> NON-FINAL DISPOSITION</td> </tr> <tr> <td><input type="checkbox"/> GRANTED</td> <td><input type="checkbox"/> GRANTED IN PART</td> </tr> <tr> <td><input checked="" type="checkbox"/> GRANTED</td> <td><input type="checkbox"/> GRANTED IN PART</td> </tr> <tr> <td><input type="checkbox"/> SETTLE ORDER</td> <td><input type="checkbox"/> SUBMIT ORDER</td> </tr> <tr> <td><input checked="" type="checkbox"/> INCLUDES TRANSFER/REASSIGN</td> <td><input type="checkbox"/> FIDUCIARY APPOINTMENT</td> </tr> <tr> <td></td> <td><input type="checkbox"/> REFERENCE</td> </tr> </table>	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	<input checked="" type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT		<input type="checkbox"/> REFERENCE	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"><input checked="" type="checkbox"/> DENIED</td> <td style="width: 50%;"><input type="checkbox"/> OTHER</td> </tr> <tr> <td><input type="checkbox"/> DENIED</td> <td><input type="checkbox"/> OTHER</td> </tr> </table>	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
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# Exhibit

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and  
Third-Party Plaintiff,

**FIRST AMENDED  
VERIFIED ANSWER  
WITH AFFIRMATIVE  
DEFENSES, COUNTER-  
CLAIMS AND THIRD-  
PARTY COMPLAINT**

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

-----X

Defendants, HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and  
MARK NEUMAN (collectively, “Defendants”), by and through their counsel Michelman &  
Robinson, LLP, hereby assert the following verified answer with affirmative defenses,  
counterclaims, and third-party complaint and allege upon information and belief as follows:

**ANSWER TO COMPLAINT**

1. Defendants deny the allegations in paragraphs “1,” “2,” and “3.”
2. Defendants admit the allegations in paragraphs “4” through “11.”
3. Defendants deny the allegations in paragraphs “12” and “13.”
4. In response to the allegations in paragraphs “14” through “20,” Defendants assert  
that the document speaks for itself.

5. Defendants admit the allegations in paragraphs “21” and “22.”
6. In response to the allegations in paragraph “23,” Defendants assert that the document speaks for itself.
7. Defendants deny the allegations in paragraphs “24,” “25,” and “26.”
8. In response to the allegations in paragraphs “27” through “32,” Defendants assert that the document speaks for itself.
9. Defendants deny the allegations in paragraph “33.”
10. In response to the allegations in paragraphs “34” through “37,” Defendants assert that the document speaks for itself.
11. In response to the allegations in paragraphs “38” through “40” Defendants assert that the document speaks for itself.
12. Defendants deny the allegations in paragraph “41.”
13. Defendants admit the allegations in paragraph “42.”
14. Defendants deny the allegations in paragraphs “43” through “49.”
15. In response to the allegations in paragraph “50” Defendants assert that the document speaks for itself.
16. Defendants deny the allegations in paragraphs “51” through “53.”
17. Defendants deny the allegations in paragraphs “54” through “69.”
18. In response to the allegations in paragraph “70,” Defendants assert that the document speaks for itself.
19. Defendants admit the allegations in paragraph “71.”
20. In response to the allegations in paragraphs “72” through “75,” Defendants assert that the document speaks for itself.

- 21. Defendants deny the allegations in paragraphs “76,” “77,” and “78.”
- 22. Defendants lack sufficient information to form a belief regarding the allegations and, on that basis, deny the allegations in paragraphs “79” and “80.”
- 23. Defendants deny the allegations in paragraph “81.”
- 24. In response to the allegations in paragraphs “82” and “83,” Defendants assert that the document speaks for itself.
- 25. Defendants deny the allegations in paragraphs “84” through “91.”

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

- 26. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “91” as if fully set forth herein.
- 27. Defendants deny the allegations in paragraphs “92” and “93.”

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

- 28. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “93” as if fully set forth herein.
- 29. Defendants deny the allegations in paragraphs “94” and “95.”

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

- 30. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “95” as if fully set forth herein.
- 31. Defendants deny the allegations in paragraphs “96” and “97.”

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

- 32. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “97” as if fully set forth herein.
- 33. Defendants deny the allegations in paragraphs “98” and “99.”

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

- 34. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “99” as if fully set forth herein.
- 35. Defendants deny the allegations in paragraphs “100” and “101.”

**AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses, without admitting that Defendants would bear the burden of proof on any of these or any other affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE  
(Plaintiff's Breach)**

1. Plaintiff's claims for relief are barred, in whole or in part, because plaintiff is in breach of its obligations under the Lease, the integrated development agreements, and its non-payment of mortgage debt.

**SECOND AFFIRMATIVE DEFENSE  
(Failure to Perform)**

2. Plaintiff failed to perform its obligations under the Lease and integrated Project documents and is not entitled to performance by the Defendants.

**THIRD AFFIRMATIVE DEFENSE  
(Terms Too Indefinite To Enforce)**

3. Certain terms within the Lease which plaintiff seeks to enforce are not clear and not definite and are therefore unenforceable.

**FOURTH AFFIRMATIVE DEFENSE  
(Payment)**

4. Defendants have made various substantial pre-payments of rent which have not been credited to their account, and Defendants have made monthly rental payments to plaintiff which plaintiff has failed to use for its mortgage debt.

**FIFTH AFFIRMATIVE DEFENSE  
(Not Entitled to Enforcement)**

5. Plaintiff's failure to deliver the Project in compliance with NYSDOH approvals renders the Lease unenforceable.

**SIXTH AFFIRMATIVE DEFENSE  
(Offsets)**

6. Defendants are entitled to substantial offsets against the rents due under the Lease.

**SEVENTH AFFIRMATIVE DEFENSE  
(Fraud In The Inducement)**

7. Plaintiff induced the Defendants to enter into the Lease and guarantee agreements by making fraudulent representations and failing to disclose material facts.

**EIGHTH AFFIRMATIVE DEFENSE  
(Waiver)**

8. Plaintiff has accepted performance by Defendants and waives any and all right to sue for breach of contract.

**NINTH AFFIRMATIVE DEFENSE  
(Bad Faith/Unclean Hands)**

9. The plaintiff is not entitled to the relief it seeks as it has acted in bad faith and with unclean hands.

**TENTH AFFIRMATIVE DEFENSE  
(Other Affirmative Defenses)**

10. Defendants reserve the right to supplement or amend this Verified Answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this litigation.

**COUNTERCLAIMS AGAINST WHITE PLAINS  
HEALTHCARE PROPERTIES I, LLC  
AND  
THIRD-PARTY CLAIMS AGAINST CCC EQUITIES, LLC,  
PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, AND WILLIAM NICHOLSON**

Now and for their counterclaims against plaintiff and third-party complaint against third-party defendants, Defendants, upon information and belief, allege the following:<sup>1</sup>

1. CCC Equities, LLC is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

2. Project Equity Consulting is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

3. The Congress Companies is a corporation duly organized and existing under the laws of the State of Massachusetts with an address and place of business at 2 Bourbon Street, West Peabody Executive Center, Peabody, Massachusetts 01960 and regularly conducts business within the State of New York.

4. Howard Fensterman is an individual residing at 4 Pond Lane, Sands Point, New York 11050 with a business address and place of business at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

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<sup>1</sup> Pursuant to the Court's instruction, Defendants incorporate all claims, allegations, and causes of action contained within the complaint filed on October 22, 2020, in the action captioned *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, Index No. 655549/2020. A copy of the complaint is attached as Exhibit A.

5. Through the period complained of herein, Fensterman acted as both a principal in the transaction and legal counsel to certain parties including the defendant Lizer Jozefovic.

6. William Nicholson is an individual residing at 12 Long Meadow Drive, Ipswich, Massachusetts 01938 with a business address and place of business at 2 Bourbon Street, West Peabody Executive Center, Suite 200, Peabody, Massachusetts 01960.

7. This case involves the development of a new state-of-the-art 160-bed skilled nursing facility on Church Street in White Plains, New York (the “Facility.”)

8. The Facility was proposed by the defendant, HBL SNF, LLC (“HBL”), and its principals Lizer Jozefovic and Mark Newman (the “Jozefovic Team”) to the New York State Department of Health (“NYSDOH”) in August 2009.

9. The Facility is dedicated to providing specialized services to “difficult to place patients,” including but not limited to, patients who exhibit psychiatric behaviors, patients who are undocumented, patients with developmental and physical disabilities, and patients who have no means of financial support and require charity care.

10. The Facility was intentionally located in White Plains to service high-density minority and high-density poverty populations as compared to surrounding regions.

11. In order to obtain a Certificate of Need from NYSDOH, the Jozefovic Team acquired skilled nursing bed licenses from other area nursing facilities including Hebrew Hospital Home of Westchester, Bethel Nursing Home, and Taylor Care Center.

12. After full review of the Jozefovic Team’s application, NYSDOH determined that the Jozefovic Team was a successful operator of nursing facilities that are authorized to care for the elderly and individuals with long-term physical care needs and has an established history of achieving high occupancy at the facilities it operated.

13. NYSDOH further determined that the Facility was unique and necessary as it provided care to patients not accepted by other facilities because of their special needs.

14. At the time the Jozefovic Team proposed the Facility, the Plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and the third-party defendants Howard Fensterman (“Fensterman”), William Nicholson (“Nicholson”), and their companies CCC Equities LLC (“CCCE”), Project Equity Construction (“PEC”), and The Congress Companies (“Congress”), approached the Jozefovic Team and proposed that they act as developers for the new Facility.

15. Led by third-party defendant Fensterman, these parties represented that they were capable of performing all aspects of development of the Facility including construction and financing (hereafter “the Project.”)

16. In fact, the Project costs for the Facility presented to NYSDOH by the Jozefovic Team were costs calculated and submitted by Fensterman and Nicholson.

17. Importantly, these costs established a total Project cost of \$56, 631,759.

18. The Project costs for the Facility were itemized by Fensterman and Nicholson as follows:

Land acquisition	\$ 4,528,333
New construction	\$37,282,722
Design Contingency	\$ 1,864,136
Construction Contingency	\$ 1,864,136
Architect/Engineering Fees	\$ 2,982,618
Construction Manager Fees	\$ 745,654
Other Fees (Consultant)	\$ 750,000
Movable Equipment	\$ 1,480,000
Financing Costs	\$ 2,112,000
Interim Interest Expense	\$ 2,710,400
CON Application Fee	\$ 2,000
CON Processing Fee	\$ 309,760
Total Project Cost	\$56,631,759

19. Many of these costs were to be paid to Fensterman and Nicholson directly, as well as Fensterman's law firm, and other costs to their entities as fees, interest costs, and other Project expenses.

20. In addition, Fensterman and Nicholson represented that they could arrange for 100% of the Project financing.

21. More specifically, Fensterman and Nicholson specifically represented and agreed in writing that they could secure a HUD insured mortgage in the amount of \$42,240,000 with an interest rate of 5.5% and a term of thirty (30) years.

22. A description of this mortgage was included in the projected Medicaid Reimbursement submitted to NYSDOH as part of the Project feasibility forecast.

23. Furthermore, Fensterman represented that he could provide the necessary project equity in the amount of \$9,863,246 through his company CCC Equities, LLC.

24. The Jozefovic Team presented this financing arrangement to NYSDOH in support of its request for approval of the Facility and these costs became part of NYSDOH's Project approval.

25. Given that Fensterman and Nicholson agreed to develop, finance, and own the Project, the Jozefovic Team agreed to enter into a Lease Agreement to occupy and operate the Facility.

26. To accomplish this, Fensterman and Nicholson proposed that their company White Plains Healthcare Properties I, LLC become the landlord for the operating company owned by the Jozefovic Team known as HBL.

27. The Lease was to be for a twenty (20) year term.

28. The rent was to be calculated as an amount equal to the debt service of the HUD insured mortgage to be obtained by Fensterman and Nicholson plus a return of cash equity to WPHP on the account of the equity contributions through CCCE.

29. The annual rent proposed by Fensterman and Nicholson and presented to NYSDOH equaled \$4,318,000 annually or \$360,000 per month.

30. The amount of annual rent as calculated above was eligible for reimbursement to HBL through the NYSDOH.

31. The Project as proposed to the NYSDOH was to be completed in approximately twenty (20) months.

32. The NYSDOH gave approval for the Project on the terms described above in October 2012.

33. Throughout the NYSDOH application process, the Jozefovic Team relied upon representations made by Fensterman and Nicholson.

34. However, shortly after receiving approval from NYSDOH, the Jozefovic Team learned that Fensterman and Nicholson did not have the capital necessary to commence or complete the Project as presented.

35. As a result of this lack of capital the Project was delayed for years.

36. In an attempt to overcome this lack of capital, on November 15, 2015, HBL entered into a Development Agreement with White Plains Healthcare Properties I, LLC (the "Development Agreement.")

37. On the same date, HBL entered into a Lease with White Plains Healthcare Properties I, LLC (the "Lease") for the Facility in order to enable WPHP to obtain its Project financing.

38. The Development Agreement and Lease are essential parts of the same transaction and are constitute integrated agreements.

39. Pursuant to the Development Agreement, the Project was to be “turn-key” meaning that the plaintiff and third-party defendants would deliver a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place in accordance with the approval granted by NYSDOH.

40. However, because Fensterman and Nicholson lacked sufficient capital to complete the Project on a turn-key basis, they induced the Jozefovic Team to withdraw its equity from another nursing facility which it owned and operated known as Waterview Nursing Home and to contribute that equity to the Project so that the Project could move forward in 2016.

41. In particular, the Jozefovic Team made the following capital contributions to the Project as memorialized in a Term Sheet dated November 20, 2015:

- a) \$2,200,000 paid to WPHP to be used by Congress for pre-development costs;
- b) \$197,072 to CCC Equities, LLC to be used in the discretion of Fensterman;
- c) \$1,595,368.32 into a control account in the name of HBL SNF.

42. These capital contributions were not made as part of a conventional business relationship or an arms-length transaction. Instead, the Jozefovic Team made these capital contributions in reasonable reliance on Fensterman, Nicholson, Congress, and CCCE’s representations that they were acting in a special capacity to protect and advance the Jozefovic Team’s interests. The relationship had developed into a joint venture and a special relationship.

43. The Jozefovic Team would not have made these capital contributions but for Fensterman, Nicholson, Congress, and CCCE’s representations.

44. Yet, despite repeated requests since 2015, Fensterman, Nicholson, Congress, and CCCE have failed or refused to provide an accounting of the use of the predevelopment and discretionary funds paid to them.

45. In consideration for the \$2,200,000 contribution to WPHP, WPHP agreed that these funds constituted a loan to WPHP to be repaid to HBL.

46. No provision was made for the payment of interest on the loan notwithstanding that WPHP had the use of such funds since 2015.

47. WPHP agreed to repay the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") in the amount of \$1,500,000 for the Project and by giving HBL a future credit against Lease payments.

48. When advancing these funds to Fensterman, Nicholson, CCC Equities and Congress, the Jozefovic Team anticipated that the Facility would be delivered in September 2017.

49. The Facility was not delivered until December 2019.

50. Despite repeated requests, WPHP has never provided an accounting for purchases of the required FF&E or any documentation evidencing repayment of \$1,500,000 of the loan amount to HBL.

51. In the absence of such an accounting, HBL cannot determine how much of its loan amount, if any, has been repaid and how much of the remaining loan balance should be credited to current Lease payments.

52. In addition, accrued interest on the \$2,200,000 loan must be calculated from November 2015 and either paid to HBL or credited to payments due under the Lease.

53. The Development Agreement required that the Project be substantially completed within twenty-two (22) months or before September 2017.

54. However, at the time the Development Agreement was executed, the plaintiff knew that it could not deliver the completed Project by the promised time of September 2017.

55. Subsequently, the plaintiff breached its obligations to HBL by failing to complete the Project until December 2019.

56.

57. The delay in completing the Project caused HBL to lose substantial revenue.

58. In addition, by delivering the Project in December 2019, HBL encountered market conditions during its start-up phase in 2020 caused by the COVID-19 pandemic which adversely affected HBL's operations as it has nursing homes throughout the region.

59. HBL would not have encountered these adverse financial conditions but not for the delay caused by plaintiff and third-party defendants.

60. In addition to the Project being completed more than two (2) years late, plaintiff and third-party defendants delivered the Project well over budget.

61. The Development Agreement required the plaintiff to enter into a construction contract with Congress and to secure a 100% performance bond to guarantee the performance of the construction contract.

62. However, unbeknownst to HBL, Congress could not secure a performance bond.

63. Fensterman and Nicholson never disclosed to HBL or any of its principals that Congress could not obtain a bond.

64. As a result, WPHP entered into a contract without approval or consent from HBL for a creation of a joint venture agreement with a third-party contractor.

65. The joint venture, among other reasons, added substantial costs to the Project.

66. These substantial additional costs exceeded the capital expenditures approved by NYSDOH and are not reimbursable through NYSDOH.

67. Upon information and belief, Congress's inability to secure the performance bond is related to certain judgments taken against its principal Nicholson arising from claims for diversion of project funds in a skilled nursing project located in Milwaukee, Wisconsin dating back to 2015, the time when the Jozefovic Team advanced monies to Nicholson and Congress.

68. Neither Fensterman nor Nicholson disclosed these adverse proceedings to the Jozefovic Team.

69. In fact, Nicholson was adjudged to have committed conversion and civil theft in the amount of \$1,903,452, and that judgement was affirmed on appeal to the Seventh Circuit Court of Appeals.

70. The Development Agreement required that plaintiff and third-party defendants deliver the Project at the costs approved by NYSDOH.

71. Only in the event that HBL authorized a change order would HBL have responsibility for any cost higher than the cost approved by the NYSDOH.

72. There were no approved change orders.

73. The approved Project cost is \$57,000,000.

74. The plaintiff and third-party defendants caused the Project to exceed the approved costs by more than \$5,000,000.

75. The plaintiff and third-party defendants breached their obligations to HBL under the Development Agreement by causing the Project to be over budget.

76. As a result, HBL is not eligible for reimbursement of its rent payments as originally intended - a loss of eligibility that will cause substantial harm to HBL.

77. Given these costs overruns and the loss of eligibility for reimbursement, the Lease is unenforceable.

78. As part of the “turn-key” delivery of the Project, plaintiff was obligated to provide permanent financing for the Project on the terms of the HUD insured loan submitted by plaintiff as part of the Project approved by NYSDOH.

79. The plaintiff and third-party defendants have failed to provide such permanent financing and are in breach of the Development Agreement and the Lease.

80. In connection with the permanent financing, the plaintiff and third-party defendants were required to demonstrate sufficient equity invested in the Project for HUD or any other lender of permanent financing to grant a thirty (30) year loan to the Project.

81. Plaintiff and third-party defendants have failed to demonstrate sufficient equity in the Project.

82. Upon information and belief, Fensterman procured financial contributions from individual third parties who contributed capital to CCCE to meet the equity requirement.

83. Although this capital is required to be and has, in fact, been represented by Fensterman to be in the nature of equity, upon information and belief, these contributions from individual third-parties are loans at high rates of interest which are overdue as a result of the Project delays.

84. Fensterman, CCCE, and plaintiff have caused additional financial burden to the Project and have attempted to pass along to HBL and the Jozefovic Team these higher interest costs.

85. The Project cost overruns and the higher finance costs due to the delay in delivering the Project, together with the lack of sufficient equity, have prevented the Project from securing permanent financing.

86. The plaintiff and third-party defendants have advised HBL that they have initiated this lawsuit because they are in default of their current loan agreements.

87. As of this date, plaintiff and third-party defendants have been unable to provide to the Jozefovic Team an accurate Project accounting of Project expenditures and have refused to provide information concerning the Project financing.

88. As of this date, plaintiff and third-party defendants have been unable to procure the HUD insured financing which they represented they could secure and is required by NYSDOH Project approval.

89. As of this date, the Project does not comply with the approval issued by the NYSDOH.

90. HBL and its principals reasonably relied upon WPHP, Fensterman, Nicholson, and Congress' representations that they would fulfill their obligations under the Development Agreement and Lease.

91. If HBL and its principals knew that WPHP, Fensterman, Nicholson, and Congress would substantially breach their obligations under the Development Agreement and Lease, HBL and its principals would not have entered into the Development Agreement and Lease.

92. As a result of the failure to deliver the Project on the terms approved by NYSDOH, HBL cannot be reimbursed for the cost of the Facility as intended by the Development Agreement and the Lease and HBL and its principals have suffered financial harm as a result.

93. Throughout the development process, WPHP, Fensterman, Nicholson and Congress' false representations and adverse actions to the Jozefovic Team have adversely affected the business of HBL.

94. WPHP, Fensterman, Nicholson and Congress knew that these representations were false when they were made.

95. At no point have HBL or the Jozefovic Team knowingly intended to agree, in whole or in part, to release or waive WPHP, Fensterman, Nicholson, and Congress for any of their breaches and violations of the Development Agreement and the Lease.

96. Since the Facility began operations, HBL has made regular rent payments to WPHP pursuant to the terms of the Lease.

97. As of this date, HBL has made over \$12 million in rental payments to WPHP.

98. HBL has made, and continues to make, these payments in compliance with its obligations under the Lease. HBL's payments do not constitute a waiver or release of HBL's claims against WPHP, CCCE, Congress, Fensterman, or Nicholson.

99. On information and belief, WPHP does not own the property for the Facility outright, but instead received entered into a mortgage agreement with Security Benefit Life Insurance Company and Security Benefit Corporation (collectively, "Security Benefit").

100. The primary purpose of HBL's rental payments to WPHP is for WPHP to satisfy its monthly mortgage payments to Security Benefit.

101. On information and belief, WPHP failed to make required mortgage payments to Security Benefit.

102. On information and belief, Security Benefit instructed WPHP to make certain payments otherwise it would institute foreclosure proceedings, potentially jeopardizing HBL's tenancy and continued operations.

103. On information and belief, although WPHP has received substantial rental payments from HBL, WPHP has refused or failed to make necessary mortgage payments to Security Benefit.

104. On information and belief, Security Benefit has declared WPHP to be in default of its mortgage, having failed to make necessary mortgage payments, charges, interest, and other required fees.

105. On information and belief, Security Benefit has demanded WPHP to send HBL a Tenant Direction Notice, instructing HBL to make all future rental payments directly to Security Benefit.

106. To date, WPHP has not instructed HBL to make future rental payments directly to Security Benefit, but instead continues to collect HBL's monthly rental payments itself.

107. On information and belief, Security Benefit has demanded that WPHP establish a Cash Management Account and instruct HBL to deposit all future rental payments into the Cash Management Account.

108. To date, WPHP has not instructed HBL to deposit future rental payments in a Cash Management Account, but instead continues to receive HBL's monthly rental payments in its own account.

109. On information and belief, Security Benefit has brought a foreclosure action against WPHP and is threatening to foreclose on the mortgage on the property for the Facility.

**AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST WPHP,  
CCCE, CONGRESS, AND FENSTERMAN  
(DEMAND FOR ACCOUNTING)**

110. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “87” with the same force and effect as if fully set forth herein.

111. HBL SNF, LLC, Lizer Jozefovic and Mark Neuman had a trust-based relationship with Fensterman, Nicholson, WPHP, Congress, and CCCE.

112. Fensterman, Nicholson, WPHP, Congress, and CCCE made repeated representations that they would maintain a special relationship with HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, and that they would advocate and protect their interests.

113. In reasonable reliance on these representations and on this special relationship, HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman advanced monies to WPHP and Fensterman prior to commencement of the Project in order to allow the Project to proceed.

114. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman would not have advanced these funds but for their reliance on this special, trust-based relationship.

115. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman are entitled to an accounting of the use of the funds advanced for the Project.

**AS AND FOR A SECOND CAUSE OF ACTION AS AGAINST WPHP  
(PAYMENT OF INTEREST)**

116. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “91” with the same force and effect as if fully set forth herein.

117. HBL SNF, LLC is entitled to imputed interest on the \$2,200,000 made to WPHP loan from November 2015 to present.

**AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST WPHP  
(BREACH OF CONTRACT)**

118. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “93” with the same force and effect as if fully set forth herein.

119. WPHP breached the Development Agreement and the Lease.

120. As a result of such breach, HBL SNF, LLC has been damaged by the loss of reimbursable capital expenditures and has incurred other costs due to the nonperformance of WPHP.

121. In addition, HBL SNF, LLC has lost funds and continues to lose revenues as a result of Project delays.

**AS AND FOR A FOURTH CAUSE OF ACTION  
AS AGAINST FENSTERMAN AND NICHOLSON  
(FRAUD IN THE INDUCEMENT)**

122. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “97” with the same force and effect as if fully set forth herein.

123. Third-party defendants Fensterman and Nicholson fraudulently induced HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman to enter into the Development Agreement, the Lease, and the Guaranty.

124. Fensterman and Nicholson misrepresented the Project costs.

125. Fensterman and Nicholson misrepresented their ability to secure permanent HUD financing.

126. Fensterman and Nicholson misrepresented their ability to complete the Project.

127. Fensterman misrepresented the capital contributions made to CCCE to satisfy the equity requirement for the Project.

128. Fensterman and Nicholson failed to disclose the claimant civil proceeding against Nicholson for civil theft.

129. By reason of such fraud in the inducement, Defendants Lizer Jozefovic and Mark Neuman have no obligations under the guarantees.

130. By reason of such fraud in the inducement, HBL SNF, LLC has suffered financial damages.

**AS AND FOR A FIFTH CAUSE OF ACTION  
AS AGAINST ALL THIRD-PARTY DEFENDANTS  
(BAD FAITH)**

131. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “106” with the same force and effect as if fully set forth herein.

132. As alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.

133. As a result of such bad faith dealings, HBL SNF, LLC has suffered damages in an amount not less than \$15,000,000.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(FRAUD)**

134. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “109” with the same force and effect as if fully set forth herein.

135. The misrepresentations and non-disclosures by Fensterman and Nicholson and third-party defendants constitute fraud.

136. WPHP, Fensterman and Nicholson new such statements were false.

137. WPHP, Fensterman and Nicholson made such statements to deceive HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman.

138. HBL SNF, LLC has been damaged by such fraudulent conduct.

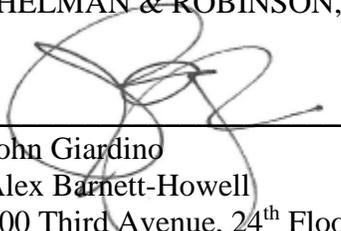
**WHEREFORE**, Defendants and Third-Party Plaintiffs deny generally and specifically that it committed any wrongdoing and demand:

- 1) A determination that the amount of rent payable under the Lease be modified by any sums not reimbursable by the NYSDOH and offset by prior payments and accrued interest;
- 2) The Guaranty Agreements be nullified;
- 3) Monetary damages in an amount to be determined;
- 4) Attorneys' fees, and
- 5) Such other relief as the Court deems appropriate.

Dated: New York, New York

May 21, 2021

MICHELMAN & ROBINSON, LLP

By: 

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*Attorneys for Defendants*

**VERIFICATION BY ATTORNEY**

JOHN GIARDINO, being an attorney duly admitted to practice in the courts of New York, affirms the following under penalties of perjury:

I am an attorney for Defendants HBL-SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARK NEUMAN, in the above entitled action and have read the foregoing Verified Answer and know the contents thereof; that the same is true upon information and belief, and that as to those matters I believe them to be true.

I further state that the grounds of my belief as to all matters in the Verified Answer are based upon the file maintained by my office and conference and telephone conferences with Defendants. This verification is made pursuant to the provisions of RPAPL 741 because Defendants was not available to sign the same at the time the Verified Answer was prepared.

Dated: New York, New York

May 21, 2021

  
\_\_\_\_\_  
JOHN GIARDINO, ESQ.



("HBL"), Lizer Jozefovic ("Jozefovic") and Mark Neuman ("Neuman") (collectively, "defendants").

2. As noted in the accompanying affirmation of our lead attorney, Alfred F. Donnellan, Esq., this is an action to recover damages from HBL and its guarantors, Jozefovic and Neuman, for breach of a lease for the nursing home facility which WPH Properties built and owns at 116-120 Church Street in White Plains and the letter of intent by which WPH Properties agreed to sell a majority interest in the building to HBL's principals. HBL's defaults under both the lease and the letter of intent are fully set forth in the accompanying affidavit of Edward O. Tabor.

3. WPH Properties did not commence this action because of an isolated default by HBL on one occasion, or even a few occasions. HBL and its principals and guarantors, Jozefovic and Neuman, have defaulted or reneged on every agreement they have entered into with WPH Properties since 2015. WPH Properties has repeatedly renegotiated the terms of the deal to accommodate HBL's failure or refusal to comply with its obligations under those agreements. And despite this, HBL has defaulted at every turn.

4. WPH Properties entered into a lease in 2015 for the facility it was going to build commencing in 2017. A copy of the 2015 lease is attached as exhibit 35. Jozefovic and Neuman were not then able, however, to obtain the necessary approvals from the United States Bankruptcy Court to allow their partner Hebrew Hospital Home of Westchester, Inc. to enter into the transaction. Hebrew Hospital finally signed the HBL operating agreement, which governs its partnership with Jozefovic and Neuman, on February 1, 2017. WPH Properties was then able to complete the underwriting of the project with its lenders and reached agreement for the financing of the facility with those lenders on May 26, 2017. The approval of the New York State Department

of Health, however, which was required before WPH Properties could start to build the facility, was delayed until July 2017. Defendant's counsel, Mark Zafran, admitted in an e-mail dated April 11, 2017, that it was HBL's Member Hebrew Hospital's bankruptcy that "was a large impediment to our financing package..." Exhibit 36.

5. WPH Properties closed on its construction financing within a month after the Department of Health issued its approval to start construction. Upon learning that WPH Properties had arranged the construction financing, however, Jozefovic insisted upon renegotiating the terms of the lease. We agreed to do so because we were so invested in the purchase of the property and the predevelopment costs, because HBL had failed or refused to put up the deposits required in the 2015 lease, and because, as a practical matter, with no deposits from HBL, we could not afford to lose HBL as the tenant. The renegotiated lease, a true and accurate copy of which is attached exhibit 12, was substantially more favorable to HBL in two respects. First, it gave HBL, as long as it was not in default, a right of first refusal if WPH Properties ever wanted to sell the building. That right was significantly more valuable than the right to purchase the property at a calculated price only during the twelfth through fifteenth years of the lease term, which is what HBL had under the 2015 lease. Second, and far more important, the 2017 lease provided for a fixed monthly rent, rather than a rent amount based upon WPH Properties' financing costs. That saved, or would have saved, HBL roughly \$1.8 million, according to my estimate, over just the first six years of the lease term.

6. WPH Properties completed the facility and the Department of Health approved it in 2019. The lease term commenced as of September 30, 2019. Upon taking possession, HBL was in default for failure to pay the required security deposits sixty days in advance of possession. By



November 2019, HBL had also defaulted under the lease by, among other things, failing to pay rent, failing to provide the required security deposits and refusing to provide financial and operational reporting required by the lease, which were all critical to WPH Properties because they were all necessary to refinance the construction loan by its due date into a permanent loan. Rather than terminate the lease, as WPH Properties had the right to do, however, WPH Properties agreed in November 2019 to transfer the property to a Delaware Statutory Trust in which HBL's principals would be beneficiaries. The agreement required HBL to provide a \$1,000,000 payment toward the security deposit within 10 days (rather than the full \$5,300,000 it was obligated to provide under the re-negotiated lease), to comply in all other respects comply with the lease and to close by April 1, 2020. HBL defaulted almost immediately by failing to provide the \$1,000,000 payment toward the security deposit. Only after that did WPH Properties terminate the lease and, later, commence this action.

7. HBL's failure to provide the security deposit either before it took occupancy, as the lease required, or at any time thereafter is its principal, and most serious, default on its obligations under the lease. The lease requires that HBL shall have delivered to WPH Properties "60 days prior to the anticipated Commencement Date," a security deposit consisting of \$3.7 million in cash or letter of credit and an additional \$1.6 million from an identified bank account. Exhibit 12, Lease § 7.1(a)(ii) and (iii). HBL has never done that. HBL admits that it took occupancy of the facility on September 30, 2019. Exhibit 11, Notice to Admit, No. 1. The security deposit was due, therefore, in July 2019. It has never been paid – not even a penny. As a result, HBL has been in occupancy for nearly two years without ever providing any security deposit. The lease specifically defines the failure to provide the security deposit as a material breach of the lease. Exhibit 12,

Lease, Schedule 3.1, §16.1 (xxvi).

8. HBI also defaulted by failing to pay rent, real estate taxes timely, municipal escrows and utility charges as required by the lease, by failing or refusing to deliver certificates of insurance timely, as well as all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the facility and by failing or refusing to deliver timely the required financial reporting and written reporting providing an operational overview of significant events and circumstances at the facility during each month of the lease term, all as alleged in the complaint. All of these defaults are detailed, with supporting documentation, in the accompanying affidavit of Edward O. Tabor.

9. HBL does not deny that it has defaulted. In fact, HBL has admitted its defaults by failing to respond to the notice to admit that was served in early June. The substance of those admissions is set forth in the accompanying affirmation of Alfred E. Donnellan, Esq.

10. Based on all of this, WPH Properties has established its entitlement to summary judgment for the relief demanded in the complaint against HBL and against Jozefovic and Neuman, who guaranteed HBI's obligations under the lease. As a result, and for the reasons set forth in Mr. Tabor's affidavit, HBL, Jozefovic and Neuman are each indebted to WPH Properties in the sum of \$111,420,213.50.

11. The defendants' response has been to make a series of other claims, none of which relieves them of their liability, in the hope that they can muddy the waters sufficiently to avoid summary judgment. The purpose of the balance of this affidavit is to address all of those issues and to demonstrate that there is no basis for the defendants' claims.

**The parties' agreements**

12. WPH Properties developed, financed, constructed and owns a brand new, state-of-the-art, 160-bed skilled nursing home located at 116-120 Church Street, White Plains, New York (the "facility"). HBL is the tenant and operator of the facility under an amended and restated operating lease that was signed on July 12, 2017 and is dated as of November 19, 2015, which was the date of the original lease. A true and correct copy of the lease, identical to that which was attached to the complaint, is attached as exhibit 12. The defendants have admitted the accuracy of the copy of the lease that is attached to the complaint. Exhibit 10, First Amended Verified Answer, ¶ 2.

13. WPH Properties and HBL are also parties to a development agreement, dated as of November 19, 2015, as amended July 12, 2017. A true and correct copy of the development agreement is attached as exhibit 13.

14. The lease obligated HBL to deliver guaranties of all of HBL's obligations under the lease by Jozefovic (the "Jozefovic Guaranty") and Neuman (the "Neuman Guaranty"). Exhibit 12, lease, § 7.1. The defendants have admitted the accuracy of the copies of the Jozefovic Guaranty and the Neuman Guaranty that are attached to the complaint. Exhibit 10, First Amended Verified Answer, ¶ 5. A true and correct copy of the Jozefovic Guaranty, identical to the one attached to the complaint, is attached as exhibit 14. A true and correct copy of the Neuman Guaranty, identical to the one attached to the complaint, is attached as exhibit 15.

15. The Jozefovic Guaranty and the Neuman Guaranty both state at section 2.1:

Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligator and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the lease, whether due by acceleration or



otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

16. Pursuant to the Jozefovic Guaranty, Jozefovic absolutely, unconditionally and irrevocably guarantees the full and prompt payment of all rent, sums and charges of every type and nature payable by HBI, under the lease, whether due by acceleration or otherwise. The Jozefovic Guaranty is an absolute and unconditional guaranty of payment and is enforceable against Jozefovic without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Jozefovic expressly waived.

17. Pursuant to the Neuman Guaranty, Neuman absolutely, unconditionally and irrevocably guarantees the full and prompt payment of all rent, sums and charges of every type and nature payable by HBL under the lease, whether due by acceleration or otherwise. The Neuman Guaranty is an absolute and unconditional guaranty of payment and is enforceable against Neuman without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice or demand, all of which Neuman expressly waived.

18. Finally, as security for his guaranty, Jozefovic pledged his 71 percent interest in Waterview Acquisition I, LLC ("Waterview"), which owns a 130-bed skilled nursing facility known as Waterview Hills Rehabilitation and Nursing Center located at 537 Route 22, Purdys, New York 10578. Pursuant to a Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 (the "pledge agreement"). The defendants have admitted the accuracy of the copy of the pledge agreement attached to the complaint. Exhibit 10,

First Amended Answer, ¶ 11. A true and correct copy of the pledge agreement, identical to the one attached to the complaint, is attached as exhibit 16.

19. In 2019, after HBL had defaulted under the lease within weeks of taking possession, the parties entered into a third agreement, the letter of intent, in an attempt to resolve the issues presented by the default in a mutually agreeable way. The letter of intent provided that WPH Properties would sell the building to a Delaware Statutory Trust in which Jozefovic and Neuman would have a 77.5 percent interest and WPH Properties would have a 22.5 percent interest. The defendants have admitted the accuracy of the copy of the letter of intent attached to the complaint. Exhibit 10, First Amended Verified Answer, ¶ 19. A true and correct copy of the letter of intent, identical to the one attached to the complaint, is attached as exhibit 17.

20. The letter of intent gave significant relief to HBL under the lease. In contemplation that the sale would be consummated in several months, the letter of intent allowed HBL to provide an initial payment of only \$1,000,000 toward the \$5.3 million security deposit from its credit line, and an additional \$1,000,000 when WPH Properties delivered free and clear title to the furniture, fixtures and equipment and then an additional \$40,000 per month thereafter. Exhibit 17, Letter of Intent, § 6(d). The letter of intent also allowed HBL to put the \$1.6 million cash security deposit in an account subject to a "blocked account agreement." Exhibit 17, Letter of Intent, § 6(e).

21. But HBL defaulted under the letter of intent as well. HBL never provided the \$1,000,000 toward the security deposit and never complied with its other obligations under the lease, as the letter of intent required. It failed to pay rent, failed to pay municipal and utility payments and real estate taxes timely, failed to enter into a "Deposit Account Control Agreement," failed to enter into the agreement with JP Morgan Chase Bank, failed to obtain the required

\$8,000,000 working capital credit line and failed to close on April 1, 2020.

**HBL's affirmative defenses are without merit**

22. HBL asserts 10 affirmative defenses, none of which have any merit

23. The first two affirmative defenses allege that WPH Properties failed to perform its obligations under the lease and development agreement and failed to pay its mortgage debt. Those claims are false for the reasons stated below.

24. The third affirmative defense, that the lease is not sufficiently clear and definite to be enforced, is baseless as well. There is nothing uncertain about HBL's obligations to provide the required security deposit, to pay rent, taxes and utilities and to provide the various documents the lease specifically identifies. HBL does not dispute that it failed to satisfy these obligations and it has never claimed, until its answer in this action, that it did not understand them.

25. The fourth affirmative defense is addressed in the accompanying affidavit of Edward O. Tabor. To the extent that HBL did make payments, those payments have been accounted for and credited to HBL. HBL is still in default in the payments it is obligated to make under the lease.

26. The fifth, sixth, seventh and eighth affirmative defenses are addressed below. WPH Properties has never defaulted in its obligations or given HBL any basis for a setoff. And while WPH Properties offered HBL the opportunity to overcome its defaults under the lease by purchasing the facility, as set forth in the letter of intent, which HBL also breached, it has consistently insisted on HBL's performance of its lease obligations.

27. Finally, addressing the ninth affirmative defense, there is not one instance in which WPH Properties or its principals have been guilty of bad faith in this matter. To the contrary, HBL and Jozefovic have consistently demonstrated their bad faith by completely disregarding HBL's

obligations under the lease, as well as Jozefovic's obligations under the pledge agreement and the obligations of Jozefovic and Neuman as guarantors of HBL's performance under the lease. Jozefovic's bad faith scheme is clear. He thinks that by using HBL's defaults under the lease to prevent WPH Properties from obtaining permanent financing he can put WPH Properties into default under its construction loan and then negotiate with the lender to purchase the facility for far less than he agreed to pay WPH Properties.

**WPH Properties and third-party defendants are entitled to judgment dismissing defendants' claims**

28. The defendants impermissibly assert counterclaims and third-party claims here. Those claims are based upon false and scurrilous allegations that are either refuted by the documentary evidence, including the release in favor WPH Properties, or are insufficient to state a cause of action. These arguments are fully addressed below and in the accompanying memorandum of law.

29. To begin with, HBL's counterclaims against WPH Properties are barred by section 16.4 of the lease, which provides that "Tenant waives, to the maximum extent permitted by applicable Laws, . . . (4) the right to interpose any counterclaim (other than compulsory counterclaims) in . . . any action instituted by Landlord in any court for unpaid Rent under this Lease . . ."

30. The counterclaims and third-party claims asserted by Jozefovic and Neuman must be dismissed by reason of the similar language in the guaranties. Each provides that "the liability of

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\* Counsel advises me that there are no compulsory counterclaims in New York. See *Henry Modell & Co., Inc. v. Minister, Elders and Deacons*, 68 N.Y.2d 456, 461 (1986).

Guarantor hereunder shall be absolute and unconditional irrespective of any or any of the following . . . (viii) any other dealings or matters occurring between Landlord and Tenant; . . . or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations;" ¶ 3.3. Further,

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE. IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

Exhibit 14, Jozefovic Guaranty, ¶ 4.2; Exhibit 15, Neuman Guaranty, ¶ 4.2. Jozefovic and Neuman, therefore, have no defenses, no counterclaims and no third-party claims.

**A. The defendants' first cause of action, for an accounting, must be dismissed because there was no fiduciary relationship between HBL, Jozefovic and Neuman and WPH Properties or any of the third-party defendants.**

31. The relationship between WPH Properties and its principals, on one hand, and HBL, Jozefovic and Neuman, on the other, was, at all times, an arms-length transaction. The lease confirms that. It provides that "[i]t is the intent of Landlord and Tenant that this this lease is a true lease and that this lease does not represent a financing arrangement." Exhibit 12, Lease, § 3.6. The lease also expressly provides that (i) the relationship between HBL and WPH Properties is, and at all times shall remain, solely that of landlord and tenant; (ii) there is no partnership, joint venture,

agency or common interest in profits or income between the parties; (iii) WPH Properties shall not be construed as a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of HBL or its stockholders, members, or partners; (iv) WPH Properties never intends to ever assume such status, and (v) both WPH Properties and HBL "disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between (WPH Properties and HBL), or any sharing of liabilities, losses, costs or expenses." Exhibit 12, Lease, § 20.28 The lease therefore expressly defeats the counterclaim for an accounting.

32. The \$2.2 million that HBL paid pursuant to the letter of intent was not in payment of any of HBL's obligations under the lease. It was HBL's non-refundable down payment for the purchase of the facility. Exhibit 17, Letter of Intent, § (1)(a)(i) and § (1)(a)(i)(3). And HBL breached the letter of intent by failing to provide the \$1,000,000 toward the security deposit, failing to pay rent, failing to pay municipal and utility payments and real estate taxes, failing to enter into a "Deposit Account Control Agreement," failing to enter into the agreement with JP Morgan Chase Bank, failing to obtain the required \$8,000,000 working capital credit line and failing to close on April 1, 2020. It is therefore not entitled to the return of the \$2.2 million, which was non-refundable by its terms. That payment, in any event, is no defense to its failure to satisfy its obligations under the lease.

**B. The defendants' second cause of action, for imputed interest, is baseless.**

33. HBL's second cause of action, for imputed interest, is baseless as well. The defendants' answer admits that "no provision was made for the payment of interest on the loan notwithstanding that WPH had the use of such funds since 2015." Exhibit 10, First Amended

Verified Answer, ¶ 46.

**C. The defendants' third cause of action, alleging that WPH Properties breached the contract, is belied by the facts.**

34. WPH Properties is not, and has never been, in default of any of its obligations under any of its agreements with the defendants. In any event, even if the defendants could assert such a counterclaim, they have waived or released it.

**(i) The defendants have waived any claims based on WPH Properties' construction of the facility.**

35. WPH Properties' principal obligation was to construct a building in accordance with the requirements of the development agreement. HBL has admitted that WPH Properties satisfied those obligations. Article III(1) of the development agreement provides that on the "substantial completion date" HBL "shall (i) be deemed to have taken occupancy and accepted possession of the Project, (ii) have agreed that the Project has been completed in accordance with the Plans and Specifications, and (iii) have agreed that the Developer has fulfilled all of its responsibilities hereunder to the satisfaction of Tenant/Operator." Exhibit 13, Development Agreement, Article III(1).

36. The "substantial completion date" is defined in Article VIII of the development agreement as "the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Architect, that the Project was substantially completed and in substantial compliance with the Plans and Specifications for the Project, (ii) the date Developer delivers a Temporary Certificate of Occupancy (the "TCO") for the Project, and (iii) the date the DOH approves the Project as constructed (but not necessarily the Operator/Tenant's operations) to accept patients." Exhibit 13, Development Agreement, Article VIII. All of those dates have long passed.

37. The temporary certificate of occupancy was issued on August 22, 2019. A true and accurate copy is attached as exhibit 18. The architect certified that the building was substantially completed and in substantial compliance with the plans and specifications on September 30, 2019. A true and accurate copy of the signed AIA Form G704 is attached as exhibit 19. The New York State Department of Health approved the project to accept patients on November 14, 2019. A true and accurate copy of the letter from the New York State Department of Health is attached as exhibit 20. The defendants admit that the facility was delivered in December 2019. Exhibit 10. First Amended Verified Answer, ¶ 49. In fact, the New York State Department of Health was prepared to approve the project for occupancy on October 1, 2019 but was delayed in doing so solely by HBL's own failure to provide a required signature in order to delay the start of rent payments. A true and accurate copy of the email chain in this regard is attached as exhibit 21.

38. The defendants' admission in the development agreement that WPH Properties completed the facility in accordance with the plans and specifications and fulfilled all of its responsibilities under the development agreement thus defeats every claim the defendants have asserted with respect to the condition of the facility and the satisfaction by WPH Properties of all of its obligations. In addition, HBL represented in the lease that "as of Commencement Date and at all times during the Term," the facility satisfies "requirements of applicable Health Care Authorities, including those relating to the facility's physical structure and environment." Exhibit 12. Lease, Schedule 18(k), ¶ (e); ¶ 18(k).

39. The lease also defeats all of the defendants' other claims against WPH Properties. Section 5.6 of the lease provides that HBL takes the facility "AS IS" "WHERE IS" "WITH ALL FAULTS." Exhibit 12, Lease, § 5.6(a). The lease further provides that HBL, its officers, agents

and anyone acting on its behalf release WPH Properties from "ALL CLAIMS . . . ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES." Exhibit 12, Lease, § 5.6(h) (emphasis in original). The lease further provides, in the same paragraph, that HBL "waives any right it otherwise may have at law or equity against the landlord with respect to any aspect of the leased Premises." Since the lease was entered into in 2017, the release that it contains requires that the defendants' first, second, third, fifth and sixth claims against WPH Properties, all of which necessarily arose before 2017, be dismissed.

**(ii) WPH Properties completed the facility on time.**

40. The development agreement did not require that the building be substantially completed within 22 months or before September 2017, as the defendants claim. Exhibit 10, First Amended Verified Answer, ¶ 53. Rather, the development agreement provides only that WPH Properties "*shall use commercially reasonable efforts* to cause the project to be substantially completed and ready for occupancy within 22 months following receipt of all Approvals and DOH Approvals and financing necessary for the Project." Exhibit 13, Development Agreement, Article III(D) (emphasis supplied). HBL signed an estoppel certificate on August 1, 2017 attesting to WPH Properties' lender, in advance of the closing in the construction financing, that "Lessor is not in default under the Lease, and no state of facts exist which, with the passage of time or the giving of notice, or both, could constitute a default by Lessor under the Lease." Exhibit 37. Obviously, with the construction not starting after the construction financing had closed, it would not be completed the following month, but HBL never preserved any claim to allege a default on that basis. In any event, as noted above, HBL has acknowledged that WPH Properties delivered the building in

accordance with the requirements of the development agreement, defeating any claim that the building was not delivered on time or within budget (even if that mattered to HBL).

**(iii) Nothing in the development agreement or the lease obligates WPH Properties to obtain permanent financing.**

41. Nothing in the lease or development agreement obligates WPH Properties to obtain permanent financing. In any event, HBL cannot assert a claim for WPH Properties' failure to do so because, in the letter of intent, HBL waived "any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purpose" and "any claims related to the Cost Certification." Exhibit 17, Letter of Intent, ¶ 8.

**(iv) HBL's default is the only reason WPH Properties does not have permanent financing.**

42. WPH Properties would have obtained permanent financing long before its construction loan was due if HBL had not defaulted. As the Court is aware, the construction lender has commenced and withdrawn a foreclosure action. The defaults alleged in the foreclosure complaint are that WPH Properties did not satisfy the construction loan when it was due and has not paid the interest at the default rate since then (although WPH Properties has continued to pay interest at the non-default rate). WPH Properties would have been able to satisfy the construction loan on a timely basis by refinancing, however, if HBL had not defaulted under the lease. No lender will lend to a landlord whose sole tenant is in default. The failure to obtain permanent financing is, therefore, the fault of HBL, not WPH Properties.

43. The costs incurred by WPH Properties as a result of its inability to obtain permanent financing have not been passed along to HBL, yet, as the defendants allege. Exhibit 10, First

Amended Verified Answer, ¶ 92. HBL pays a fixed rent, not dependent on WPH Properties' costs. But those costs are part of WPH Properties' damages claim against HBL.

(v) **The defendants' claims based on the 2015 term sheet are completely baseless.**

44. Even if the 2015 term sheet was a binding agreement when it was signed, it no longer has any significance because the merger clause in the amended and restated lease, which was entered into in 2017, after the 2015 date of the term sheet, precludes reliance on prior agreements. Exhibit 12, Lease, § 20.6. But the 2015 term sheet was never a binding agreement. It was intended, by its terms, only to "clarify the pertinent information shared at the meeting of 04/22/15," not to be binding agreement between the parties. A true and accurate copy of the 2015 term sheet is attached as exhibit 22.

**D. The defendants' fourth and sixth causes of action, for fraud have no basis in fact.**

45. The defendants' claims of alleged misrepresentations with respect to the cost of the building and its financing are both irrelevant and waived. HBL "acknowledge[d] and agree[d]" in the development agreement that "the actual total cost of the Project ("Project Cost") as of the date hereof [November 20, 2015] is approximately \$60.0 million, is not possible to exactly ascertain as of the date of this Agreement due to circumstances beyond the control of all parties to this Agreement and is projected to be greater than the Approved Project Cost." Exhibit 13, Development Agreement, Article IV(A). In fact, HBL was responsible for all of the approvals required from the New York State Department of Health. Exhibit 13, Development Agreement, Article II(C). HBL, not WPH Properties, was responsible to "file and diligently pursue with DOH all applications required to increase the Approved Project Cost such that it then equals the best estimate of the Project Cost." Exhibit 13, Development Agreement, Article IV(A).

46. But even if HBL had a cognizable claim that the cost of the project somehow caused HBL to fail to comply with its regulatory obligations, that claim is defeated by the lease and the letter of intent. HBL's representations in the lease include the express representation that the facility complies with "insurance, reimbursement and cost reporting requirements" and "regulations or agreements for reimbursement," Exhibit 12, Lease, Schedule 18(k), (e). The letter of intent addresses this issue directly. It provides:

Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the lease, (3) any claims related to the Cost Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.

Exhibit 17, Letter of Intent, ¶ 8.

47. WPH Properties financed and built the building. It paid all of the development costs. Exhibit 13, Development Agreement, Article III(E). HBL is a tenant. It had no right with respect to the landlord's financing and no obligations that were in any way dependent upon or related to the financing or cost of the building. And the defendants' claim that the rent was somehow fixed on the basis of debt service is belied by the lease. Unlike the 2015 lease, the amended and restated 2017 lease provides for annual rent in a specified amount, not tied to the cost of the building, the cost of debt, equity or any other capital sources, or anything else. Exhibit 12, Lease, § 3.2.

**E. The defendants' fifth cause of action must be dismissed because bad faith is not a cause of action.**

48. My attorneys advise me that, for the reasons set forth in the accompanying



memorandum of law, the defendants' fifth cause of action, for "bad faith," must be dismissed because there is no cause of action for "bad faith." In any event, as discussed above, there has been no bad faith on the part of WPH Properties or the third-party defendants.

**F. WPH Properties and the third-party defendants are entitled to judgment dismissing the counterclaims and third-party claims.**

49. For all of these reasons, and as more fully set forth in the accompanying memorandum of law, the defendants' counterclaims and third-party claims have no merit and must be dismissed. The purpose for asserting those claims is obvious: to continue to prolong these proceedings so that HBL can continue to default under the lease and, ultimately, use the pressure asserted by WPH Properties' lender either to try to squeeze favorable concessions from WPH Properties, or to continue with its obvious master strategy to force WPH Properties into default with its current lender by way of its own defaults under the lease, rendering the property unfinanceable and unsaleable, and then purchase the property at a deep discount from a foreclosure proceeding rather than from WPH Properties at fair market value. The Court should not let either happen.

50. WPH Properties satisfied its obligations to HBI. HBI has admitted that HBI, in fact, has released WPH Properties from liability. HBI's counterclaims and third-party claims have no basis in fact and no merit as a matter of law. They should be dismissed.

**WPH Properties and Fensterman are entitled to judgment dismissing the claims asserted by Jozefovic in the New York County Action**

51. The six causes of action Jozefovic asserts in the New York County action have even less merit than the meritless counterclaims.

52. The first and second causes of action in the New York County complaint allege that

Jozefovic's collateral assignment of his interest in Waterview Hills Acquisition I, LLC, is void because HBL provided the rent security required by the lease to WPH Properties. That is simply not true.

53 Jozefovic's claim is that he satisfied his obligations under the pledge agreement by allegedly tendering documents to Howard Fensterman sufficient to give him control over the account in which the \$1.6 million in additional security deposit was to be held prior to HBL's occupancy of the facility. Jozefovic's allegation is patently false, as set forth in the accompanying affidavit of Howard Fensterman. It is also irrelevant. Whether or not Jozefovic tendered the appropriate documents, HBL never paid the security deposit, as it has admitted, as stated above and in the accompanying affirmation of Alfred E. Donnellan, Esq.

54. WPH Properties and HBL entered into the lease before the building was built. They did so knowing that the pre-construction and construction activities were going to take several years. (In fact, as will be discussed below, HBL caused the delay in moving forward with the construction of the building.) HBL was reluctant to post the \$1.6 million in security two years before taking occupancy. WPH Properties needed to know, however, that HBL had the funds to provide the security when the building was completed. So the parties agreed that HBL could hold the funds in its account until 60 days before the building was going to be finished, as long as the funds could not be moved from that account and remained available to be posted as security. That obligation (like HBL's other obligations under the lease) was secured by the pledge of the Waterview Membership Interest, which the pledge agreement allows WPH Properties to sell if Jozefovic defaults under the pledge agreement or HBL defaults under the lease. Both defaults have occurred.

55. Jozefovic's argument to avoid his obligations under the pledge agreement centers on his contention that he satisfied his obligations under the pledge agreement by tendering certain bank documents to Howard Fensterman. As will be explained more fully below, the documents Jozefovic tendered were insufficient for that purpose. That argument, however, is a sideshow, intended to divert the Court's attention from the substantial default under the lease – HBL's failure to post any security deposit – that Jozefovic does not dispute or even argue about.

56. Even if HBL had put the \$1.6 million in the account, that would not have terminated the pledge agreement. The pledge agreement terminated only when HBL deposited the \$1.6 million in WPH Properties rent security deposit account. That has never happened, as HBL has admitted.

57. Jozefovic admits, in his affirmation in support of his motion to stop the sale of his Waterview Hills interest, a copy of which is attached as exhibit 23, that "[u]nder Paragraph 2, as soon as I deposited \$1,600,000 into the rent security account, the Collateral Assignment 'shall automatically terminate and be void and of no further effect.'" Exhibit 23, Jozefovic Affirmation, ¶ 29. That is an accurate citation of paragraph 2, Exhibit 16, Pledge Agreement, ¶ 2. But then he states, in direct contradiction to that statement, that "[t]he Collateral Assignment required me to place \$1.6 million into an account and provide Fensterman with signatory authority. *after which the Collateral Assignment would automatically terminate.*" Exhibit 23, Jozefovic Affirmation, ¶ 38. That is a complete and blatant misreading of paragraph 2. As Jozefovic admitted in paragraph 29 of his affirmation, *the Pledge Agreement terminates only after the \$1.6 million was deposited in WPH Properties' Rent Security Deposit Account.* Exhibit 16, Pledge Agreement. Exhibit 23, Jozefovic affirmation, ¶ 2.

58. HBL has been and continues to be in default of its obligation under the lease to post the \$1.6 million in security. Because HBL has not posted that security, the pledge agreement remains in effect and the first two causes of action asserted in the New York County action must be dismissed.

59. In fact, Jozefovic, breached the pledge agreement by subsequently pledging the Waterview Membership Interest to Metropolitan Commercial Bank ("MCB"). The pledge agreement prohibits Jozefovic from pledging his interest in Waterview Hills to anyone else. It also prohibits him from amending the Waterview operating agreement, which he did to authorize the membership certificates that he pledged to MCB. Exhibit 16, Pledge Agreement, ¶¶ 3, 4.

60. Notwithstanding these express prohibitions in the pledge agreement, Jozefovic, after signing the pledge agreement, amended the operating agreement and pledged the Waterview Membership Interest to MCB. Jozefovic's material breach of the pledge agreement should defeat his motion, not be used to support it.

61. The third cause of action asserted in the New York County action must be dismissed for the same reason. Contrary to his claim, Jozefovic is a debtor. He guaranteed HBL's obligations under the lease. HBL has defaulted on those obligations. That makes him liable for those debts and, consequently, a debtor. To the extent that he claims he is not a debtor because his obligations under the pledge agreement have been satisfied, he is wrong, for the reasons that have been stated.

62. The fourth, fifth and sixth causes of action asserted in the New York County action are addressed in, and defeated by, the accompanying affidavit of Howard Fensterman.

**HBL's breach of its obligations under the lease and letter of intent caused WPH Properties to incur interest rate damages and lender charges**

63. HBL's defaults have not only caused harm to WPH Properties standing on their own,

but they have had a cascading effect, causing WPH Properties to default under its construction loan agreement. WPH Properties has been unable to refinance the construction loan prior to its maturity because HBL's defaults made it impossible for WPH Properties to provide a new lender with an estoppel certificate certifying that the tenant was in compliance with the lease. As a result, WPH Properties became subject to increased interest rates and incurred default and late charges.

64. On April 16, 2020, the construction lender issued a notice of default to WPH Properties. And on May 1, 2021, the construction lender commenced an action to foreclose the mortgage, entitled *Security Benefit Life Insurance Company v. White Plains Healthcare Properties I, LLC, et al* (Supreme Court, Westchester County, Index, No. 55883-2021). Security Benefit later withdrew the foreclosure action without prejudice to renew upon expiration of the moratorium on commercial foreclosure proceedings in New York State enacted by the "Covid-19 Protect Our Small Businesses Act of 2021," as amended, which is currently set to expire on August 31, 2021. Thus, upon expiration of the statutory foreclosure prohibition on August 31, 2021, the facility and WPH Properties face the imminent likelihood that Security Benefit will reinstate the foreclosure action.

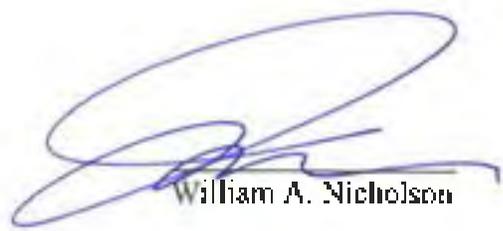
65. The lease requires HBL to cooperate in WPH Properties' efforts to refinance the mortgage. Exhibit 12, Lease, §7.8. HBL has not done that. The failures of Jozefovic and HBL, which Jozefovic controls, to comply with their contractual obligations under the Pledge Agreement, the lease, the letter of intent and guarantees have therefore caused WPH Properties substantial prejudice and financial harm and placed its principal asset, the facility, at serious imminent risk of foreclosure.

66. The mezzanine lender, Bradford Allen Funding Company LLC ("Bradford Allen") is

also entitled to late charges and extension fees under its loan documents, for the same reasons. WPH Properties is entitled to indemnification under the lease, Article IX for Security Benefit and Bradford Allen legal and professional fees, default interest, late charges and extension fees caused by HBL's default.

Conclusion

67. For all of these reasons, and for the reasons more fully set forth in the accompanying affirmation, affidavits and memorandum of law, I respectfully request that the Court grant summary judgment in favor of WPH Properties establishing the liability of HBL, Jozefovic and Neuman for the breach of the lease and the letter of intent, awarding a money judgment against HBL, Jozefovic and Neuman in the amount of \$111,420,213.50 and dismissing the defendants' counterclaims and third-party claims.

  
William A. Nicholson

Sworn to before me this  
18th day of August 2021.

  
Notary Public





**CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, WILLIAM A. NICHOLSON, certify that this document contains 6912 words, exclusive of the caption page, table of contents and table of authorities and signature block, as counted by the word count of the word-processing system used to prepare this document.

Dated: White Plains, New York  
August 18, 2021

/s/ William A. Nicholson  
William A. Nicholson

# Exhibit

DEVELOPMENT AGREEMENT

20

This Development Agreement (the "Agreement") dated as of November 19, 2015 by and between HBL SNF, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (hereinafter referred to as the "Operator/Tenant") and WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 200, Peabody, MA 01960 ("WPHCP") (hereinafter referred to as the "Developer") (collectively the "Parties");

WHEREAS, the Operator/Tenant has requested the Developer to design and construct a 160 Bed Skilled Nursing Facility at 116-120 Church Street, White Plains, New York; and

WHEREAS, the parties have simultaneously herewith entered into that certain operating lease by and between Developer as Landlord and Tenant/Operator, as Tenant dated as of the date hereof for a 160 bed skilled nursing facility at 116-120 Church Street, White Plains, New York (the "Lease"); and

WHEREAS, the Developer desires to design and construct said facility upon the conditions set forth herein;

NOW, THEREFORE, in consideration of one (\$1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, the Operator/Tenant and the Developer hereby mutually covenant and agree as follows:

**ARTICLE I  
DESCRIPTION OF THE DEVELOPMENT**

The Project to be developed, designed and constructed shall consist of a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Project") at 116-120 Church Street, White Plains, New York (the "Church Street Location") bounded and described and more particularly set forth in Exhibit A annexed hereto (the "Land"). Developer reserves the right to change the site, subject only to the prior approval of the DOH should it become impracticable or commercially unfeasible to construct the Project on the Church Street Location.

A. The Developer has caused The Architectural Team, 50 Commandant's Way, at Admirals Hill, Chelsea, MA 02150 (the "Architect") to prepared outline drawings and specifications for the development of the Project (the "Outline Plans and Specifications 3<sup>rd</sup> Edition") which satisfies the design standards of the New York State Department of Health ("DOH"). The Operator/Tenant has reviewed and approved the Outline Plans and Specifications 3<sup>rd</sup> Edition. The Developer has submitted the Outline Plans and Specifications 3<sup>rd</sup> Edition to DOH for approval.

B. The Parties acknowledge and agree the 1<sup>st</sup> and 2<sup>nd</sup> Editions of the Outline Plans and Specifications have been provided by Developer, approved by Operator/Tenant, and



A. The Operator/Tenant shall satisfy each and every requirement contained in the Contingent Approval including without limitation:

- (1) Payment of the DOH fees of at least \$309,760,
- (2) Submission and DOH approval of the Outline Plans and Specifications 3rd Edition,
- (3) Evidence of Operator / Tenant's Working Capital Loan (hereinafter defined),
- (4) Signed agreements for the so-called bed rights (requires payment of at least \$345,000).

The payment for items III A. (1) and (4) shall be included in disbursements to be made to Developer from the proceeds of the Waterville/Salem Financing (defined below).

B. The Operator/Tenant shall at its sole expense do all things necessary to assure and confirm its ownership of the so-called bed rights necessary for the CON and the Project.

C. Upon the satisfaction of all contingencies set forth in Article VII (unless otherwise agreed to by Developer, in writing), the requirements contained in the Contingent Approval and in Section 3(e), the Developer shall promptly initiate development of the Project in accordance with the Plans and Specifications. The quality of the materials and workmanship on the Project shall meet or exceed all applicable governmental and building industry standards, including all DOH standards for occupancy.

D. Developer shall use commercially reasonable efforts to cause the Project to be substantially completed and ready for occupancy within 22 months following the receipt of all Approvals and DOH Approvals and financing necessary for the Project. Developer shall be responsible to start and finish the Project within the guidelines and the dates set forth by DOH in the final approval letter, as may be adjusted in accordance with DOH regulations.

E. Except for the DOH Approvals, the Developer shall be responsible for all for all development costs including, but not limited to, obtaining the site plan approval, sewer and water hookups and approvals, Department of Transportation, Land Acquisition, Demolition, Cleanup, "Land Carry" (Real estate taxes and insurances prior to C of O), Zoning, Legal, Estimating and Construction Management Fees, Architects, Engineers, Designers and other engineering professionals, Testing, Borings, Hazmat Surveys, Site Surveys, Industrial Hygienists, Reproductions, Signs, printing, fences, Building Permits, and Construction Costs.

F. The Developer will maintain at its onsite office, the outline Plans and Specifications, any amendments thereto and any other drawings relating to the development and make the same available to Operator/Tenant for inspection and will furnish them copies thereof, if requested. Upon written request, the Developer will provide Operator/Tenant with copies of all certificates and requisitions (together with appropriate backup documentation) of Developer and of its architects, engineers and subcontractors pertaining to the Project and will also provide Operator/Tenant with copies of all certificates and requisitions of Developer delivered to the construction lender.

G. The Developer shall (i) enter into a construction contract (the "Construction Contract") acceptable to the Construction Lender with Congress Building Corp. ("Congress") or

an entity controlled by Congress, located at 2 Bourbon Street, Peabody, MA 01960 and (2) require that Congress will provide 100% Performance & Payment bonds from a Surety on the accredited list of the U. S Treasury, (which list is published annually by the Federal Register), to guarantee the undertakings, covenants, terms, conditions and agreements of the Construction Contract, and such bond will include the Developer and the Construction Lender (if required by lender) as obligors. Developer shall provide such guarantees of completion as may be required by the Construction Lender.

H. The Project will be a "turnkey job" as said term is commonly used in the construction trade except that Operator/Tenant shall purchase or lease its own minor movable equipment, expendables, computers, business equipment, maintenance tools and supplies. Operator/Tenant shall purchase the FF&E from Developer for \$1,500,000.00, the payment for which shall be disbursed to Developer from the Waterville/Salem Financing.

I. Except as provided in the Lease, on the Substantial Completion Date the Tenant/Operator shall (i) be deemed to have taken occupancy and accepted possession of the Project, (ii) have agreed that the Project has been completed in accordance with the Plans and Specifications, and (iii) have agreed that the Developer has fulfilled all of its responsibilities hereunder to the satisfaction of Tenant/Operator.

J. Operator/Tenant /Tenant shall grant to Developer a perfected security interest in all assets of Operator/Tenant including the CON, and an executed lease for the Project, personally guaranteed by the principals of the Operator/Tenant. The lease, security and underlying security agreement shall provide that in the event that the Operator/Tenant defaults, Developer may assume control of the CON and/or any licenses owned or controlled by Operator/Tenant ("Licenses"), and or other collateral, and is authorized to proceed with the Project as it deems necessary using the CON and/or Licenses, and/or the other collateral provided.

K. An affiliate of Operator Tenant, owned and controlled by Lizer Jozefovic, is in the process of refinancing a nursing facility located in Westchester County, N.Y. referred to herein as "Waterville/Salem". Operator Tenant and Lizer Jozefovic shall cause Waterville/Salem to deliver the proceeds of the refinancing of Waterville/Salem (the "Waterville/Salem Financing") in the amount of at least \$3,900,000 to Operator/Tenant and Developer.

L. If the Working Capital Loan (defined below) is not already committed by either the Mezzanine Lender or the Construction Lender as a separate loan, at least six months prior to the proposed Substantial Completion Date, the Operator/Tenant shall make diligent, truthful and proper applications to Institutional Lenders as such term is defined in Article 12-D of the NYS Banking Law, for working capital financing for the operation of the project in the amount of not less than reasonably required by Developer and the Construction Lender ("Working Capital Loan") and to furnish, without delay, such verifications of bank accounts and employment, or any other instruments or information as may be required by the Institutional Lenders in the processing of the Operator/Tenant's applications. The Working Capital Loan shall be secured by a lien against Operator/Tenant's accounts receivable and other assets. For the avoidance of



Operator/Tenant ("Operator/Tenant Required Cost") will be the responsibility of Operator/Tenant. At the sole option of Developer, any Operator/Tenant Required Cost will be either (i) paid in full by Operator/Tenant to Developer within 30 days of invoice to Operator/Tenant, or (ii) added to the Fixed Rent (as defined in the Lease) pursuant to Section 3.2(IV) thereof.

**ARTICLE V  
AUTHORIZED REPRESENTATIVES**

A. Operator/Tenant's Representative. Operator/Tenant shall designate an individual to represent it on all matters regarding the Project (the "Operator/Tenant's Representative"). Operator/Tenant's Representative shall be reasonably available at all times during which development activities are taking place. The Operator/Tenant's Representative shall have the authority, on behalf of Operator/Tenant, to approve changes in the scope of this Agreement and the Project, render decisions with respect to the Project and approve all Contract Changes and Change Orders, as provided hereinabove. Any changes in this Agreement and Contract Changes or Change Orders authorized by the Operator/Tenant's Representative shall be binding upon Operator/Tenant. Operator/Tenant hereby designates Lizer Jozefovic as its Operator/Tenant's Representative, and he will remain as such until Operator/Tenant gives Developer forty-eight (48) hours prior written notice that a change in its Developer's Representative.

B. Developer's Representative. Developer hereby designates William Nicholson as its representative on all matters regarding the development of the Project, and he shall remain as such until Developer gives Operator/Tenant forty-eight (48) hours prior written notice of a change in its Developer's representative.

**ARTICLE VI  
DEVELOPER FINANCING**

Developer Financing. The Developer, at its sole cost and expense, shall use commercially reasonable efforts (including providing a sufficient balance sheet and such personal financials as reasonably required by the Construction Lender), and shall be responsible for procuring all development financing for the Project (the "Construction Loan"). The Operator/Tenant shall be responsible for and hereby covenants to cooperate with the Developer in the prompt preparation and delivery of any and all financial projections, business plans, market studies, discharge capture plans, and any other such information, data, or projections concerning the operations, personal financial statements of the Operator/Tenant and its principals, as the Lender or Developer may request from time to time. The Operator/Tenant further covenants and agrees to file and/or apply at the request of the Developer and/or its designated Health Care Consultant or attorney any and all applications, modifications or other requests for a change in the approval or its terms (as defined herein) or an increase in the Approved Project Cost.

**ARTICLE VII  
CONTINGENCIES**

A. The Developer shall have obtained all Approvals for the development of the Project based upon the Outline Plans and Specifications, 3d Edition, 160 Beds. The Parties acknowledge that all necessary land use approvals for the development of the Project have been previously obtained based upon the approved Outline Plans and Specifications, 2<sup>nd</sup> Edition, 179 Beds. The Operator/Tenant agrees to assist and fully cooperate with Developer in connection with obtaining the Approvals.

B. The Developer shall have obtained a Construction Loan or other financing acceptable to the Developer and the DOH which upon completion shall convert to permanent mortgage financing (the "Permanent Financing") in an amount which is at least 75% of the Project Cost.

C. The Operator/Tenant shall have obtained all DOH Approvals.

With regard to each of the foregoing contingencies (the "Contingencies") each Party agrees to exert, vigorously and expeditiously, all necessary efforts on its behalf to initiate or assist in the satisfaction of each of the Contingencies. Each Party agrees to do nothing that would be detrimental to the satisfaction of the Contingencies.

**ARTICLE VIII  
SUBSTANTIAL COMPLETION DATE**

The "Substantial Completion Date" shall mean the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Architect, that the Project was substantially completed and in substantial compliance with the Plans and Specifications for the Project, (ii) the date Developer delivers a Temporary Certificate of Occupancy (the "TCO") for the Project, and (iii) the date the DOH approves the Project as constructed (but not necessarily the Operator/Tenant's operations) to accept patients, provided, however, if the Developer is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Operator/Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (i); Developer will give Operator/Tenant thirty (30) days' notice of the date Developer expects to be the Substantial Completion Date.

**ARTICLE IX  
HOLD HARMLESS**

A. Developer agrees to indemnify and hold harmless Operator/Tenant, and its managers, officers and employees from and against any and all claims, including reasonable legal fees, liability costs and expenses to the extent arising out of Developer's breach of this Agreement or in connection with, the work undertaken in the Project by the Developer.

B. Operator/Tenant agrees to indemnify and hold harmless Developer and its managers, officers and employees from and against any and all claims, including reasonable legal fees, liability costs and expenses, to the extent arising out of Operator/Tenant's breach of this Agreement or the negligence or willful acts of the Operator/Tenant or any of its employees or agents.

**ARTICLE XI  
PUNCH LIST PREPARATION**

On or prior to the Substantial Completion Date, the Operator/Tenant, the Developer and the Architect, whose decision will be final with respect to all construction matters, shall jointly prepare a list of the items for the Project that remain to be completed or corrected, assign a dollar value for the cost to complete the work and estimate a reasonable time for its completion or correction (collectively the "Punch List"). The Developer shall cause the Construction Lender to withhold 125% of such value. Upon approval of the Architect, and Construction Lender, as any items are completed on the Punch List, those monies withheld by the Construction Lender on account of such uncompleted Punch List items shall be released to Developer.

**ARTICLE XII  
REPRESENTATIONS AND WARRANTIES OF OPERATOR/TENANT**

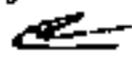
Operator/Tenant represents and warrants to Developer that:

- A. It is a New York limited liability company and in good standing under the laws of New York State.
- B. It has obtained all necessary consents to enter into this Agreement and perform its obligations hereunder.
- C. This Agreement will not violate the terms of any other agreement by which the Operator/Tenant may be bound.

**ARTICLE XIII  
REPRESENTATIONS AND WARRANTIES  
OF DEVELOPER**

Developer represents and warrants to Operator/Tenant that:

- A. It is a Massachusetts limited liability company and in good standing under the laws of the Commonwealth of Massachusetts.
- B. It has obtained all necessary Limited Liability Company consents to enter into this



Agreement and perform its obligations hereunder.

C. It has obtained all necessary limited liability company authorizations to enter into this Agreement.

ARTICLE XIV  
PAYMENTS BY DEVELOPER

Developer shall pay in a commercially reasonable manner all labor, materials and all liabilities incurred in the performance of its obligations under this Agreement.

ARTICLE XV  
WARRANTY

All Warranties shall be provided and enforceable solely in the Lease.

ARTICLE XVI  
MISCELLANEOUS

A. Applicable Law. This Agreement has been entered into, and shall be governed by, the laws of the State of New York.

B. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. This Agreement is assignable by Developer to any joint venture, partnership or limited liability company in which William Nicholson, or an entity controlled, directly or indirectly by him, is a principal thereof, and to any lender or lenders of Developer. Upon such assignment and assumption by the assignee of all obligations of Developer under this Agreement, the existing Developer shall be relieved of all obligations hereunder.

C. Survival of Representations and Warranties. All representations and warranties in this Agreement shall survive the Substantial Completion Date.

D. Further Action. The Parties agree to execute and deliver all documents, provide all information and take, or refrain from taking, all such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

E. Notices and Addresses. Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be deemed to have been given, served and delivered if delivered by recognized national overnight carrier, or mailed by United States registered or certified mail, addressed to the party entitled to receive the same at his address set forth below, or sent by fax (with a copy sent by first class mail). Each party hereto may change his mailing address by giving to each other party hereto,

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written notice of such new address in the manner provided above. Except wherever specified in this Agreement, any notice shall be deemed to have been served and delivered on the date on which such notice is faxed (provided a copy is sent by first class mail), hand delivered, or two (2) days following the date it is mailed.

If to Developer:  
White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:  
Festernak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Adrian Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Operator/Tenant  
HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:  
Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafin, Esq.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

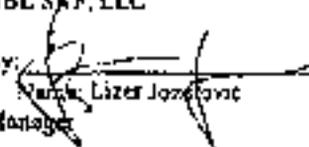
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Signature Page for Development Agreement

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed the day and year first above written.

OPERATOR/TENANT:  
HBL SNF, LLC

By:   
Marko Lizer Jozefovic  
Manager

DEVELOPER:  
White Plains Healthcare Properties I, LLC

By:   
William Nicholson, Manager



# Exhibit 14

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Lizer Jozofovic ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

**RECITALS**

A. Landlord has been requested by HBL SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Tenant is owned by Guarantor, and Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. **DEFINITIONS.** Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. **COVENANTS OF GUARANTOR.**

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recover against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

3.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease, (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (ii)

an unconditional Letter of Credit, in accordance with the Section 7.1(a)(ii) of the Lease in the amount of \$3,700,000, or (b) \$3,700,000 in cash to secure the full and timely payment and performance of Tenant's obligations under the Lease, (i) an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached as Exhibit 7.1(a) of the Lease or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months, and (ii) and released to Landlord all funds in the controlled account number [REDACTED] in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held as an additional Security Deposit by Landlord. After the Guaranty Termination Date, Guarantor shall continue to remain personally liable pursuant to the terms of this Guaranty for (i) all obligations of Tenant under the Lease which arose or accrued on or prior to the Guaranty Termination Date and (ii) any liability of Tenant arising out of a breach of any warranty or representation of Tenant under Lease, and all documents executed by Tenant in connection therewith, (iii) and any liability of Guarantor arising out of a breach of any warranty of representation hereunder.

**4. WAIVERS OF GUARANTOR**

4.1 Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protect, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

4.2 GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

5. SUBORDINATION; SUBROGATION.

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR. Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. NOTICES. Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addressees as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

If to Landlord:

White Plains Healthcare Properties I, LLC  
c/oThe Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Guarantor:

HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Lizer Jozefovic

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

8. CONSENT TO JURISDICTION. Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. CERTAIN ADDITIONAL COVENANTS

9.1 Financial Deliveries. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. MISCELLANEOUS.

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:

  
Liza Izefovik



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### 60278/2020 - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
Case Type: **Commercial Division**  
Case Status: **Active**  
eFiling Status: **Full Participation Recorded**  
Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

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Motion Info:  Filed Date:  thru

Document Number:

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151	<a href="#">EXHIBIT(S)</a> - O (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
152	<a href="#">EXHIBIT(S)</a> - P (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
153	<a href="#">EXHIBIT(S)</a> - Q (Motion #5) <i>Pinnacle letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
154	<a href="#">EXHIBIT(S)</a> - R (Motion #5) <i>Email</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
155	<a href="#">EXHIBIT(S)</a> - S (Motion #5) <i>Bankruptcy Court Order</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
156	<a href="#">EXHIBIT(S)</a> - T (Motion #5) <i>Operating Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
157	<a href="#">EXHIBIT(S)</a> - U (Motion #5) <i>NYDOH letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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158	<a href="#">EXHIBIT(S)</a> - V (Motion #5) <i>Development Agreement</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
159	<a href="#">EXHIBIT(S)</a> - W (Motion #5) <i>Letter of Intent</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
160	<a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affirmation of Alfred E. Donnellan</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
161	<a href="#">EXHIBIT(S)</a> - X (Motion #5) <i>Notification of Disposition of Collateral</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
162	<a href="#">EXHIBIT(S)</a> - Y (Motion #5) <i>June 10,2021 Letter</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
163	<a href="#">EXHIBIT(S)</a> - Z (Motion #5) <i>Publication</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
164	<a href="#">EXHIBIT(S)</a> - AA (Motion #5) <i>Terms of Sale</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
165	<a href="#">EXHIBIT(S)</a> - BB (Motion #5) <i>Amended and Restated Operating Agreement of Waterview</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
166	<a href="#">AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE</a> (Motion #5) <i>Affidavit of Howard Fensterman</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
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168	<a href="#">EXHIBIT(S)</a> - DD (Motion #5) <i>Fed Ex Receipt</i>	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
169	<a href="#">MEMORANDUM OF LAW IN OPPOSITION</a> (Motion #5)	<a href="#">Donnellan, A.</a> Filed: 06/29/2021 Received: 06/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
170	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #5) <i>Supplemental Affidavit of Brett Bandazian in Partial Joinder and Support of Defendants'/Third-Party ...</i> <a href="#">show more</a>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
171	<a href="#">EXHIBIT(S)</a> - 6 (Motion #5) <i>Exhibit 6 Certificate</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
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172	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF CROSS-MOTION</a> (Motion #5) <i>Second Supplemental Affirmation of Robert J. Malatak in Partial Joinder and Support of Defendants'/T ... show more</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
173	<a href="#">EXHIBIT(S)</a> - 7 (Motion #5) <i>Exhibit 7 - Article</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
174	<a href="#">ORDER TO SHOW CAUSE</a> (Motion #5)	Court User Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
175	<a href="#">NOTICE OF ENTRY</a>	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 06/30/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
176	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> *Corrected*	<a href="#">Giardino, J.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
177	<a href="#">NOTICE OF APPEAL/INFORMATIONAL STATEMENT/COPY OF ORDER/PROOF OF SERVICE</a> (Motion #5) *Corrected* <i>Notice of Appeal</i>	<a href="#">Malatak, R.</a> Filed: 06/30/2021 Received: 07/01/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
178	<a href="#">COUNTY CLERK CERTIFICATION OF MINUTES</a>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
179	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 1 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
180	<a href="#">RECEIPT OF FILE - TRANSFER CASE</a> <i>NY County File Part 2 of 2- Transfer and consolidation of NY County Index 655549/2020</i>	Court User Filed: 07/28/2021 Received: 07/28/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
181	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/10/2021 Received: 08/10/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
182	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/13/2021 Received: 08/13/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
183	<a href="#">NOTICE OF MOTION</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
184	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affirmation of Alfred E. Donnellan, Esq.</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
185	<a href="#">EXHIBIT(S)</a> - 1 (Motion #6) <i>Summons &amp; Complaint - Westchester County action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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186	<a href="#">EXHIBIT(S)</a> - 2 (Motion #6) <i>Answer with Counterclaims and Third Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
187	<a href="#">EXHIBIT(S)</a> - 3 (Motion #6) <i>Amended Verified Complaint 2020.11.30</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
188	<a href="#">EXHIBIT(S)</a> - 4 (Motion #6) <i>Reply to Counterclaims and Answer to Third-Party Complaint</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
189	<a href="#">EXHIBIT(S)</a> - 5 (Motion #6) <i>First Amended Verified Complaint 2021.03.22</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
190	<a href="#">EXHIBIT(S)</a> - 6 (Motion #6) <i>Summons &amp; Complaint - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
191	<a href="#">EXHIBIT(S)</a> - 7 (Motion #6) <i>Answer - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
192	<a href="#">EXHIBIT(S)</a> - 8 (Motion #6) <i>Answer of MCB - NY County</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
193	<a href="#">EXHIBIT(S)</a> - 9 (Motion #6) <i>Decision and Order 2021.04.08</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
194	<a href="#">EXHIBIT(S)</a> - 10 (Motion #6) <i>First Amended Verified Answer</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
195	<a href="#">EXHIBIT(S)</a> - 11 (Motion #6) <i>Notice to Admit with exhibits</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
196	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of William Nicholson</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
197	<a href="#">EXHIBIT(S)</a> - 12 (Motion #6) <i>Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
198	<a href="#">EXHIBIT(S)</a> - 13 (Motion #6) <i>Development Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
199	<a href="#">EXHIBIT(S)</a> - 14 (Motion #6) <i>Jozefovic Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
200	<a href="#">EXHIBIT(S)</a> - 15 (Motion #6) <i>Neuman Guaranty</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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Document

Filed By

Status

201	<a href="#">EXHIBIT(S)</a> - 16 (Motion #6) <i>Pledge Agreement</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
202	<a href="#">EXHIBIT(S)</a> - 17 (Motion #6) <i>Letter of Intent</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
203	<a href="#">EXHIBIT(S)</a> - 18 (Motion #6) <i>White Plains TCO</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
204	<a href="#">EXHIBIT(S)</a> - 19 (Motion #6) <i>AIA form G704</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
205	<a href="#">EXHIBIT(S)</a> - 20 (Motion #6) <i>NYSDOH letter 2019.12.02</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
206	<a href="#">EXHIBIT(S)</a> - 21 (Motion #6) <i>NYSDOH email 2019.10.01</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
207	<a href="#">EXHIBIT(S)</a> - 22 (Motion #6) <i>Term Sheet 2015.11.20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
208	<a href="#">EXHIBIT(S)</a> - 23 (Motion #6) <i>Jozefovic Affidavit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
209	<a href="#">EXHIBIT(S)</a> - 35 (Motion #6) <i>Operating Lease</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
210	<a href="#">EXHIBIT(S)</a> - 36 (Motion #6) <i>Zafrin e-mail dated 4-11-17</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
211	<a href="#">EXHIBIT(S)</a> - 37 (Motion #6) <i>Estoppel Certificate to Security Benefit</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
212	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Edward Tabor</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
213	<a href="#">EXHIBIT(S)</a> - 24 (Motion #6) <i>Itemization of amounts due under lease and LOI</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
214	<a href="#">EXHIBIT(S)</a> - 25 (Motion #6) <i>List of Rents &amp; Late Charges</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
215	<a href="#">EXHIBIT(S)</a> - 26 (Motion #6) <i>Notice of Default</i> # <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

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216	<a href="#">EXHIBIT(S)</a> - 27 (Motion #6) <i>Accelerated Rent (NPV)</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
217	<a href="#">EXHIBIT(S)</a> - 28 (Motion #6) <i>Professional Fees</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
218	<a href="#">EXHIBIT(S)</a> - 29 (Motion #6) <i>Security Benefit Notice of Default dated 4-16-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
219	<a href="#">EXHIBIT(S)</a> - 30 (Motion #6) <i>Notice of Default 5-22-20</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
220	<a href="#">EXHIBIT(S)</a> - 31 (Motion #6) <i>Complaint in Security Benefit Foreclosure Action</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
221	<a href="#">EXHIBIT(S)</a> - 32 (Motion #6) <i>Itemization of Amounts Due</i> <b>Redacted</b> per 22 NYCRR §202.5(e)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
222	<a href="#">EXHIBIT(S)</a> - 33 (Motion #6) <i>Unreimbursed Deposits and Payments</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
223	<a href="#">EXHIBIT(S)</a> - 38 (Motion #6) <i>Payment of Real Estate Taxes</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
224	<a href="#">EXHIBIT(S)</a> - 39 (Motion #6) <i>Certificates of Insurance</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
225	<a href="#">EXHIBIT(S)</a> - 40 (Motion #6) <i>Tenant Insurance Analysis</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# Exhibit 15

GUARANTY OF LEASE

THIS GUARANTY OF LEASE (this "Guaranty") is made as of November 19, 2015, by Mark Neuman ("Guarantor"), to WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company ("Landlord").

RECITALS

A. Landlord has been requested by HBL SNF, LLC a New York Limited Liability Company ("Tenant") to enter into an Amended and Restated Lease and Security Agreement dated as of November 19, 2015 (the "Lease"), whereby Landlord would lease to Tenant, and Tenant would lease from Landlord, certain premises located in White Plains, New York, as more particularly described in the Lease (the "Premises").

B. Guarantor will derive substantial economic benefit from the execution and delivery of the Lease.

C. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease.

D. Guarantor hereby acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. DEFINITIONS. Defined terms used in this Guaranty and not otherwise defined herein have the meanings assigned to them in the Lease.

2. COVENANTS OF GUARANTOR.

2.1 Guarantor absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety: (i) the full and prompt payment of all Minimum Rent and Additional Rent and all other rent, sums and charges of every type and nature payable by Tenant under the Lease, whether due by acceleration or otherwise, including costs and expenses of collection (collectively, the "Monetary Obligations"), and (ii) the full, timely and complete performance of all covenants, terms, conditions, obligations, indemnities and agreements to be performed by Tenant under the Lease, including any indemnities or other obligations of Tenant that survive the expiration or earlier termination of the Lease (all of the obligations described in clauses (i) and (ii), are collectively referred to herein as the "Obligations").

2.2 Guarantor agrees with Landlord that (i) any action, suit or proceeding of any kind or nature whatsoever (an "Action") commenced by Landlord against Tenant, Guarantor or any Other Guarantor of the Lease ("Other Guarantor") to enforce the Obligations shall not prejudice in any way Landlord's rights to enforce the Obligations in any subsequent Action against Tenant, Guarantor or any Other Guarantor, (ii) Landlord may, at its option, join Guarantor in any Action against Tenant or any Other Guarantor or seek recover against Guarantor without Landlord first asserting, prosecuting, or exhausting any remedy or claim

against Tenant or any Other Guarantor and (iii) Guarantor will be conclusively bound by a judgment entered in any Action in favor of Landlord against Tenant whether or not Guarantor is entered as a party or participates in such Action.

2.3 If Landlord proposes to grant a mortgage on, or refinance any mortgage encumbering the Premises or any portion thereof, Guarantor shall cooperate in the process, and shall permit Landlord and the proposed mortgagee to meet with Guarantor or, if applicable, officers of Guarantor and to discuss Guarantor's business and finances. On request of Landlord, Guarantor agrees to provide any such prospective mortgagee the information to which Landlord is entitled hereunder, provided that if any such information is not publicly available, such nonpublic information shall be made available on a confidential basis. Guarantor agrees to execute, acknowledge and deliver documents requested by the prospective mortgagee (such as a consent to the financing, without encumbering Guarantor's or Tenant's assets, a consent to a collateral assignment of the Lease and of this Guaranty, estoppel certificate, and a subordination, non-disturbance and attornment agreement), customary for tenants and their guarantors to sign in connection with mortgage loans to landlords, so long as such documents are in form then customary among institutional lenders (provided the same do not materially and adversely change Tenant's rights or obligations under the Lease or materially and adversely change Guarantor's rights and obligations under this Guaranty).

3. GUARANTOR'S OBLIGATIONS UNCONDITIONAL.

3.1 This Guaranty is an absolute and unconditional guaranty of payment and of performance, and not of collection, and shall be enforceable against Guarantor without the necessity of the commencement by Landlord of any Action against Tenant, and without the necessity of any notice of nonpayment, nonperformance or nonobservance, or any notice of acceptance of this Guaranty, or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives in advance. The obligations of Guarantor hereunder are independent of, and may exceed, the obligations of Tenant.

3.2 This Guaranty shall apply notwithstanding any extension or renewal of the Lease, or any holdover following the expiration or termination of the Lease Term or any renewal or extension of the Lease Term.

3.3 This Guaranty is a continuing guarantee and will remain in full force and effect notwithstanding, and the liability of Guarantor hereunder shall be absolute and unconditional irrespective of any or all of the following: (i) any renewals, extensions, modifications, alterations or amendments of the Lease (regardless of whether Guarantor consented to or had notice of same); (ii) any releases or discharges of Tenant or any Other Guarantor other than the full release and complete discharge of all of the Obligations; (iii) Landlord's failure or delay to assert any claim or demand or to enforce any of its rights against Tenant or any Other Guarantor; (iv) any extension of time that may be granted by Landlord to Tenant or any Other Guarantor; (v) any assignment or transfer of all of any part of Tenant's interest under the Lease (whether by Tenant, by operation of law, or otherwise); (vi) any subletting, concession, franchising, licensing or permitting of the Premises or any portion thereof; (vii) any changed or different use of the Premises (or any portion thereof);

(viii) any other dealings or matters occurring between Landlord and Tenant or any Other Guarantor; (ix) the taking by Landlord of any additional guarantees, or the receipt by Landlord of any collateral, from Tenant, any Other Guarantor or any other persons or entities; (x) the release by Landlord of any Other Guarantor; (xi) Landlord's release of any security provided under the Lease or any other guaranty; (xii) Landlord's failure to perfect any landlord's lien or other lien or security interest available under applicable Legal Requirements; (xiii) any assumption by any person of any or all of Tenant's obligations under the Lease or any Other Guarantor's obligations under any other guaranty, or Tenant's assignment of any or all of its rights and interests under the Lease, (xiv) the power or authority or lack thereof of Tenant to execute, acknowledge or deliver the Lease; (xv) the existence, non-existence or lapse at any time of Tenant as a legal entity or the existence, non-existence or termination of any corporate, ownership, business or other relationship between Tenant and Guarantor; (xvi) any sale or assignment by Landlord of any or all of this Guaranty, any other guaranty and the Lease (including any direct or collateral assignment by Landlord to any mortgagee); (xvii) the solvency or lack of solvency of Tenant or any Other Guarantor at any time or from time to time; or (xviii) any other cause, whether similar or dissimilar to any of the foregoing, that might constitute a legal or equitable discharge of Guarantor (whether or not Guarantor shall have knowledge or notice thereof) other than payment and performance in full of the Obligations; (xix) the release or discharge of Tenant in any state or federal creditors' proceedings, receivership, bankruptcy or other proceeding; (xx) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code (11 U.S.C. § 101 et seq., as amended), or from other statute, or from the order of any court; (xxi) the rejection, disaffirmance or other termination of the Lease in any such proceeding; (xxii) the assertion or the failure to assert by Landlord against Tenant, of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; or (xxiii) if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason, in such event, Guarantor shall pay to Landlord an amount equal to any such payment that has been rescinded or returned. This Guaranty shall continue to be effective if at any time the payment of any amount due under the Lease or this Guaranty is rescinded or must otherwise be returned by Landlord for any reason. Without in any way limiting the generality of the foregoing, Guarantor specifically agrees that (A) if Tenant's obligations under the Lease are modified or amended with the express written consent of Landlord, this Guaranty shall extend to such obligations as so amended or modified without notice to, consideration to, or the consent of, Guarantor, and (B) this Guaranty shall be applicable to any obligations of Tenant arising in connection with a termination of the Lease, whether voluntary or otherwise. Guarantor hereby consents, prospectively, to Landlord's taking or entering into any or all of the foregoing actions or omissions. For purposes of this Guaranty and the obligations and liabilities of Guarantor hereunder, "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, permittees or others directly or indirectly operating or conducting a business in or from the Premises or any portion thereof, as fully as if any of the same were the named Tenant under the Lease.

3.4 Notwithstanding anything to the contrary hereunder, Guarantor shall be released and discharged from all liability with respect to any obligations of Tenant under the Lease arising or accruing after the Commencement Date (the "Guaranty Termination Date"); provided that 60 days prior to the Commencement Date Tenant has delivered to Landlord (i) (a)

an unconditional Letter of Credit, in accordance with the Section 7.1(a)(ii) of the Lease in the amount of \$3,700,000, or (b) \$3,700,000 in cash to secure the full and timely payment and performance of Tenant's obligations under the Lease, (ii) an agreement by Capital Funding Group, which cannot be amended except by an agreement in writing signed by Landlord, Tenant and Capital Funding Group, in the form attached as Exhibit 7.1(a) of the Lease or otherwise approved by Landlord and Landlord's lenders in their reasonable discretion, wherein and whereby Capital Funding Group agrees to allow Tenant to draw down on its Credit Line each month so as to enable Capital Funding Group to pay directly to Landlord the sum of \$506,096.50 per month commencing the Commencement Date and on each day Fixed Rent is due under the Lease for the following 11 months, and (iii) and released to Landlord all funds in the controlled account number [REDACTED] in JPMorgan Chase Bank, N.A. in the amount not less than \$1,600,000 to be held as an additional Security Deposit by Landlord. After the Guaranty Termination Date, Guarantor shall continue to remain personally liable pursuant to the terms of this Guaranty for (i) all obligations of Tenant under the Lease which arose or accrued on or prior to the Guaranty Termination Date and (ii) any liability of Tenant arising out of a breach of any warranty or representation of Tenant under Lease, and all documents executed by Tenant in connection therewith, (iii) and any liability of Guarantor arising out of a breach of any warranty of representation hereunder.

**4. WAIVERS OF GUARANTOR.**

4.1 Without limitation of the foregoing, Guarantor waives (i) notice of acceptance of this Guaranty, protest, demand and dishonor, presentment, and demands of any kind now or hereafter provided for by any statute or rule of law, (ii) notice of any actions taken by Landlord or Tenant under the Lease or any other agreement or instrument relating thereto, (iii) notice of any and all defaults by Tenant in the payment of Minimum Rent and Additional Rent or other rent, charges or amounts, or of any other defaults by Tenant under the Lease, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of its obligations hereunder, (v) any requirement that Landlord protect, secure, perfect, insure or proceed against any security interest or lien, or any property subject thereto, or exhaust any right or take any action against Tenant, any Other Guarantor or any other person or entity (including any additional guarantor or Guarantor) or against any collateral, and (vi) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

4.2 GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PERSON OR ENTITY WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH: THIS GUARANTY; THE LEASE; ANY LIABILITY OR OBLIGATION OF TENANT IN ANY MANNER RELATED TO THE PREMISES OR ANY PORTION THEREOF; ANY CLAIM OF INJURY OR DAMAGE IN ANY WAY RELATED TO THE LEASE AND/OR THE PREMISES (OR ANY PORTION THEREOF); ANY ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUPPLIERS, SERVANTS, CUSTOMERS, CONCESSIONAIRES, FRANCHISEES, PERMITTEES OR LICENSEES; OR ANY ASPECT OF THE USE OR OCCUPANCY OF, OR THE CONDUCT OF BUSINESS IN, ON OR FROM THE PREMISES (OR ANY PORTION THEREOF).

GUARANTOR SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS OR CLAIMS FOR SET-OFF, RECOUPMENT OR DEDUCTION OF RENT IN ANY ACTION BROUGHT BY LANDLORD AGAINST GUARANTOR UNDER THIS GUARANTY. GUARANTOR SHALL NOT BE ENTITLED TO MAKE, AND HEREBY WAIVES, ANY AND ALL DEFENSES AGAINST ANY CLAIM ASSERTED BY LANDLORD OR IN ANY SUIT OR ACTION INSTITUTED BY LANDLORD TO ENFORCE THIS GUARANTY OR THE LEASE. IN ADDITION, GUARANTOR HEREBY WAIVES, BOTH WITH RESPECT TO THE LEASE AND WITH RESPECT TO THIS GUARANTY, ANY AND ALL RIGHTS WHICH ARE WAIVED BY TENANT UNDER THE LEASE, IN THE SAME MANNER AS IF ALL SUCH WAIVERS WERE FULLY RESTATED HEREIN. THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY IS PRIMARY AND UNCONDITIONAL.

4.3 Guarantor expressly waives any and all rights to defenses arising by reason of (i) any "one-action" or "anti-deficiency" law or any other law that may prevent Landlord from bringing any action, including a claim for deficiency, against Guarantor before or after Landlord's commencement or completion of any action against Tenant or any Other Guarantor; (ii) ANY ELECTION OF REMEDIES BY LANDLORD (INCLUDING ANY TERMINATION OF THE LEASE) THAT DESTROYS OR OTHERWISE ADVERSELY AFFECTS GUARANTOR'S SUBROGATION RIGHTS OR GUARANTOR'S RIGHTS TO PROCEED AGAINST TENANT FOR REIMBURSEMENT; (iii) any disability, insolvency, bankruptcy, lack of authority or power, death, insanity, minority, dissolution, or other defense of Tenant, of any other guarantor (or any other Guarantor), or of any other person or entity, or by reason of the cessation of Tenant's liability from any cause whatsoever, other than full and final payment in legal tender and performance of the Obligations; (iv) any right to claim discharge of any or all of the Obligations on the basis of unjustified impairment of any collateral for the Obligations; (v) any change in the relationship between Guarantor and Tenant or any Other Guarantor or any termination of such relationship; (vi) any irregularity, defect or unauthorized action by any or all of Landlord, Tenant, any Other Guarantor or surety, or any of their respective officers, directors or other agents in executing and delivering any instrument or agreements relating to the Obligations or in carrying out or attempting to carry out the terms of any such agreements; (vii) any assignment, endorsement or transfer, in whole or in part, of the Obligations, whether made with or without notice to or consent of Guarantor; (viii) if the recovery from Tenant or any other Person (including any Other Guarantor) becomes barred by any statute of limitations or is otherwise prevented; (ix) the benefits of any and all statutes, laws, rules or regulations applicable in the State of Illinois which may require the prior or concurrent joinder of any other party to any action on this Guaranty; (x) any release or other reduction of the Obligations arising as a result of the expansion, release, substitution, deletion, addition, or replacement (whether or not in accordance with the terms of the Lease) of the Premises or any portion thereof; or (xi) any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of any of the Obligations or to foreclose or take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Obligations, it being the intention hereof that Guarantor shall remain liable as a principal on the Obligations notwithstanding any act, omission or event that might, but for the provisions hereof, otherwise operate as a legal or equitable discharge of Guarantor. Guarantor hereby waives all defenses of a surety to which it may be entitled by statute or otherwise.

**5. SUBORDINATION; SUBROGATION**

5.1 Guarantor subordinates to and postpones in favor of the Obligations (i) any present and future debts and obligations of Tenant or any Other Guarantor to Guarantor (the "Indebtedness"), including: (A) salary, bonuses, and other payments pursuant to any employment arrangement; (B) fees, reimbursement of expenses and other payments pursuant to any independent contractor arrangement; (C) principal and interest pursuant to any Indebtedness; (D) distributions payable to any partners, members or shareholders of Guarantor or Affiliates of Guarantor; (E) lease payments pursuant to any leasing arrangement; (F) any management fees; and (G) all rights, liens and security interests of Guarantor, whether now or hereafter arising, in any assets of the Tenant or any Other Guarantor, and (ii) any liens or security interests securing payment of the Indebtedness. Guarantor shall have no right to possession of any assets of Tenant or any Other Guarantor or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until the Obligations have been paid and performed in full. Guarantor agrees that Landlord shall be subrogated to Guarantor with respect to Guarantor's claims against Tenant or any Other Guarantor and Guarantor's rights, liens and security interest, if any, in any of Tenant's or any Other Guarantor's assets and proceeds thereof until all of the Obligations have been paid and performed in full.

5.2 After the occurrence of an Event of Default and until such Event of Default is cured or after the commencement of any bankruptcy or insolvency proceeding by or against Tenant and until such proceeding is dismissed, Guarantor shall not: (i) make any distributions or other payments to any partners, parent entities, or Affiliates of Guarantor (other than to Tenant); or (ii) ask for, sue for, demand, take or receive any payment, by setoff or in any other manner, including the receipt of a negotiable instrument, for all or any part of the Indebtedness owed by Tenant, or any successor or assign of Tenant, including a receiver, trustee or debtor in possession (the term "Tenant" shall include any such successor or assign of Tenant) until the Obligations have been paid in full; however, if Guarantor receives such a payment, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured. Notwithstanding anything in this Section 5 to the contrary, after an Event of Default has occurred and is outstanding, Guarantor may make cash contributions to Tenant.

5.3 Guarantor shall not be subrogated, and hereby waives and disclaims any claim or right against Tenant by way of subrogation or otherwise, to any of the rights of Landlord under the Lease or otherwise, or in the Premises (or any portion thereof), which may arise by any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of its Obligations hereunder. Guarantor shall look solely to Tenant for any recoupment of any payments made or costs or expenses incurred by Guarantor pursuant to this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid and performed in full, Guarantor shall immediately deliver the payment to Landlord for credit against the then outstanding balance of the Obligations, whether matured or unmatured.

**6. REPRESENTATIONS AND WARRANTIES OF GUARANTOR.** Guarantor represents and warrants that:

6.1 This Guaranty is valid and binding upon and enforceable against Guarantor without the requirement of further action or condition.

6.2 The execution, delivery and performance by Guarantor of this Guaranty does not and will not (i) contravene any applicable Legal Requirements, the organizational documents of Guarantor, if applicable, any order, writ, injunction, decree applicable to Guarantor, or any contractual restriction binding on or affecting Guarantor or any of its properties or assets, or (ii) result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of its properties or assets.

6.3 No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any governmental authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Guarantor of this Guaranty or any other instrument or agreement required hereunder.

6.4 There is no action, suit or proceeding pending or threatened against or otherwise affecting Guarantor before any court or other governmental authority or any arbitrator that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

6.5 Tenant is directly or indirectly owned and controlled by Guarantor.

6.6 Guarantor has derived or expects to derive financial and other advantages and benefits directly or indirectly, from the making of the Lease and the payment and performance of the Obligations. Guarantor hereby acknowledges that Landlord will be relying upon Guarantor's guarantee, representations, warranties and covenants contained herein.

6.7 All reports, statements (financial or otherwise), certificates and other data furnished by or on behalf of Guarantor to Landlord in connection with this Guaranty or the Lease are: true and correct, in all material respects, as of the applicable date or period provided therein; do not omit to state any material fact or circumstance necessary to make the statements contained therein not misleading; and fairly represent the financial condition of Guarantor as of the respective date thereof; and no material adverse change has occurred in the financial condition of Guarantor since the date of the most recent of such financial statements.

7. **NOTICES.** Any consents, notices, demands, requests, approvals or other communications given under this Guaranty shall be in writing and shall be given as provided in the Lease, as follows or to such other addresses as either Landlord or Guarantor may designate by notice given to the other in accordance with the provisions of this Section 7:

If to Landlord:

White Plains Healthcare Properties I, LLC  
o/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:

Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

To Guarantor:

HBL SNF, LLC  
537 Routes 22  
Purdys, New York 10578  
Attn: Mark Neuman

With a copy to:

Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zafrin, Esq.

8. **CONSENT TO JURISDICTION**. Guarantor hereby (a) consents and submits to the jurisdiction of the courts of the State of New York and the federal courts sitting in the State of New York with respect to any dispute arising, directly or indirectly, out of this Guaranty, (b) waives any objections which the undersigned may have to the laying of venue in any such suit, action or proceeding in either such court, (c) agrees to join Landlord in any petition for removal to either such court, and (d) irrevocably designates and appoints Tenant as its authorized agent to accept and acknowledge on its behalf service of process with respect to any disputes arising, directly or indirectly, out of this Guaranty. The undersigned hereby acknowledges and agrees that Landlord may obtain personal jurisdiction and perfect service of process through Tenant as the undersigned agent, or by any other means now or hereafter permitted by applicable law. Nothing above shall limit Landlord's choice of forum for purposes of enforcing this Guaranty.

9. **CERTAIN ADDITIONAL COVENANTS**.

9.1 Financial Deliveries. Guarantor shall deliver the following information to Landlord:

9.1.1 As soon as available, and in any event within 120 days after the close of each calendar year, in hard copy and electronic format, in form satisfactory to Landlord, and presented on a consolidated as well as a property-by-property basis, complete financial statements prepared for such year with respect to Guarantor including a balance sheet as of the end of such year, together with related statements of operations, cash flows and changes in equity for such calendar year, prepared in accordance with GAAP applied on a consistent basis.

Upon the delivery of any financial information by or on behalf of Guarantor pursuant to this Section 9 from time to time during the Lease Term, Guarantor shall be deemed (unless Guarantor specifically states otherwise in writing) to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, presents fairly the results of operations of Guarantor for the respective periods covered thereby, reflects accurately the books and records of account of Guarantor as of such dates and for such periods, and that there has been no adverse change in the financial condition of Guarantor since the date of the then applicable financial information.

9.2 Assignment; Sale of Assets; Change in Control. Without the prior consent of Landlord, which consent may be withheld or granted in Landlord's sole discretion, Guarantor shall not assign (whether directly or indirectly), in whole or in part, this Guaranty or any obligation hereunder or, through one or more step transactions or tiered transactions, do, or permit to be done, any activity, transaction or Transfer prohibited under Section 10.1 of the Lease.

9.3 Payment Method; Default Interest. Guarantor shall make any payments due hereunder in immediately available funds by wire transfer to Landlord's bank account as notified by Landlord, unless Landlord agrees to another method of payment of immediately available funds. If Guarantor does not pay an amount due hereunder on its due date, Guarantor shall pay, on demand, interest at 18% annually on the amount due for a period ending on the full payment of such amount, including the day of repayment, whether before or after any judgment or award, to the extent permitted under applicable law.

10. MISCELLANEOUS.

10.1 Guarantor further agrees that Landlord may, without notice, assign this Guaranty in whole or in part. If Landlord disposes of its interest in the Lease, "Landlord," as used in this Guaranty, shall mean Landlord's successors and assigns.

10.2 Guarantor promises to pay all costs of collection or enforcement incurred by Landlord in exercising any remedies provided for in the Lease or this Guaranty whether at law or in equity. If any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Guaranty, or to recover damages for the breach thereof, the party prevailing in any such action or proceedings shall be entitled to recover from the non-prevailing party all attorneys' fees and reasonable costs and expenses incurred by the prevailing party. As used herein, "attorneys' fees" shall mean the fees and expenses of counsel

to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

10.3 Guarantor shall, from time to time within 10 days after receipt of Landlord's request, execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications), and setting forth such other information as Landlord may reasonably request. Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises (or any portion thereof).

10.4 If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

10.5 The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its heirs, successors, legal representatives and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

10.6 Whenever the words "include", "includes", or "including" are used in this Guaranty, they shall be deemed to be followed by the words "without limitation", and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Guaranty shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

10.7 Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

10.8 The provisions of this Guaranty shall be governed by and interpreted solely in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.

10.9 The execution of this Guaranty after the execution of the Lease shall not invalidate this Guaranty or lessen the Obligations of Guarantor hereunder.

10.10 This Guaranty may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument. The signature page of any counterpart may be detached therefrom and reattached to any other counterpart to physically form a single document.

10.11 The Recitals set forth above are hereby incorporated by this reference and made a part of this Guaranty. Guarantor hereby represents and warrants that the Recitals are true and correct.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty under seal as of the day and year first above written.

GUARANTOR:

  
Mark Neuman

# Exhibit 16

COLLATERAL ASSIGNMENT AND PLEDGE OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT

THIS ASSIGNMENT made as of August 11, 2017, by Lizer Jozefovic, an individual having an address at 53 Mariner Way, Monsey New York 10952 (the "Assignor") to Howard Fensterman as nominee for White Plains Health Care Properties LLC, a Massachusetts Limited Liability Company (the "Assignee") with reference to the following facts.

WHEREAS, HBL-SNF a New York Limited Liability Company ("Operator/Tenant") an entity controlled by Assignor had entered into a development agreement with WHITE PLAINS HEALTHCARE PROPERTIES I, LLC (the "Developer") dated November 19, 2015 (the "Agreement") which was amended by and between the Parties by that certain first Amcndment to the Development Agreement (the "Amendment") dated as of July 12, 2017.

WHEREAS, the Dcvelopment Agreement among other things obligated the Tenant to enter into a Lease with Developer in return for the Developer, developing, designing, financing and Building a 160 Bed Skilled Nursing Home for Tenant in White Plains New York; and

WHEREAS the Development Agreement obligated the Tenant to obtain CON approval to build such 160 Bed Skilled Nursing Home for Tenant in White Plains New York and to deliver to Developer such documents as are reasonably requested by Developers lenders; and

WHEREAS, the Tenant has obtained all CON approvals necessary to construct the Skilled Nursing Home and the Developer has obtained all zoning and building department of approvals and a Construction Loan; and

WHEREAS, in or about November 2015 in consideration of Howard Fensterman and/or CCC Equities assigning all mortgages held by them on property owned by Waterview Acquisition I, LLC agreed that he would pre-pay Two Million Two Hundred Thousand Dollars to White Plains Healthcare Properties and would additionally establish a joint signature account in JP Morgan Bank into which the sum of One Million Six Hundred Thousand Dollars was deposited; and

WHEREAS, The Lease requires the sum of 1.6 Million Dollars to be delivered to Landlord at least 60 days prior to the Commencement date of the Lease as additional security for the Tenants faithful performance of the terms and conditions of the Lease; and

WHEREAS, Section 10.2 of the Loan Agreement by and between Developer and its Construction lender restates the language of the Lease and Developer has undertaken to ensure that the 1.6 Million Dollars on deposit with JP Morgan shall be delivered according to the terms and provisions of the Lease; and

WHEREAS, the Sums in the JP Morgan Account entitled HBL SNF, LLC, Account Number [REDACTED] have been transferred to two JP Morgan Account's entitled Waterview Acquisition I, LLC Account Number [REDACTED] and Account Number [REDACTED] in which Howard Fensterman is not a signatory and the parties want to enter into this agreement by which Howard Fensterman will be added as a signatory to such account under terms and conditions set forth below; and

WHEREAS, Tenant and Assignor have promised to add Howard Fensterman as a signatory to such account so as to ensure that no withdrawals may be made so as to reduce the amount of the account below 1.6 Million and so as to ensure that when required 60 days prior to the commencement date the money in the account or equivalent shall be delivered as additional cash security for the lease; and;

WHEREAS in order to secure the promises made by Assignor concerning such account Assignor has agreed to deliver to Assignee this Assignment; and the Assignor desires to pledge to Assignee all of his membership interest in Waterview Acquisition I, LLC (the "Company"), in order to secure the promises made herein and in the Lease and Security Agreement delivered to the Construction Lender;

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignee and the Assignor hereby agree as follows:

1. As collateral security for the Borrowers' obligations under the Lease, the Security Agreement, the Loan, and the Development Agreement the Assignor hereby pledges and assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member in the Company (the "Collateral").

2. Upon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the interest in the Company assigned to the Assignee pursuant to Paragraph 1 hereof shall be automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect. Notwithstanding the foregoing, the Assignee hereby agrees to execute any document reasonably required for the purpose of evidencing the reassignment of such interest and the termination of this Assignment.

3. The Assignor represents, covenants and warrants that he is the legal and beneficial owner of the Collateral and has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in the Company and that there are no current liens or encumbrances that exist as of the day of the execution of this assignment.

4. The Assignor agrees not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

5. The Assignor covenants and agrees not to voluntarily withdraw as the managing member of the Company without the prior written consent of Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

6. The covenants provided for in this Assignment shall be binding upon the

successors and assignees of the parties hereto.

7. This Assignment shall be governed by the laws of the State of New York.

8. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument in writing duly signed by or on behalf of the Assignor or Assignee.

9. Assignor represents and warrants that he has a 71 % membership interest in the Company and that he is manager thereof.

10. In accordance with the laws of the State of New York and as part of the consideration for the making of the Loan, Assignor consents to the jurisdiction of any local, state or federal court located within New York and further consents that all service of process may be made by registered mail to his address set forth below and service so made shall be deemed completed five (5) days after the same shall have been mailed.

11. Assignor covenants and agrees to execute such additional documents and to take such further actions as may be reasonably required to carry out the provisions and intent of this Assignment including, without limitation, executing a financing statement or statements and continuations thereof. In addition, Assignor grants to Assignee a power of attorney coupled with an interest to effectuate the terms of the foregoing sentence and to file all continuations, renewals or amended financing statements without the signature of Assignor.

13. Should Assignor violate the terms and provisions concerning the maintenance of the account as set forth in the resolution of Waterview Acquisition I, LLC annexed hereto as Exhibit A the Assignee shall have:

(a) The right to sell the Collateral in the State of New York at one or more public or private sales at such price and on such terms as Assignee in its discretion accepts, for cash, upon or for future delivery. Upon any such sale, the Assignee shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral. Such purchaser at any such sale shall hold the Collateral sold absolutely free from any claim or right on the part of the Assignor, and the Assignor hereby waives (to the extent permitted by law) all rights of redemption, stay or appraisal which he has or may have under any rule of law or statute now existing or hereafter adopted. The Assignee shall give the Assignor twenty-one (21) days' written notice by registered or certified mail, postage prepaid, return receipt requested (which Assignor acknowledges is reasonable and sufficient), of the Assignee's intention to make any such public or private sale. Such notice, in the case of public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places in the State of New York as the Assignee may fix in the

notice of such sale. The Assignee shall not be obligated to make any sale of the Collateral if it shall determine not to do so, regardless of the fact that notice of such sale of the Collateral may have been given. The Assignee may, upon one day's written notice, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place within in the State of New York to which the same was so adjourned. In case sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Assignee until the sale price is paid by the purchaser or purchasers thereof, but the Assignee shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold, and, in case of any such failure, such Collateral may be sold again upon like notice. As an alternative to exercising the power of sale herein conferred upon it, the Assignee may proceed by a suit or suits at law or in equity to foreclose this Assignment and to sell the Collateral, or any portion thereof, pursuant to a judgment or decree of a court of competent jurisdiction;

(b) such other rights with respect to the Collateral as shall be afforded to secured parties by the Uniform Commercial Code of the State of New York including, but not limited to, the right to setoff; and/or

(c) to apply any proceeds of any disposition of the Collateral to the payment of the cash security required under the terms and provisions of the lease and reasonable expenses of the Assignee in connection with the exercise of its rights or remedies, including reasonable fees and expense of attorneys, and any balance shall be paid to such party as shall be entitled thereto pursuant to law.

13. The Assignor hereby waives any right to require that the Assignee proceed against any real or personal property or any guaranty given as security for the Note, whether or not existing or hereafter given, before exercising its rights and remedies with respect to the Collateral.

14. This Agreement may be executed in counterparts, each of which, when taken together, shall be construed as one and the same instrument.

15. All notices, demands and other communications provided for herein shall be deemed received upon personal delivery or delivery by national overnight delivery service, or three (3) business days following deposit in the U.S. mail, postage prepaid, first class registered or certified,

to Assignor or assignee at the following addresses:

If to Assignor:  
Liner Jozefovic  
53 Mariner Way  
Monsey, New York

With a copy to:  
Michelman & Robinson, LLP  
800 Third Avenue  
New York, New York  
Attention: Mark H. Zafrin, Esq.

If to Assignee:  
Howard Fensterman  
C/o Abrams, Fensterman et al  
3 Dakota Drive  
Suite 300  
Lake Success, New York 11042

IN WITNESS WHEREOF, Assignor has duly executed this Assignment, as of the day and year first written above.

  
\_\_\_\_\_  
Lizer Jozefovic

The Company hereby acknowledges receipt of this Assignment by Assignor.

WATERVIEW ACQUISITION I, LLC

By:   
\_\_\_\_\_



# Limited Liability Company Certification

# Chase Investments

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
Account Maintenance Fax (800) 805-3909

## Account Information

Account Number	[REDACTED] (ON MANAGED)	WATERVIEW ACQUISITION I L LC 537 RT 22 PURDYS NY 10578-2900
Account Description	LTD LIABILITY CO	
Rep of Record	0V01	
Completed By	KENNETH GATES (CHCKG17)	

## Limited Liability Company Information

Use this form to certify the member/manager(s) authorized to act on an investment account for a Limited Liability Company. A Signatory Information Sheet **MUST BE** provided for all signers.

Limited Liability Company Name  
Waterview Acquisition I LLC

Limited Liability Company Tax ID Number (TIN)  
[REDACTED]

Limited Liability Company Type  
Member Managed Company

## Member/Manager Information

Member/Manager Name  
Mark Neuman

Member/Manager Name  
Herbert Jozefovic

Member/Manager Name  
Howard Fensterman

Member/Manager Name  
[REDACTED]

## Certification

In consideration of J.P. Morgan Securities LLC ("JPMS") opening and/or maintaining an investment account ("Account") for the Limited Liability Company ("LLC") named above, the undersigned duly authorized to bind the LLC and all of its Members/Managers personally, certify as follows:

**FIRST:** The name of the LLC to which this Certification applies is as indicated above.  
**SECOND:** All Members/Managers are over the age of majority in their respective state of residence. Each of the Members/Managers listed above is hereby individually authorized, for and on behalf of the LLC.  
**THIRD:** JPMS is authorized to accept orders for trading, purchases and sales of assets and other instructions for the receipt and withdrawal and disposition of assets to any name, including themselves and third parties, whether free or versus payment, or trade or non-trade related (including to any Members/Managers) from those Members/Managers listed above, pursuant to the terms of the LLC and applicable law. The LLC is duly authorized and permitted to engage in cash and margin transactions in any and all forms of securities including, but not limited to, evidences of interest, participation, or indebtedness, instruments of any issuer (whether publicly registered or exempt from registration) including, but not limited to, common or preferred stock, scrip, warrants and rights; bills, notes, bonds or debentures of any coupon, including "zero coupon" or maturity; certificates of deposit, bank notes or deposit notes; commercial paper, money market instruments; listed and/or over-the-counter options, commodities, commodity futures, options on futures (including single stock futures contracts and other securities futures products), transactions in foreign currencies; limited partnership interests and other interests in hedge funds, buyout funds, real estate investment trusts, venture capital funds, private equity funds and private equity investment vehicles; whole mortgage loans, any and all interests and participations in mortgage loans, mortgage-backed and asset backed securities; any kind of derivative investment, including interest rate, currency, credit, equity or other swap transactions; repurchase and reverse\* repurchase transactions, buy/forward sale transactions, dollar rolls, secured lending transactions and any instrument or interest generally regarded as an investment or hedge, secured or unsecured, or any transaction, that is similar to any of those described above (including an option with respect to any of them).

(continued on next page)

**INVESTMENT PRODUCTS ARE:**  
**NOT FDIC INSURED • NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES • SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED**



# Certification Regarding Municipal Advisor Rule

# Chase Investments

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
Account Maintenance Fax (800) 805-3909

Use this form to certify entity status on an investment account.

### Account Holder Information

Name of Account Owner ("Entity")

Waterview Aquisition I LLC

For the purposes of Section 15B of the Securities Exchange Act of 1934 (the "Municipal Advisor Rule"), I hereby represent, warrant and certify to J.P. Morgan Securities LLC ("JPMS") on behalf of the Entity, each of the following and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue:

I am a knowledgeable official representative of the Entity, am authorized to sign this certificate, have access to the appropriate information or have direct knowledge of the source of the funds of the Entity that enables me to make these representations; and, if necessary, have consulted with legal counsel, in regard to these representations, warranties and certifications.

### Certification Regarding Municipal Entity Status (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a Municipal Entity
- The Entity is not a Municipal Entity

The term "Municipal Entity" means any state, political subdivision of a state, or municipal corporate instrumentality of a state, including: (1) any agency, authority or instrumentality of the state, political subdivision or municipal corporate instrumentality; (2) any plan, program or pool of assets sponsored or established by the state, political subdivision or municipal corporate instrumentality thereof; and (3) any other issuer of municipal securities.

### Certification Regarding Obligated Entity Status (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a Obligated Person
- The Entity is not a Obligated Person

The term "Obligated Person" means any person or entity, including an issuer of municipal securities, who is either generally or through an enterprise, fund or account of such person, committed by contract or other arrangement to support the payment of all, or a part of, the obligations on the municipal securities to be sold in an offering of municipal securities, except the term Obligated Person shall not include: (1) a person who provides municipal bond insurance, letters of credit or other liquidity facilities; or (2) a person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility or other credit enhancement.

### Certification Regarding Proceeds with JPMS (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- Amounts to be invested in accounts established at JPMS for the entity may constitute Proceeds of Municipal Securities or Municipal Escrow Accounts
- Amounts to be invested in accounts established at JPMS for the entity may not constitute Proceeds of Municipal Securities or Municipal Escrow Accounts

The term "Proceeds of Municipal Securities" means monies derived by a municipal entity from the primary offering of municipal securities, investment income derived from the investment or reinvestment of such monies, and any monies of a municipal entity or obligated person held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the payment of the debt service on the municipal securities, including reserves, sinking funds and pledged funds created for such purpose, and the investment income derived from the investment or reinvestment of monies in such funds.

The term "Municipal Escrow Investments" means proceeds of municipal securities and any other funds of a municipal entity or Obligated Person that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities.

### Signature

I hereby represent, warrant and certify to JPMS on behalf of the Entity, each of the foregoing and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue.

Authorized Signature 	Date (mm/dd/yyyy) 8-16-17
Authorized Signer Name (please print) Mark Neuman	

**INVESTMENT PRODUCTS ARE:  
NOT FDIC INSURED • NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES • SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED**

**Limited Liability Company Certification**

**Chase Investments**

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
 Account Maintenance Fax (800) 805-3909

**Certification (continued)**

A Member/Manager may: (1) give to, and receive from, JPMS or its affiliates oral, written or electronic instructions, confirmations, notices or demands with respect to the account and any transaction; (2) bind the LLC to enter into and perform any transaction or agreement, amendment or modification thereof, relating to the account and any transaction involving the LLC; (3) lend or borrow money or securities and secure the repayment thereof with the property of the LLC; (4) pay in cash or by check or by credit or debit card or draft drawn upon the funds of the LLC any sums required to be paid in connection with the account and any transaction; (5) direct the sale or exercise of any rights with respect to any securities or other property; (6) agree to any terms or conditions or execute or otherwise assent to any document or agreement affecting the account and any transaction; (7) direct JPMS to surrender any securities or other property for the purpose of effecting any exchange or conversion thereof; (8) appoint any other person or persons to do any and all things which such Member/Manager of the LLC is hereby empowered to do; and (9) generally, take all such action as such Member/Manager of the LLC may deem necessary or desirable to implement or facilitate the trading activities described herein. Members/Managers are permitted to sell, assign and endorse for transfer, certificates representing stocks, bonds or other securities now registered or hereafter registered in the name of the LLC. If a Member/Manager is an entity (e.g., Corporation), then the appropriate ancillary documents (e.g., corporate resolution) is required. If the Members/Managers want to authorize a third party to transact on the account, the General Partners must also submit a JPMS Trading Authorization form naming such party. Subject to the policies of JPMS and its affiliates, or in the event JPMS or its affiliates receive conflicting instructions, or reasonably believe instructions from one Member/Manager might conflict with the wishes of another Member/Manager or other authorized third party, JPMS or its affiliates may do any of the following: (a) choose which instructions to follow and which to disregard; (b) suspend all activity in the Account until written instructions, signed by all Members/Managers, are received; (c) close the Account and deliver all securities and other property, net of debits or liabilities, to the address of record; and/or (d) take other legal action.

**FOURTH:** Members/Managers certify that they have the power under the LLC Agreement and applicable law to open and maintain an Account with JPMS and its affiliates (including margin accounts\*) and to enter into transactions, both purchases and sales, of securities and other property for the LLC. Notwithstanding the herein certifications, any person with actual or apparent authority is authorized and empowered by the LLC to undertake any activity. All actions previously taken by any Member/Manager in connection with or related to the matters set forth in, or reasonably contemplated or implied by the herein certifications be, and each of them hereby is, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the LLC.

**FIFTH:** Members/Managers warrant and represent that the information above is accurate and complete. Members/Managers, jointly and severally, agree to indemnify and hold harmless JPMS, its agents, employees, representatives and affiliates, from and against any and all liabilities, judgments, claims, settlements, losses, damages, obligations, and expenses, including reasonable attorney fees, arising from or relating to this Certification and/or for effecting transactions for the Account in reliance thereon. If fewer than all Members/Managers sign, those signing certify that they are authorized to bind the LLC and all Members/Managers thereof to the terms of this Certification. Members/Managers agree to inform JPMS, in writing, of any changes in the identity of the Members/Managers listed above, any other amendments to the LLC and/or any other event that could alter the Certifications made herein including its revocation. Such written notice should be provided to JPMS at the following address: J.P. Morgan Securities LLC, Attention: Account Processing, IL 1-0291 4th Floor, 131 South Dearborn Street, Chicago, IL 60603-5506 or any other address that has been provided by JPMS specifically for such purpose. JPMS may rely on this Certification indefinitely or until written notice to the contrary is received by JPMS. Members/Managers agree that this release and discharge shall survive the revocation of this Certification with respect to transactions entered into prior to the effectiveness of such revocation.

\*Additional Documentation Required

**Member Signature(s)**

Authorized Members  
 All Members/Managers have signed below

Member Signature 	Date (mm/dd/yyyy) 8/16/17
Member Signature 	Date (mm/dd/yyyy) 8/16/17
Member Signature 	Date (mm/dd/yyyy) 8/16/17
Member Signature X	Date (mm/dd/yyyy) / /

**INVESTMENT PRODUCTS ARE:**  
 NOT FDIC INSURED • NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES • SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED



EXHIBIT A  
ACTION OF THE MEMBERS AND MANAGERS  
OF  
WATERVIEW ACQUISITION I, LLC  
AUGUST 11<sup>th</sup> 2017

The undersigned, each being a Member or Manager of WATERVIEW ACQUISITION I, LLC, a New York limited liability company (the "Company"), and collectively constituting all of the Members and Managers of the Company, do each hereby consent to and adopt the following resolutions as resolutions of the Members and Managers of the Company:

AUTHORIZATION

WHEREAS, it is deemed to be in the best interests of the Company and its members and affiliates to enter into an agreement with White Plains Health Care Properties as Developer (the "Developer"), for Developer to design and construct a 160 Bed Residential Health Care Facility in White Plains New York ("the Facility").

WHEREAS, Marc Neuman, Lizer Jozefovic and Gerald Neuman and the Company will derive substantial economic benefit by increasing their market share in Westchester County by the construction of the Facility; and

WHEREAS, Waterview Acquisition I, LLC is the owner of that certain account maintained at JP Morgan Account's entitled Waterview Acquisition I, LLC Account Number [REDACTED] and Account Number [REDACTED] (the "Account") in which Marc Neuman and Lizer Jozefovic are the sole signatories;

WHEREAS, in order to achieve the Companies goals set for the above it is in the best interest of the Company and its members to add Howard Fensterman as a signatory to that account and place certain restrictions on withdrawals from the account pending the construction of the Facility

THEREFORE, BE IT RESOLVED, that

1. The Company add Howard Fensterman as a co-signatory to the following account Waterview Acquisition I, LLC Account Number [REDACTED] and Account Number [REDACTED] at JP Morgan Chase together with Marc Neuman and Lizer Jozefovic;
2. Howard Fensterman's signature shall be required on any withdrawal or any direction to the Bank on the account where such withdrawal or direction shall cause the balance and value of the account to fall below 1.6 million dollars until such

time as the Facility is completed and an affiliated entity HBL-SNF satisfies its obligation to post a 1.6 million dollar additional cash security deposit according to Section 7.1(a)(iii) of the lease between HBL SNF, LLC as Tenant And White Plains Healthcare Property I, LLC as Landlord which requires Sixty days prior to the anticipated Commencement Date that the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account,

3. Howard Fensterman' s signature shall be required to withdraw all sums in the account in excess of 1.6 million at the direction of Lizer Jozefovic or Marc Neuman and by his signature below agrees to give such consent unless such withdrawal shall cause the balance in the account to fall below 1.6 Million dollars.

RESOLVED FURTHER, that the managers of the Company designated by any of them (such manager or managers, which are authorized to act singly or together pursuant hereto, being hereinafter designated as "authorized managers"), be and they are each hereby authorized, directed and empowered, in the name of the Company, to execute and deliver to JP Morgan Bank and all , agreements or instruments including this Resolution to JP Morgan Bank required to evidence and effectuate the terms of this Resolution which shall be incorporated into a formal resolution and direction to JP Morgan Chase Bank, N.A. evidencing the agreements memorialized by this Resolution.

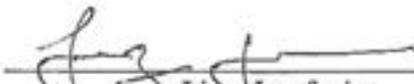
RESOLVED FURTHER, that any and all acts of any of the authorized managers of the Company done or made heretofore in connection with the actions authorized by this Resolution and the execution of all agreements related thereto, are hereby ratified and approved in all respects.

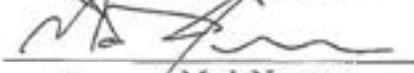
RESOLVED FURTHER, that JP Mortgage Bank may conclusively rely upon a copy of these resolutions and is authorized to act upon these resolutions for past, present and future transactions until (a) written notice of its revocation is delivered JP Morgan Bank. The authority hereby granted shall apply with equal force and effect to the successors in office of the managers herein named.

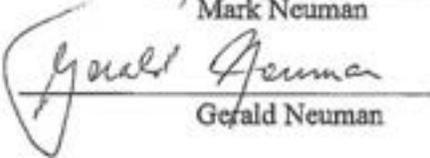
[SIGNATURE PAGE FOLLOWS]

The foregoing action is taken pursuant to the applicable New York limited liability company statutory laws and the operating agreement of the Company, by the written consent of a majority of its members and managers of the Company acting without a meeting.

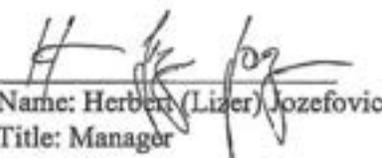
MEMBERS:

  
Lizer Jozefovic

  
Mark Neuman

  
Gerald Neuman

MANAGERS:

  
Name: Herbert (Lizer) Jozefovic  
Title: Manager

AUTHORIZED SIGNATORY

\_\_\_\_\_  
Howard Fensterman

# Exhibit 17

# Exhibit 5 to Amended Verified Complaint

HBL-SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

November 20, 2019

White Plains Healthcare Properties, I, LL  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William Nicholson

**Re: Letter of Intent**  
**Premises: 116-120 Church Street**  
**White Plains, New York**

Dear Mr. Nicholson

This Letter of Intent ("LOI") outlines our proposal for White Plains Health Care Properties, I, LLC (the "Contributor") to transfer the premises known as 116-120 Church Street, White Plains New York (the "Premises") to a Delaware Statutory Trust where we would jointly hold the beneficial interests in the Trust on the terms and conditions set forth below. The Building a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Facility") had been constructed pursuant to a Development Agreement dated November 19<sup>th</sup>, 2015 and for which we had simultaneously entered into that certain operating lease by and between you as Landlord and us as Tenant/Operator, (the "Lease").

- 1) **Basic Transaction:** (the "Transaction"): Contributor shall contribute premises 116-120 Church Street White Plains, New York to a newly formed Delaware Statutory Trust (the "Trust") formed by the parties. This transaction shall be memorialized by a contribution agreement in substantially the form annexed hereto as Exhibit A. The Contribution shall be governed by IRC Sec. 721. The agreed upon cost and fair market basis shall be \$67,345,348.00
  - a) Lizer Jozefovic and Mark Neuman will acquire from the Trust by a Purchase Agreement 77.50 Percent of the Beneficial Interests in the Trust and redemption of a portion of the B Beneficiaries' interest for a purchase price of \$52,200,000.00 paid as follows;
    - i) By a down payment (the "Down Payment") not to be held in escrow, but to be made upon the execution and delivery of this LOI of \$2,200,000.00 by wire transfer to the account of White Plains Healthcare Properties I, LLC according to the wire instructions annexed hereto.
    - ii) By the Trust obtaining a new first mortgage of \$51,000,000.00 to pay the balance of the Purchase Price and cover closing costs to be used as follows;

- (1) To pay the first Mortgage held by Security Benefit Life Insurance in the approximate amount of \$39,226,253 plus accrued interest and fees.
  - (2) To pay the loan encumbering the membership interests of the Contributors by Bradford Allen in the approximate amount of \$9,770,963 plus accrued interest and fees;
  - (3) By the Trust making a non-refundable down payment of \$2,200,000.00
  - (4) To pay the costs of the financing.
- b) Lizer Jozefovic and Mark Neuman shall be the A Beneficiaries of the trust holding a 77.50% Beneficial interest, and the present members of the Contributor or their designees shall be the B Beneficiary with a 22.5% equity position.
  - c) The A Beneficiaries shall be the personal guarantors of the new financing in the amount of Fifty-One Million (\$51,000,000.00) Dollars. The Transaction is to close thirty (30) days after Buyer has received approval for the Financing set forth in paragraph 1)a ii)). The Contribution Agreement shall call for a purchase price equal to Transferors cash basis in the property and shall not result in a taxable event for Contributor;
  - d) The Financing shall be an obligation of the Trust secured by a first mortgage loan on the Facility and the Premises.
  - e) Lizer Jozefovic and Mark Neuman shall act as the Personal Guarantors and shall be obligated if necessary, to secure additional personal guarantors to ensure that none of the B beneficiaries shall have any obligation to guarantee the Financing. Any additional guarantors on the Financing shall also execute and deliver a personal guaranty of Tenant's obligations to Landlord on the Lease. All guaranties on the Lease shall be full unlimited personal guarantees.
  - f) The Financing shall bear interest at a constant rate of no more than 7% per annum with Principal and Interest paid on an amortization schedule of 35 years and shall be subject to the reasonable approval of the Contributor, which consent shall not be unreasonably withheld or delivered without cost to the Tenant Borrower.
  - g) Formal Contracts: The Parties intend that additional agreements including the Contribution Agreement, Redemption Agreement and Trust Agreement (the Formal Contracts") shall be complete as of November 22nd, 2019, and absent execution of Formal Contracts this LOI shall govern provided the Down Payment is received in good funds by Contributor upon execution of this LOI, and in no event later than the end of business November 22, 2019. In the event Tenant defaults in the payment of rent on the Lease and such default continues for five (5) days, Contributor shall have the right to terminate this LOI and all Formal Contracts.
  - h) Closing: The Closing of the Transaction ("Closing") will occur at the offices of the First Mortgagee Bank's counsel or such other location within the State of New York as may be agreed upon by the Parties thirty (30) days after receipt by the Trust of approval for

the Financing but no later than April 1st, 2020. If the Tenant has a commitment letter on April 1<sup>st</sup>, 2020 that is in the process of closing or if the closing is delayed by a title issue, the closing date shall be automatically extended for another Ninety-Days. If the closing does not occur by such date, time being of the essence, this LOI and the Formal Contracts shall be terminated and no party shall have any rights with respect thereto. The parties shall remain as Landlord and Tenant pursuant to the existing Lease until such time as the Transaction closes. The Lease may be amended as provided herein but only if and when such amendments are approved by Contributor's existing Lender.

- 2) **Structure of the Trust:** The Contributor and Tenant have agreed to create a Trust as a "statutory trust" in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. 3801 and enter into a Trust Agreement which shall constitute the "governing instrument" of the Trust. Each party will become a Beneficiary and will transfer certain sums of money and/or property to the Trust in exchange for a beneficial interest in the Trust as set forth above;
  - a) The Trust shall be a special purpose entity which is being formed solely for the purpose of acquiring the Trust Property from the Contributor and maintaining, improving, building upon, and leasing the Trust Property for use as a skilled nursing facility and all and such other activities incident or appropriate to the preceding
  - b) Simultaneously upon the closing of the transaction, the existing lease shall be modified only as set forth herein.
  - c) The trust shall be permitted to have only the following liens on the Trust Property and no other:
    - i) A Mortgage in the amount of Fifty-One Million (\$51,000,000.00) Dollars (the "First Mortgage") the terms of which shall be acceptable to the Department of Health and the Contributor.
    - ii) The Trust will designate Howard Fensterman and William Nicholson as the Administrative Trustees of the B interests.
      - (1) The Trust Agreement shall provide that Howard Fensterman and William Nicholson as the B beneficiaries Administrative Trustees shall have the sole authority to all issues governing administering and enforcing the terms of the Lease including the collection and distribution of rent.
      - (2) Lizer Jozefovic shall be responsible as the overall Administrative Trustee for all other matters concerning the building including but not limited to repairs, maintenance, and operation of the building. Any Trustee may be removed for cause including misconduct, bad faith, fraud or gross negligence.
      - (3) Except as otherwise provided in a Trust Agreement to be executed and notwithstanding any provision of the Act that otherwise so empowers the Trust, neither the Beneficiaries nor any Trustees nor any other Person shall be authorized or empowered, nor shall they permit the Trust, to take any of the following actions

without the prior unanimous written consent of all of the Beneficiaries:

- (a) Make any arrangements to reduce, modify, or forebear on the payment of rent by the Tenant.
- (b) Guarantee any obligation of any Person, including any Affiliate;
- (c) engage, directly or indirectly, in any business other than the actions required or permitted to be performed hereunder;
- (d) incur, create or assume any indebtedness;
- (e) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person;
- (f) To the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of their Interests subject to obtaining any approvals required under this Trust Agreement other than a sale of the interests to qualified purchasers under a syndicated offering of the B interests. The cost of such syndication shall not be charged to the B Beneficiaries and all monies derived therefrom and due hereunder shall be net of the costs of the syndication.
- (g) allow any business to be conducted on the Property other than the operation of a skilled nursing facility and ancillary uses;
- (h) own any other property or engage in any business other than owning and leasing the Trust Property for use as a skilled nursing facility;
- (i) take any action to consolidate or merge the Trust with or into any Person;
- (j) sell all or any portion of or any interest in the Trust Property;
- (k) grant an option to lease all or any portion of the Trust Property for a term (with all extension periods) ending on or after the 45th Anniversary Date;
- (l) amend, terminate or waive any material provisions of any lease for all or any portion of the Trust Property;
- (m) enter into any agreement with any Person giving any Person any rights with respect to the Trust Property that extend beyond the 45th Anniversary Date or which are not terminable without penalty on less than 90 days' notice;
- (n) encumber the Trust Property with any mortgages or another lien, easement, covenant or restriction other than the First Mortgage, or a HUD Mortgage to refinance the debt contemplated by this Agreement, at such time as HUD regulations shall allow;
- (o) modify the Trust Agreement or the Trust's certificate of trust in any manner, issue additional Interests in the Trust to any Person, or modify the rights and privileges of the Interest owners;
- (p) institute proceedings to have the Trust be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Trust or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequester (or other similar official) of the Trust or a substantial part of its property;
- (q) make any assignment for the benefit of creditors of the Trust;

- (r) admit in writing the Trust's inability to pay its debts generally as they become due;
  - (s) take action in furtherance of any of the foregoing actions; or dissolve or liquidate the Trust.
- iii) The 22.5% of the Trust Owned by the B Beneficiaries interest shall be subject to a Redemption Agreement where the B interests shall be sold to the A interests or their designees, assigns or transferees, over five years for a total price of \$19,800,000.00 in four tranches each representing interests of 5.625% each
- (1) Tranche one on or before August 1, 2020 in the amount of \$3,786,250.00
  - (2) Tranche two on or before August 1, 2021 in the amount of \$3,786,250.00
  - (3) Tranche three on or before August 1, 2022 in the amount of \$3,786,250.00
  - (4) Final Tranche by August 1, 2023 in the amount of \$8,441,250
- iv) Any purchase of the membership interests shall be a purchase of Beneficial Interests from the B Beneficiaries and shall reduce the Priority Return proportionate to the payments as a percentage of the total remaining price of \$19,800,000, which is the balance after payment of the non-refundable Down Payment.
- v) The A Beneficiaries shall prepare at their sole cost and expense of the A Beneficiaries a Private Placement Memorandum for the Sale of Membership interests in the Trust by a Broker Dealer who specializes in sales of marginal interests in Delaware Statutory Trusts to individuals and other entities who have to designate property as target property in connection with 1031 Exchanges of Property. The A Beneficiaries shall have the right to designate a portion of their membership interests as C interests for the purpose of selling them as part of the same syndication, provided that (1) there is no change in control of the A Beneficiaries or the Tenant entity.
- vi) The B Beneficiaries will be entitled to a priority return ( the "Priority Return") equal to all available rental and other income over and above the payment of the P&I on the New First Mortgage which shall in no event be less than \$2,000,000 per year (as adjusted by periodic redemptions) and shall be paid to the B Beneficiaries as a Priority Return until such time as they have been fully redeemed pursuant to the Redemption Agreement.
- vii) The Trustee shall deposit all rents and other funds collected from the operation of the Real Estate in the bank designated by the first mortgagee (the "Operating Account") which shall be subject to both a Deposit Account Control Agreement and Deposit Account Instruction Agreement. The Trust shall maintain books and records of the funds from the Real Estate deposited in such account, interest earned thereon, and withdrawals therefrom. The Trustee shall pay from the Operating Account the operating expenses of the Real Estate (other than those paid by a tenant of the Real Estate as set forth in its lease) and any other payments relative to the Real Estate as required by this the Trust Agreement.

- viii) The Trustee shall be responsible for receiving all cash from the Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust Agreement. The Trustees shall furnish quarterly and annual reports to each of the Beneficiaries as to the amounts of rent received from the Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficiaries.
  - ix) To the extent permitted by the Internal Revenue Code depreciation, which shall be calculated on a straight-line depreciation method shall be allocated as follows: a) first to the B Beneficiary to the extent necessary to shelter the Priority return from taxes and b) second to the beneficiaries, pro rata, in accordance with the ownership interests.
- 3) **Condition of Property and Title:** Contributor shall give, and the Trust and the Trust shall accept, a good and marketable title which any National Title Insurance Company (the "Title Company"), will approve and insure at standard rates, free and clear of all liens, hypothecations, mortgages, easements, and encumbrances, except for the Permitted Exceptions.
- i) The Premises is being contributed subject to the following exceptions to the title (the "Permitted Exceptions"):
    - (1) Zoning and building regulations, restrictions and ordinances now or hereafter adopted or imposed by any governmental or quasi-governmental body having or asserting jurisdiction over the Premises or any part thereof;
    - (2) Future Real Estate taxes, assessments, water charges, sewer rents or other charges not yet due and payable (subject to apportionment as provided herein) and certified, confirmed or ratified assessment liens and pending assessments, if any;
    - (3) The state of facts shown on an updated as built survey prepared originally prepared and revised to be an as built survey, (the "Survey") and such additional state of facts which said survey would show or reveal provided such additional state of facts do not render title unmarketable;
    - (4) Any state of facts a physical inspection of the Premises would reveal;
    - (5) Exceptions permitted by the Title Company (as defined herein) (the "Title Exceptions");
  - 4) All payments made to purchase any portion of the B Beneficiaries 22.5% interest shall also act to proportionally reduce the amount of Priority Return paid to the B beneficiaries under the Trust and the proportionate difference shall be paid to the A Beneficiaries or whoever purchases the B Beneficiaries interests as the case may be.,
    - a) Distributions: Provided that all required payments set forth herein have been made by the Tenant, During the interim period prior to the purchase of the premises Tenant may pay Management Fees so long as (i) the amount of such Management Fees paid in any twelve-month period shall not exceed five percent (5%) of Tenants' gross revenues for such period

and (ii) there shall not then exist, and/or the paying of such Management Fees shall not cause there to exist, a Default or Event of Default under the Lease the first mortgage on the property or the Tenant's Working Capital Loans, (iii) the Initial Payment, the payment of Rent, and all other payments set forth herein have been made by the Buyer/Tenant.. Upon the occurrence of an Event of Default, Tenant shall not pay Management Fees. The Tenant will make no distributions to its shareholders, officers, affiliates, or any related party unless the Down Payment, the payment of Rent is current, and.

- 5) **Confidentiality and Disclosure:** Tenant and Contributor shall each maintain the confidentiality of all confidential and non-public information supplied by the other. If this Transaction is not consummated, each party shall return all documents obtained to the other. Except as required by law, without the prior written consent of the other party, neither Tenant nor Contributor will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this Letter of Intent. If a party is required by law to make any such disclosure, the parties shall consult with each other and seek to agree upon appropriate language for such disclosure. The Tenant acknowledges that Contributor will be unable to furnish any patient health information unless such disclosure complies specifically and completely with all terms, conditions, regulations, and guidelines in HIPAA.
  
- 6) **Interim Operation:** Subject to the approval in writing of Contributor's existing Lender, the parties will enter into an amendment of the Lease as follows to allow for the operation of the facility before the closing.
  - a) **Commencement Date:**The Commencement Date according to the Lease shall be September 30, 2019.
  
  - b) **Rent:** An initial rent payment of \$509,000.00 has been paid receipt of which is on account toward the rental period from September 30, 2019 to October 31, 2019 (the "October 2019 Rent") leaving a balance of \$13,735 for October 2019 Rent. November 1, 2019, to November 30, 2019 (the "November 2019 Rent") shall be postponed until November 18, 2019 and shall be paid by Tenant on that date. The next rental payment shall be the December monthly rent amount outlined in the Lease - \$506,097 which shall be paid on December 5, 2019. Also, the Tenant will reimburse the Landlord for their municipal maintenance escrow and utility deposits of \$5,500 and \$60,356, respectively. Such reimbursement payment shall be made on or before December 5<sup>th</sup>, 2019. Upon receipt of the \$60,356 for the utility deposits from the Tenant, Landlord will direct any refund from the Utility companies to the Tenant, or otherwise pay such refund over to the Tenant forthwith provided Landlord has previously received those funds from the Tenant.
  
  - i) The following amounts are in dispute, and neither party will be obligated to waive their rights and positions by the signing of this agreement. The landlord has demanded the following sums due to their Lender.

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- (1) Late and Default Interest costs of \$201,997.34 for September 2019 and October 2019,
  - (2) \$19,000 of Late Fees for November 2019,
  - (3) \$5,061 per day for Default Interest premium during November 2019.
- ii) The A Beneficiaries and the B Beneficiaries shall jointly negotiate with the Contributor's current Lenders to effectuate the best possible settlement of these late costs (the "Late Costs"). The amounts if any remaining after such joint negotiation will be paid by the 77.5% by the Buyer and 22.5% by the Contributor (provided the Initial Payment, the payment of Rent and all other payments set forth herein are made timely) from Financing proceeds. If not available from the Financing proceeds the Tenant shall pay all Late Costs. .
- c) Security Deposit/ Guaranty: Section 7.1(a)(i) the Lease shall be amended to provide that Tenant shall enter into a Deposit Account Control Agreement with Metropolitan National Bank which can only be revoked with the consent of both parties, which shall provide that each month, the Tenant's Lender shall draw on the loan amount first to pay rent to the Landlord, notwithstanding the adequacy of any accounts receivable borrowing base calculations. This Document shall be part of the Closing Documents on the Tenant's first initial Term Loan and shall be delivered in full effect by December 1, 2019.
- d) Section 7.1(a)(ii) of the Lease shall be amended to provide that the obligation for the Security Deposit shall initially be reduced to 2,000,000 dollars.
- i) The sum shall be paid by Tenant as follows: (a) Provided that the Contributor has obtained a permanent Certificate of Occupancy the Tenant shall draw the initial \$1,000,00.00 from its credit line on or no later than December 1, 2019. (b) Landlord shall obtain a release of the lien of its Lender on the FF&E, upon delivery of free and clear title to the FF&E the Tenant will enter into a reverse lease and obtain at least \$1,000,000.00 which shall be paid on account of the Security Deposit no later than April 1, 2020.
  - ii) Also, Tenant shall pay the sum of \$40,000 per month commencing January 1, 2020 to be treated as additional clerk rent until there is a total \$3,700,000 posted as Security Deposit under 7.1(a)(i).
- e) Section 7.1(a)(iii) of the Lease shall be amended to provide that instead of delivering the sum of \$1,600,000 in cash, the parties shall enter into a blocked account agreement wherein and whereby account number [REDACTED] in JP Morgan Chase Bank NA prohibiting any liquidation of that account until the Second Payment is paid. Such account shall be not be posted as collateral security to Landlord's Lender provided the Initial Payment has been made in full, and all payments of Rent are current and the Tenant is not otherwise in Default, except that the Landlord shall have a security interest in such account under a DAISA, which allows the Landlord to demand the liquidation of such account to pay any defaults under the lease.

- f) Working Capital: Section 7.7 of the Lease shall be amended to suspend the requirement for providing the working capital account. The Tenant shall be obtaining a single working capital line for \$8,000,000.00 no later than December 1, 2019.
- g) Right of First Refusal and Option to Purchase: The Tenant's rights with respect to the right of first refusal and option to purchase under Sections 3.7 and 3.7 of the Lease will be suspended pending payment in full of the Security Deposits required by Section 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) of the Lease as amended, the payment of the Initial Payment, the working capital required by Section 7.7 of the Lease and Tenant being in full compliance with the Lease.
- h) Insurance: Tenant shall obtain property insurance, effective as of September 30, 2019, and (2) provide the property insurance, and all other insurances required by the Lease by November 19, 2019, effective retroactively back to September 30, 2019.
- i) Real Estate Taxes: Real estate taxes shall be prorated as of September 30, 2019 and the Tenant's portion shall be paid to the Landlord no later than December 1, 2019, plus any late charges which the City of White Plains may impose.
- j) Utilities: Tenant shall pay actual costs of utilities incurred at the property covering the rental period from September 30, 2019 (pro-rated as the utility company billing periods may require) forthwith upon presentation of invoices for the same from the Landlord, no later than December 1, 2019.
- k) Punchlist: The punch list and all other developer obligations are deemed complete except for.
  - i) The White Plains Outstanding Punchlist November 5, 2019 (the Remaining Punchlist), the value of which is has been determined by the Architect and agreed herein to be \$3,800.
  - ii) The Electric Blinds in rooms (the "Suspended Work") the value of which is agreed herein to be \$35,000.
  - iii) Provided the Initial Payment is made by November 15, 2019 and provided there are no other Defaults by the Tenant, Landlord shall complete the Remaining Punchlist and the Suspended Work to the approval of the Architect, within 45 days from the date of the Contributor's receipt of the Initial Payment. Should Landlord not do so, then the Tenant may credit the agreed values of any uncompleted Punchlist or Suspended Work from the February, 2020 Rent payment, and the Landlord's Work under the Lease and Development Agreement shall be deemed complete.

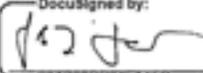
Security: Tenant shall assume all property security obligations as of November 11, 2019.

Upon the closing of the purchase of the premises by the Trust, the Trust shall take an assignment of the lease as amended above.

- 7) **Exclusivity:** In consideration of (1) the Initial Payment, (2) the payment of Rent as set forth herein, and (3) Tenant's efforts in pursuing the Transaction, Contributor agrees that (1) until the termination of this Letter of Intent, or execution of the Formal Contracts and (2) provided the payment of the Initial Payment and the payment of Rent as set forth herein is made, and (3) all other obligations of the Tenant set forth herein,, Contributor will not permit any of its affiliates to, and will not authorize or permit any officer, director, employee, counsel, agent, investment banker, accountant, or other representative of any of them, directly or indirectly, to: (a) initiate contact with any person in an effort to solicit any proposal (other than that contemplated by this Letter of Intent for the acquisition (directly or indirectly , by sale of stock or assets, or by merger or consolidation or otherwise) of the operation of the Real Estate, or any of the Assets, or any other business combination or financing transaction involving such business (a "Proposal); (b) cooperate with, or furnish or cause to be furnished any non-public information concerning the operation of the Real Estate, to, any person in connection with any Proposal; (c) negotiate or enter into discussions with any person with respect to any Proposal; or (d) enter into any agreements or understanding with the intent to effect a Proposal. Contributor will immediately give written notice to Tenant of the details of any Proposal of which Contributor becomes aware. Contributor will, and will cause its officers, directors, affiliates, agents, and representative to, terminate all discussions regarding a Proposal, other than those with Tenant and its representatives concerning the Transaction, and represents that neither it nor any of its officers, directors, affiliates, agents, or representatives have entered into any executory agreements or accepted any commitments concerning any Proposal other than the Transaction provided that (1) this LOI or successor Formal Contracts has not terminated, and (2) the payment of the Initial Payment, the payment of Rent as set forth herein have all been paid and are current, and (3) all other obligations of the Tenant set forth herein are not in Default and are current.
  
- 8) **Waiver of Claims:** Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the Lease, (3) any claims related to the Cost Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.
  
- 9) **Expenses:** Tenant and Contributor shall each be responsible for their respective accounting, legal, advisory, and other costs and expenses in connection with the Transaction. Tenant shall reimburse Contributor for its legal, advisory and other costs and expenses in connection with the Transaction and the Termination of the Lease. Reimbursement for such legal and transaction fees shall not to exceed \$125,000 and may be made from the proceeds of the Closing, provided the Closing occurs and the Contributor's existing 1<sup>st</sup> Mortgage Loan and Mezzanine Loan are paid off from the proceeds of the Financing by March 31, 2020, and (2) the Initial Payment is made as set forth herein above, and (3) the Tenant is not in default under this LOI or the successor Formal Contracts. Otherwise the \$125,000 cap shall expire and the Tenant shall pay the Contributor all such costs incurred after September 30, 2019.

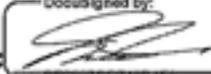
- 10) **Letter of Intent:** This LOI represents a statement of all of the terms, conditions, representations, warranties, indemnities, covenants, and other provisions that would be contained in the definitive documentation for the proposed transactions. This LOI shall constitute a binding agreement upon payment of the or any of their respective affiliates will have any legal obligation under this LOI unless and until one or more subsequent definitive written agreements are mutually executed and delivered by each of Contributor and Buyer. No past, present, or future action, course of conduct, or failure to act relating to the transactions referenced in this LOI or relating to the negotiation of the terms of such transactions will give rise to or serve as the basis for any obligation or other liability on the part of Contributor or Buyer or any of their respective affiliates.[ These changes should be rejected]
  
- 11) **Governing Law:** This Agreement shall be governed by and construed by the internal laws of the State of New York, Venue shall be in Westchester County without application of its conflicts of law rules. If you agree with the preceding, please sign and return one copy of this Letter of Intent.

HBL-SNF, LLC

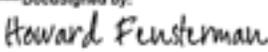
DocuSigned by:  
  
 Lizer Jozetovic

**ACKNOWLEDGED AND AGREED**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Name: William A. Nicholson  
 Title: Manager

**Accepted and Agreed**

DocuSigned by:  
  
 Howard Fensterman

# Exhibit 1



**TEMPORARY  
CERTIFICATE OF OCCUPANCY**  
**DEPARTMENT OF BUILDING**  
**THE CITY OF WHITE PLAINS, NEW YORK**

Certificate No: 19-15383

RE: Application No: 2016-05890BLDC

Date of Issue: 8/22/2019

Permit No: 2016-05890BLDC

**THIS CERTIFIES THAT THE BUILDING**(or portion of the building as noted below) located at:

120 CHURCH ST

City of White Plains, NY 10601

SBL: 125.67-3-1

May be used subject to the following conditions:

Date of Occupancy: 8/22/2019 through 11/20/2019

Type of Use Authorized: -438

Portion of Building to be Occupied:

Land/Use Conditions: All affidavits and final inspections to be conducted and approved prior to issuance of final Certificate of Occupancy.

This TCO is to Occupy is only good for the next 90 days until all of C of O paperwork and fees are closed out

The Owner of these premises by acceptance of this document hereby agrees to proceed expeditiously with all remaining work required to qualify the building for a final Certificate of Occupancy or Compliance and to call for all inspections relating thereto. Said owner is also required to maintain all portions of their premises in a safe condition, and to provide adequate safeguards to prevent all tenants and the public from entering into any active construction areas.

At the end of the time period specified above, this Temporary Certificate of Occupancy or Compliance will automatically expire. In order to continue occupancy of the building, either an extension of this Certificate or a final Certificate of Occupancy or Compliance must be obtained from the Commissioner of Building.

This Certificate does not in any way relieve the owners, or any other person or person in possession or control of the building or any part thereof, from obtaining such other permits or licenses as may be prescribed by law for the uses or purposes for which the building is designated or intended; nor from complying with any lawful order issued with the object of maintaining the building in a safe condition.

**THIS CERTIFICATE IS ISSUED TO  
WHITE PLAINS HEALTHCARE**

Owner: **WHITE PLAINS HEALTHCARE  
PROPERTIES I, LLC - STEPHEN T. KING  
2 BOURBON STREET, SUITE 200  
PEABODY MA 01960**

DAMON A. AMADIO, P.E., COMMISSIONER OF BUILDING

# Exhibit 1

# AIA Document G704™ – 2017

## Certificate of Substantial Completion

<b>PROJECT:</b> <i>(name and address)</i> White Plains Institute for Rehabilitation and Healthcare 120 Church Street White Plains, NY	<b>CONTRACT INFORMATION:</b> Contract For: General Construction  Date: June 12, 2017	<b>CERTIFICATE INFORMATION:</b> Certificate Number: 001  Date: October 4, 2019
<b>OWNER:</b> <i>(name and address)</i> White Plains Health Care Properties I, LLC  West Peabody Executive Center Suite 300 Peabody, MA 01960	<b>ARCHITECT:</b> <i>(name and address)</i> The Architectural Team, Inc. 50 Commandant's Way Chelsea, MA 02150	<b>CONTRACTOR:</b> <i>(name and address)</i> Congress/Consigli Joint Venture C/O The Congress Companies West Peabody Executive Center Suite 200 2 Bourbon Street Peabody, MA

The Work identified below has been reviewed and found, to the Architect's best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate.  
*(Identify the Work, or portion thereof, that is substantially complete.)*  
 This certificate applies to the entire job.

The Architectural Team, Inc.		Gary M. Kane	September 30, 2019
<b>ARCHITECT</b> <i>(Firm Name)</i>	<b>SIGNATURE</b>	<b>PRINTED NAME AND TITLE</b>	<b>DATE OF SUBSTANTIAL COMPLETION</b>

**WARRANTIES**  
 The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:  
*(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)*  
 Not Applicable

**WORK TO BE COMPLETED OR CORRECTED**  
 A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:  
*(Identify the list of Work to be completed or corrected.)*  
 See attached mottized Punch List dated October 4, 2019.

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first. The Contractor will complete or correct the Work on the list of items attached hereto within thirty (30) days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: 

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:  
*(Note: Owner's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)*  
 Shall be in accordance with the Owner/Contractor agreement.

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion.

Congress/Consigli Join  
Venture C/O The Congress  
Companies

CONTRACTOR (Firm  
Name)

White Plains Health Care  
Properties I, LLC

OWNER (Firm Name)

SIGNATURE

PRINTED NAME AND TITLE

DATE

SIGNATURE

PRINTED NAME AND TITLE

DATE

# Exhibit 20



**Department of Health**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

December 2, 2019

Andrew Blatt  
Consultant  
Pinnacle Health Consultants, LLC  
1890 Palmer Avenue  
Suite 204  
Larchmont, NY 10538

**Re: CON #092058**  
**Establish and construct a 160 bed RHCF; HBL SNF, LLC d/b/a The**  
**Rehabilitation and Nursing Center of White Plains**

Dear Mr. Blatt:

Based on the pre-opening survey conducted on September 19, 2019, the facility was found to be in substantial compliance with the applicable provisions of 10 NYCRR.

As a result of this inspection, approval is granted to use the areas that were renovated and/or constructed as part of the above-mentioned CON project. This approval is effective November 14, 2019.

If you have any questions regarding this letter, please contact Chris Chow at (631) 851-3612, [chris.chow@health.ny.gov](mailto:chris.chow@health.ny.gov). Written correspondence should be sent to the New York State Department of Health, Courthouse Corporate Center, 320 Curleton Avenue, Suite 5000, Central Islip, NY 11722.

Sincerely,

Chris Chow  
Principal Sanitarian  
Division of Nursing Homes and  
Intermediate Care Facilities/HID

# Exhibit 22

November 20, 2015  
TERM SHEET  
REGARDING  
WHITE PLAINS INSTITUTE FOR REHABILITATION AND HEALTH CARE  
USE OF PROCEEDS FROM REFINANCE OF WATERVIEW AND SALEM AND  
CCC EQUITIES PAYOFFS

This Term Sheet is intended to clarify the pertinent information shared at the meeting of 04/22/2015, attended by Howard Fensterman, as Manager of CCC Equities I, LLC (“CCC”), William Nicholson as Manager of White Plain Healthcare Properties I, LLC (“WPHCP”), Lizer Jozefovic as Manager of HBL/SNF, LLC (“HBL/SNF”) the Tenant, and Mark Zafrin as counsel to HBL/SNF, and to further outline the action items required in order to break ground in the Spring of 2016.

**1) ASSIGNMENT OF CCC EQUITIES MORTGAGES:**

- a) CCC Mortgage: CCC shall assign the series of notes issued by Mokray Acquisitions I, LLC to CCC and the mortgages related thereto, listed on Exhibit 1 attached hereto, to M&T Realty Capital upon payment in full of the amounts set forth in the payoff letter, dated November 20, 2015. The assignment and payoff is not to be construed as a reduction of the equity holdings of CCC in WPHCP, but a “release” of the loans for the purposes of the proceeds being used to fund HBL/SNF and the project.
- b) Disbursement of Proceeds: The proceeds from the CCC Mortgage payoff shall be paid to Madison Title Agency, LLC to be further disbursed as follows:
  - i) \$2,200,000.00 to an account in the name of WPHCP designated by Congress Construction Company to be used for the related pre-development costs of the project, as set for in Paragraph 3 of the “Partners Term Sheet” dated May 26, 2015, as further provided below.
  - ii) \$197,072.00 to CCC or order for the purpose of further distribution in the discretion of Howard Fensterman, as Manager of CCC.
  - iii) The Balance \$1,595,368.32 to an account designated by HBL/SNF (the “**Control Account**”), and, until the closing of a construction loan with Lancaster Pollard (or equivalent), any withdrawals or disbursements from the Control Account shall be subject to the dual signatures of an authorized officer or representative of HBL/SNF and WPHCP. Subsequent to such a closing with Lancaster Pollard (or equivalent), any withdrawals or disbursements from the Control Account shall be subject to any restrictions or limitations as determined by Lancaster Pollard (or equivalent). The funds in the Control Account may be invested in instruments of not greater risk than 90 day treasury notes and not to be further disbursed until (a) the closing of the Lancaster Pollard loan and/or (b) a further agreement between HBL/SNF and WPHCP.

c) Guarantees: Simultaneously with the assignment of the Mokray notes and mortgages and the satisfaction of the payoff letter, Lizer Jozefovic and William Nicholson shall jointly and severally issue a guaranty in favor of WPHCP, pursuant to which they shall guarantee any deficiency between the amount of CCC's investment in WPHCP and the proceeds realized from the collateral (Project, Beds, Entitlements, Land, Plans, Control Account, Etc.,) in event the project's assets needs to be sold because Lancaster Pollard (or equivalent) does not provide construction funding and/or Mezzanine financing or as a result of any breach of HBL/SNF's or Lizer Jozefovic's obligations.

hereunder.

d) Use of Proceeds: The proceeds from the CCC Mortgage payoff are intended to be used as follows;

- (a) \$1,595,368.32 shall be used to capitalize HBL/SNF;
- (b) \$2,200,000.00 from the accounts of WPHCP, generally, for :
  - (i) \$990,000.00 (approximately) to be used for Architect's and Engineer's fees;
  - (ii) \$50,000 (approximately) to be used Interior, Food Service, and other Designers' fees;
  - (iii) \$343,000.00 as additional down payment to Hebrew Hospital as per contract (Operating Agreement version 8 or latest version), to be released to Hebrew Hospital upon execution of the HBL/SNF Operating Agreement,
  - (iv) \$309,750.00 to be paid to the New York State Department of Health ("DOH") for the application fee as per the November 15, 2012 NY DOH Conditional Approval Letter;
  - (v) Balance of \$507,250.00 to be held by WPHCP and disbursed as WPHCP determines, for the following preconstruction costs,
    - 1. Application or other fees to Lancaster Pollard,
    - 2. Taxes, Insurances and other ongoing property/maintenance/safety costs,
    - 3. Other fees,
    - 4. Other pre-construction professional fees and other fees and costs,
    - 5. Survey, environmental, Market Study, Appraisal, and other 3rd party fees for the loan.

e) \$2,200,000.00 disbursement to WPHCP is to be characterized as a non interest bearing loan and repaid to HBL/SNF as follows;

- 1. \$1,500,000.00 is to be deemed as an advance payment for FF&E for the project and repayable only by delivery of title to the FF&E. HBL/SNF will show the FF&E as an asset on its balance sheet; HBL/SNF is to own and be responsible for replacing FF&E. Tenant shall also have ownership of replacement reserve for FF&E.



2. \$700,000.00 shall be repaid as a deduction from the rent over an above payments for P&I, Taxes and Reserves at the rate of \$2,700.00 per month for a term of 420 months .

f) Prior to the assignment of the notes and mortgages, WPHCP shall be granted a security interest in all of the assets of HBL/SNF, including without limitation, the Control Account, and all of the HBL/SNF's rights in and to the beds (including without limitation HBL/SNF's rights, title and interest in and to the purchase and sale agreements pertaining to the beds) and DOH approvals to secure the agreements of Lizer Jozefovic and HBL/SNF hereunder.

II) HBL/SNF and Lizer Jozefovic shall cooperate and deliver all items required by Lancaster Pollard (or other construction lender) in order to most expeditiously close the construction loan.

III) HBL/SNF shall be responsible to fund all of its costs and expenses, as tenant, relating to the development, and fill up of White Plains Institute For Rehabilitation And Health Care, including without limitation expenses payable to DOH, amounts in excess of the funds provided herein for the beds, and professional and consulting fees. Funding for such costs and expenses shall not be made from the Control Account.

IV) HBL/SNF and WPHCP shall enter into a lease (the "Lease"), substantially in the form attached hereto as Exhibit A, which includes, among other things:

a) HBL/SNF shall deposit in the Control Account an amount not less than the requirements of the construction lender's working capital and reserve requirements, including without limitation any shortfall amount as between the construction lender's requirements and the amount in the Control Account.

b) If WPHCP sells the real property to a bona fide third party purchaser prior to the twelfth lease year under the Lease, WPHCP may purchase the HBL/SNF right of first refusal for an amount equal to ten percent (10%) of the excess of the sale price (less costs and fees, including broker's fees) over the TPC (defined below); provided, however, commencing on the twelfth year of the Lease after the commencement date under the Lease and continuing until December 31<sup>st</sup> of the fifteenth year after the commencement date under the Lease, HBL/SNF shall have a right to purchase the real property from WPHCP for a price equal to the sum of (a) the actual total project cost ("TPC"), plus (b) the following amounts:

- i) For Year 12, TPC plus \$1,500,000.
- ii) For Year 13, TPC plus \$1,650,000.
- iii) For Year 14, TPC plus \$1,800,000.



iv) For Year 15, TPC plus \$1,950,000.

c) HBL/SNF will be responsible for funding the initial operating deficit so as not to delay the loan closing, in the amounts and according to the terms as may be required by the construction lender.

(V) HBL/SNF and WPHCP shall enter into a Development Agreement, substantially in the form attached hereto as Exhibit B.

(Signature Page to Follow)



Agreed and accepted this 20<sup>th</sup> day of November 2015

CCC Equities I, LLC

By: \_\_\_\_\_  
Howard Fensterman, Managing Member

HBL SNF, LLC

By  \_\_\_\_\_  
Jozefovic, Managing Member

White Plains Healthcare Properties I, LLC

BY: \_\_\_\_\_  
William Nicholson, Manager

Agreed and accepted this 20<sup>th</sup> day of November 2015

CCC Equities I, LLC



By: \_\_\_\_\_

Howard Fensterman, Managing Member

HBL SNF, LLC

By \_\_\_\_\_

Jozefovic, Managing Member

White Plains Healthcare Properties I, LLC



BY: \_\_\_\_\_

William Nicholson, Manager



# Exhibit 23

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I,  
LLC,

Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC, and MARK NEUMAN,

Defendants and Third-Party Plaintiffs,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, WILLIAM  
NICHOLSON, and METROPOLITAN  
COMMERCIAL BANK

Third-Party Defendants

-----X

**AFFIRMATION OF LIZER JOZEFOVIC  
IN SUPPORT OF ORDER TO SHOW CAUSE**

LIZER JOZEFOVIC affirms the following to be true under the penalties of perjury:

1. I respectfully submit this affirmation in support of the Motion for an Order to Show Cause preventing the sale of my Membership Interest in Waterview Acquisition I, LLC ("Waterview"). This Affirmation is based upon my personal knowledge.

2. I am the managing member of Waterview and own 70.1% of the company (the "Membership Interest.")

3. The history of my dealings with White Plains and all other parties is set forth in the Affirmation of John Giardino and the Memorandum of Law.

4. The Waterview facility consists of a 130-bed skilled nursing facility licensed by the State of New York.

5. I acquired Waterview in 2005.

6. There are currently 126 residents in the facility.

7. I am personally involved in managing the daily operations of Waterview and I am in the facility every week.

8. My son, Joseph Jozefovic, has been the administrator of the facility since 2015.

9. I am personally the holder of the nursing home license issued by the New York State Department of Health whose operations are overseen by the Department of Health.

10. In 2015, I refinanced the facility with the U.S. Department of Housing and Urban Development and there is currently a \$25,000,000 HUD loan in place for the Waterview operations.

11. In addition, I borrowed \$3,000,000 from Metropolitan Commercial Bank to fund operations, a loan I personally guaranteed.

12. I also have a line of credit extended by Gemino in the amount of \$1,400,000, which I have also personally guaranteed.

13. The proposed sale of my membership interest in Waterview will cause a default on all of these loans.

14. As set forth in the motion papers, I have invested approximately \$5,000,000 in White Plains. Without the infusion of my capital, the White Plains Project could not have been completed.

15. Specifically, on November 20, 2015, I contributed to the Project: (1) \$2,200,000 paid to White Plains to be used by Congress for pre-development costs; (2) \$197,072 paid to CCCE to be used at the discretion of Fensterman; and (3) \$1,595,368.32 paid into a control account as rent security.

16. During this time, I was represented by Third-Party Defendant Howard Fensterman of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP.

17. These funds are a loan to the developer that has never been paid back to me by White Plains.

18. White Plains agreed to repay \$1,500,000 of the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") for the Project and conveying title to my company.

19. In addition, White Plains agreed to repay \$700,000 of the principal amount of the loan by providing credit against Lease payments.

20. I have never received this rent credit and this amount of \$700,000 could certainly be credited to the rent security which Plaintiff is seeking that sale of the Waterview Membership interest<sup>1</sup>.

21. To date, White Plains has refused to convey title to the FF&E, or to provide an accounting of the use of these predevelopment and discretionary funds.

22. To date, White Plains has refused to provide evidence of purchases of the required FF&E, or to credit \$700,000 against the Lease payments.

23. To date, interest accrued on this \$2,200,000 loan is equal to more than \$450,000.

---

<sup>1</sup> The proceeds of the sale can only be used to fund the \$1.6 million account.

24. In short, White Plains has an unpaid obligation to me which totals over \$1,140,000.

25. I have always performed my obligations under the Development Agreement and the Lease.

26. On August 10, 2017, an email was sent to Fensterman (the "August 10 Email"). The August 10 Email states, in relevant part, that the following "reflects what we agreed to. Please confirm...[and] do the paperwork to finalize this." The August 10 Email continues to state that "[w]ith respect to the Waterview account: I, Howard Fensterman and Lizer Jozefovic shall be co-signatories to the Waterview account...."

27. A true and correct copy of the August 10 Email is attached to the Affirmation of John Giardino as Exhibit F.

28. On or about August 11, 2017, I entered into a Collateral Assignment and Pledge of Membership Interest and Security Agreement, which formalized the rent security account for the Facility (the "Collateral Assignment").

29. The Collateral Assignment contained three relevant sections:

- a. Under Paragraph 2, as soon I deposited \$1,600,000 into the rent security account, the Collateral Assignment "shall automatically terminate and be void and of no further effect";
- b. Under Section 13, White Plains' rights are limited to a violation of the "terms and provisions concerning the maintenance of the account..."; and
- c. Under Section 13(c), any proceeds derived from the disposition of the collateral must be applied to the Rent security.

30. A true and correct copy of the Collateral Assignment is attached to the Affirmation of John Giardino as Exhibit D.

31. On August 16, 2017, Fensterman was sent a series of emails (the "August 16 Emails"). The August 16 Emails state, in relevant part, "[e]nclosed please find the Chase Certification that we received today; Please note that the Certification requires that the Resolution that we prepared be annexed as an exhibit. What I need from Howard is original signature cards from Howard with wet ink signatures."

32. True and correct copies of the August 16 Emails are attached to the Affirmation of John Giardino as Exhibit G.

33. On August 17, 2017, an email was sent to Fensterman (the "August 17 Email"). The August 17 Email states, in relevant part, that "I need [Fensterman's] signature on the last page."

34. The purpose of the August 17 Email was to transfer the Rent Security to a new account pursuant to a resolution of Waterview Acquisition I, LLC

35. In 2017, the Rent Security was transferred to the Chase account ending in xxxx-xxx-xxxx-0885 (the "Second Account").

36. Once completed, the resolution and account holder certification form were tendered to Fensterman.

37. True and correct copies of the August 17 Email, account information form, resolution, and account holder form are attached to the Affirmation of John Giardino as Exhibit H.

38. The Collateral Assignment required me to place \$1.6 million into an account and provide Fensterman with signatory authority, after which the Collateral Assignment would automatically terminate.

39. I ensured that the Rent Security was properly deposited in the Second Account and that Fensterman was provided with all necessary forms to become a signatory, thereby completing all of my obligations under the Collateral Assignment.

40. However, following the August 17 Email, White Plains and Fensterman took no actions to become a signatory. From August 2017 until this current action, the Second Account was never discussed, and White Plains never raised it as an issue. As multiple years passed, I reasonably believed that White Plains was satisfied with the Rent Security, especially since the Second Account maintained a balance of well over \$1.6 million.

41. I sent these documents to Mr. Fensterman and never heard anything further until this lawsuit.

42. Previously, the Operating Agreement of Waterview Acquisition 1, LLC did not permit its members to assign their membership interests.

43. At the time, the Operating Agreement of Waterview Acquisition 1, LLC stated, in relevant part:

- a. Articles 5 and 6 did not provide for any such assignment of the Membership Interest;
- b. Article 12 specifically prohibited an assignment of the Membership Interest to Fensterman as Nominee of White Plains Healthcare Properties LLC.

44. Fensterman is aware of these facts, as well as the limitations on transfer and assignment of the Membership Interest, as Fensterman and Abrams, Fensterman LLP acted as counsel to Waterview Acquisition 1, LLC in its formation and execution of its operating agreement.

45. To permit an assignment, the Operating Agreement of Waterview was amended to authorize me, as the Majority Member, to assign the Membership Interest.

46. In December 2019, I assigned the Membership Interest to Metropolitan Commercial Bank ("MCB") as part of a \$3 million loan and financing arrangement to provide working capital to benefit the Project, most of which was paid in the form of rent to White Plains.

47. On December 23, 2019, I granted MCB a security interest in the Membership Interest, and MCB perfected its security interest by taking possession of the related certifications and filing a Uniform Commercial Code Financing Statement.

48. Currently, MCB has perfected its security interest in Membership Interest and has physical possession of the membership certificates. White Plains knew and approved of the loan from MCB, since the proceeds have been used to pay rent on the Facility.

49. Following my performance under the Collateral Assignment, I waited for White Plains to complete the Project. Pursuant to the Development Agreement, White Plains was required to complete the Project by no later than September 2017.

50. However, due to unexplained delays, the Project was not completed until December 2019. Not only was this two-year delay financially burdensome, but it also forced me to open the Facility at the onset of the COVID-19 pandemic.

51. Moreover, the Development Agreement required White Plains to complete the Project at the NYSDOH-approved budget of \$57 million. To guarantee that White Plains stayed within this budget, I was supposed to be responsible only for additional costs pre-authorized via change orders.

52. Throughout the entire Project, I never authorized a single change order. Yet, by the time the Facility was completed, White Plains had incurred more than \$5 million in additional costs.

53. These cost overruns are extremely detrimental, as not only must they be repaid, but they have also prevented me from obtaining full reimbursement of my monthly rent payments as was originally intended under the Development Agreement and Lease.

54. Moreover, White Plains was required to provide permanent financing for the Project in the form of the HUD-insured loan approved by NYSDOH.

55. However, White Plains failed to provide permanent financing, breaching the Development Agreement and the Lease.

56. As a result of White Plains' breach, I am currently losing \$68,000 per month on NYSDOH reimbursements, resulting in an annualized loss of \$816,000.

57. On November 20, 2019, I entered into a letter of intent with White Plains to address certain defaults and issues (the "LOI").

58. A true and correct copy of the LOI is attached to the Affirmation of John Giardino as Exhibit 1.

59. Pursuant to the LOI, I paid White Plains an additional \$2.2 million.

60. White Plains has never accounted for these funds.

61. To the extent there were any issues about the Rent Security, the \$2.2 million payment for these funds resolved them.

62. To date, I have paid and continue to pay rent to White Plains on time every month.

63. Since December of 2019, I have made every monthly rent payment of \$506,096.50, totaling more than \$12 million.

64. I understood that White Plains would use my rent payments to pay the mortgage for the Facility, which is owned by Security Benefit Life Insurance Company ("Security Benefit").

65. However, Security Benefit has declared White Plains to be in default of the mortgage for having failed to make necessary mortgage payments, charges, interest, and other required fees.

66. In a notice dated April 16, 2020, Security Benefit stated that White Plains breached the terms of the mortgage.

67. On May 22, 2020, Security Benefit sent another letter to White Plains, reiterating that White Plains remains in default and raising additional breaches.

68. True and correct copies of the Security Benefit letters are attached to the Affirmation of John Giardino as Exhibit J.

69. On May 1, 2021, Security Benefit brought a foreclosure action against White Plains for nonpayment of rent in the action captioned *Security Benefit Life Insurance Company, et al. v. White Plains Healthcare Properties I. LLC et al.*, No. 55883/2021.

70. Although I have paid over \$500,000 per month in rental payments to White Plains each and every month, pursuant to Security Benefit's complaint, White Plains is required to pay Security Benefit approximately \$160,000 per month in mortgage payments. It is inexplicable why White Plains has failed to pay its mortgage, and raises troubling questions concerning what White Plains is doing with my rental payments.

71. The mortgage foreclosure action has harmed the reputation of the facility and has adversely affected business.

72. Rather than address its own failures and breaches under the Development Agreement, Lease, Collateral Assignment, LOI, and mortgage with Security Benefit, White Plains has engaged in extrajudicial tactics to seize the Membership Interest and the Facility.

73. On or about October 6, 2020, I received a purported Notification of Disposition of Collateral issued by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP ("DDW LLP"), dated October 6, 2020 (the "First Notification").

74. The First Notification claimed that I was a debtor and that the Membership Interest at would be sold "to the highest qualified public bidder in public" at 10:00 am on Friday, October 30, 2020.

75. A true and correct copy of the First Notification is attached to the Affirmation of John Giardino as Exhibit A.

76. The First Notification was negated by the entry of a Preliminary Injunction and Temporary Restraining Order by Judge Bannon in the action captioned *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, No. 655549/2020.

77. On or about March 2021, after the First Notification failed, White Plains contacted NYSDOH and claimed that the appointment of an emergency receiver for the Facility was necessary.

78. White Plains made this request in secret, never informing me or my counsel of this request.

79. I was subsequently contacted by NYSDOH Director Marthe JB Ngwashi who requested further information about the situation and whether the Facility was in financial jeopardy.

80. Once I was given the opportunity to meaningfully respond, NYSDOH took no further steps to appoint a receiver.

81. A true and correct copy of the letter from my counsel to NYSDOH regarding White Plains' improper request for receivership is attached to the Affirmation of John Giardino as Exhibit K.

82. Finally, on or about June 10, 2021, I received a purported Notification of Disposition of Collateral, dated June 9, 2020 (the "Second Notification"), which announced White Plains' renewed intention to sell the Membership Interest at "public auction".

83. A true and correct copy of the Second Notification is attached to the Affirmation of John Giardino as Exhibit B.

84. However, White Plains is not in possession of my Membership Interest.

85. White Plains has widely distributed the Second Notification to my business partners and colleagues. As a result, I have received calls from interested and concerned parties inquiring about the purported sale.

86. I have spent years of my life successfully building and operating nursing homes. Although it is difficult to estimate, the Membership Interest is worth no less than \$6 million.

87. White Plains has no right to sell the Membership Interest under the Collateral Assignment. Moreover, White Plains' rights under the Collateral Assignment are limited to enforcing the Rent Security, which remains intact.

88. I will be irreprovably harmed if the sale is permitted to proceed.

89. Furthermore, under the Assignment, the proceeds of such a sale can only be used to fund the Rent Deposit Account.

90. The continued publication of the Second Notification and any purported sale will irreparably harm me and jeopardize my operations.

91. Because White Plains will attempt to sell the Membership Interest, I will be irreparably harmed if the relief requested is not granted.

92. Moreover, my Membership Interest is essential for the management of Waterview and New York Law. I obtained the proper licensing and authorization to operate these particular nursing homes from NYSDOH. The licensing and authorization cannot be transferred to another party without a thorough analysis and approval from NYSDOH.

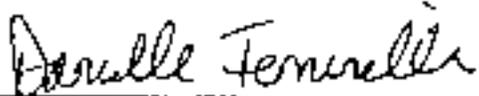
93. In this action, my claims for damages far exceed \$1.6 million.

94. I seek an Order to Show Cause for a preliminary injunction to (1) enjoin White Plains Healthcare Properties I, LLC, Howard Fensterman, and Metropolitan Commercial Bank from taking any action to transfer, assign, convey or sell the Membership Interest; and (2) enjoin Epic and Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman from taking any action to reduce the Rent Security below \$1.6 million.

Dated: New York, New York  
June 28, 2021

By:   
LIZER JOZEFOVIC

Affirmed before me this  
28 day of June, 2021

  
\_\_\_\_\_  
Notary Public

Danielle Ferrinella  
Notary Public, State of New York  
No. 01065001689  
Qualified in Westchester County  
Commission Expires 9.8.2021

# Exhibit 35

OPERATING LEASE

By and Between

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
a Massachusetts limited liability company  
("Landlord")

and

HBL SNF, LLC,  
a New York limited liability company ("Tenant")

Dated as of November . 2015

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**OPERATING LEASE**

THIS OPERATING LEASE ("Lease") is entered into as of November , 2015 (the "Effective Date"), by and between WHITE PLAINS HEALTHCARE PROPERTIES I, LLC a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 200, Peabody, MA 01960 ("WPHCI") or (the "Landlord") and HBL SNF, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (the "Tenant"), with respect to the following facts:

**RECITALS**

A. WHEREAS, Landlord is the owner of the real property, improvements, and personal property constituting the long-term care facility commonly known as 116-120 Church Street, White Plains, New York and more particularly described on Exhibit A, attached hereto and made a part hereof, (the "Real Property"), and following execution of this Lease, upon which certain buildings and improvements shall be erected (the "Facility"); and

B. WHEREAS, Landlord desires to lease the entire Leased Premises (defined herein) to Tenant and Tenant desires to lease the Leased Premises from Landlord pursuant to the terms, conditions and covenants set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, promises, representations and warranties set forth herein and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

**ARTICLE I**

**INCORPORATION OF RECITALS; PRINCIPLES OF CONSTRUCTION, DEFINITIONS**

Section 1.1 Incorporation of Recitals. The aforesaid Recitals A through B are hereby incorporated into this Lease as if fully set forth herein. Landlord and Tenant are hereinafter sometimes individually referred to as a "Party" and collectively referred to as "Parties".

Section 1.2 Principles of Construction. All references to articles, sections, schedules and exhibits are to articles, sections, schedules and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Landlord" shall mean "Landlord and its successors and assigns"; the words "Leased Premises" shall include any

portion of the Leased Premises and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal, legal assistant and law clerk fees and disbursements, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise, and, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Landlord in protecting its interest in the Leased Premises and its rights hereunder. Wherever pursuant to this Lease it is provided that Landlord shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees as defined above. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The words "includes", "including" and similar terms shall be construed as if followed by the words "without limitation". Whenever in this Lease any consent, approval, determination or decision of Landlord is to be made by Landlord, or any matter is to be satisfactory to Landlord, then unless expressly provided to the contrary, such provision shall be deemed to mean that such consent, approval, determination or decision of Landlord or determination whether a matter is satisfactory shall be made by Landlord in its sole and absolute discretion for any or no reason and shall be final and conclusive. Any reference in this Lease shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease shall be deemed to be a reference to this Lease (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time. Any reference in this Lease or in the Guaranty shall be deemed to be a reference to the Guaranty (as defined herein), as the same may hereafter be amended, modified, supplemented, extended, consolidated, replaced and/or restated from time to time.

Section 1.3 Definitions.

"Additional Rent" as defined in Section 3.2

"Affiliate" as defined in Section 20.31.

"Change of Ownership" means

"Commencement Date" as defined in Section 3.1.

"Commissioner" means the Federal Housing Commissioner also called the Assistant Secretary for Housing in the United States Department of Housing and Urban Development.

"DOH" means New York State Department of Health.

"Effective Date" as defined in introductory paragraph.

"Eligible Institution" as defined in Section 4.3.

"Extension Term" as defined in Section 3.1(b).

"Facility" as defined in Recital A.

"Fixed Rent" as defined in Section 3.2.

"Governmental Authority" as defined in Section 5.2.

"Guarantors" mean Eizer Josefovic and Mark Neuman.

"Hazardous Materials" as defined in Section 10.3

"Hazardous Waste" as defined in Section 10.3.

"Health Care Authority or Authorities" means any Governmental Authority (including HUD) having responsibility for the approval, licensing, certification, payment, issuance of guaranties and insurance for, and/or otherwise setting standards for the operation and occupancy of skilled nursing facilities.

"Health Care Licenses" means all Medicare and Medicaid certifications and provider agreements, all public third party payor certifications and provider agreements, and all certifications, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses and certificates of need required by Health Care Authorities for the legal use, occupancy and operation of the Facility.

"HUD" means the United States Department of Housing and Urban Development.

"Landlord" as defined in introductory paragraph, and Section 1.2.

"Landlord's Unreturned Capital Value" means for Landlord at any time, (a) the sum of (i) the initial capital contributions made to Landlord by its members and (ii) the additional capital contributions, if any, made to Landlord by its members as of such time, less (b) the distributions made to the members of Landlord as of such time. The Landlord's Unreturned Capital Value will be determined in good faith by Landlord, and Landlord shall give Tenant notice of any change thereto. As of the execution of this Lease Landlord's Unreturned Capital Value is \$11,584,290.

"Landlord's Indemnitees" as defined in Section 9.1.

"Landlord's Work" as defined in Section 5.1.

"Laws" as defined in Section 5.1.

"Lease Default" as defined in Section 16.1.

"Leased Premises" as defined in Section 2.1.

"Lease Year" as defined in Section 3.1.

“Letter of Credit” as defined in Section 7.1.

“Material Default” as defined in Schedule 3.1.

“Mezzanine or second Mortgage” means a mortgage on the Premises junior to the first Mortgage.

“Mortgagee” shall refer to the first and second priority mortgages secured by fee simple interest in the Real Property as amended, restated, extended or replaced from time to time in Landlord’s discretion.

“Overdue Rate” as defined in Section 9.1(b).

“Primary Market of the Facility” means a fifteen mile radius of the Leased Premises.

“Prime Rate” as defined in Section 9.1.

“Prospective Mortgagee” means any Person chosen by Landlord as a Mortgagee prior to a closing of a Mortgage to be held by such Person.

“Real Property” as defined in Recital A

“Rent” as defined in Section 3.2.

“Security Deposit” as defined in Section 7.1.

“Special Purpose Entity” as defined in Schedule 19.2.

“Substantial Completion Date” means the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Landlord’s architect, that the Facility was substantially completed and in substantial compliance with the plans and specifications for the Facility, and (ii) the date Landlord delivers a Temporary Certificate of Occupancy (the “TCO”) for the Facility, provided, however, if the Landlord is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (ii).

“Tenant’s Lease Coverage Ratio” means EBITDAR divided by Fixed Rent.

“Term” as defined in Section 3.1 (including all exercised Extension Terms).

“Total Project Cost or “TPC” is the actual cost of purchasing, developing, constructing, and equipping the Facility, including without limitation, the cost of the Real Property and improvements, development costs, financing costs, and the cost of Landlord’s Work and all equipment.

“Utilities” as defined in Section 4.1.

ARTICLE II

LEASED PREMISES

Section 2.1 Leased Premises. Landlord hereby leases and demises to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions set forth in this Lease, the following assets:

(a) all of Landlord's right, title, and interest in and to the Real Property, including, without limitation, all buildings, structures, erections, improvements, appurtenances, easements and fixtures, including fixed machinery and fixed equipment situated thereon or forming a part thereof; and

(b) all of Landlord's right, title and interest in and to all machinery, trade equipment, trade fixtures, furniture, furnishings, beds, and accessories of all kinds used in connection with the Facility located on the Real Property.

All of the items described in Sections 2.1(a) and 2.1(b) herein are collectively referred to as the "Leased Premises." Landlord and Tenant acknowledge and understand that all of the items which comprise the Leased Premises, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, shall be transferred back to Landlord in accordance with the terms and conditions set forth herein upon the expiration or earlier termination of this Lease.

Section 2.2 In connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein, and each successor in interest, shall have the right to transfer all amounts deposited pursuant to Section 4.3 with respect to the Facility, less any amount used pursuant to Section 4.3, to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, Landlord or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto. If Landlord's interest in the Leased Premises is sold or conveyed as provided above or otherwise or by operation of law: (i) at the new owner's option, Tenant shall attorn to and recognize the new owner as Tenant's Landlord under this Lease and Tenant shall take such actions to confirm the foregoing within ten (10) days after request.

ARTICLE III

TERM AND RENT

Section 3.1 Term of Lease.

(a) The term (the "Term") of this Lease shall be for a period of thirty (30) years commencing on the later to occur of (i) the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility and (ii) the date that New York State Department of Health (hereinafter sometimes, "DOH") determines that the Landlord's Work is sufficiently

complete as constructed (but not necessarily the Tenant's operations) to accept patients, provided, however, if the Landlord is unable to obtain a permanent or temporary Certificate of Occupancy because of the actions or inactions of the Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of a permanent or temporary Certificate of Occupancy shall not be a condition under clause (i) (the "Commencement Date"), and ending at 11:59:59 P.M. on the day preceding the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date (the "Expiration Date"). Under any and all circumstances, Landlord shall not be liable to Tenant, in damages or otherwise, for any delay in delivering the Leased Premises to Tenant and Tenant shall have no right to terminate or rescind this Lease on account thereof. Notwithstanding the Commencement Date, certain of the rights and obligations of the parties shall commence on the Effective Date, but not including Tenant's obligations to pay Fixed Rent and Impositions prior to the Commencement Date, or to maintain the Leased Premises, insure the Leased Premises or restore the Leased Premises after a casualty or condemnation prior to the Commencement Date, or any other rights and obligations, which by their terms are intended to commence as of the Commencement Date, which rights and obligations shall commence on the Commencement Date.

As used herein with respect to the Term and the periods for payment of Rent (unless the context otherwise requires) the term "Lease Year" shall mean a 365 day period (or 366 day period in the case of a leap year), first commencing on the Commencement Date and thereafter on successive anniversaries thereof, and ending on the day prior to the next succeeding anniversary of the Commencement Date.

Landlord and Tenant hereby acknowledge that the Commencement Date is presently indeterminate and shall occur only as hereinabove provided in this Section. Except for the rights of Tenant expressly stated herein, Tenant hereby waives any right to rescind this Lease under the provisions of Section 223-a of the Real Property Law of the State of New York, and agrees that the provisions of this Article are intended to constitute "an express provision to the contrary" within the meaning of said Section 223-a. Landlord and Tenant shall execute a memo specifying the Commencement Date immediately following its occurrence.

(b) Provided a Lease Default has not occurred and is then continuing either at the time of the exercise of the options provided below or at the end of the Term or Extension Term, or there has not been any Lease Default listed in Schedule 3.1 attached hereto (a "Material Default"), whether or not cured, within two years of the end of the Term or Extension Term, Tenant shall have the option to extend the Term of this Lease for three (3) additional periods of ten (10) years each (each an "Extension Term"), by giving written notice to Landlord not less than five forty-five (545) days nor more than seven hundred (700) days prior to the expiration of the Term (or Extension Term as the case may be) of this Lease, TIME BEING OF THE ESSENCE to these time periods. These options may be exercised by Tenant serving written notice upon Landlord stating that Tenant is exercising the option to extend. If Tenant fails to give such notice in writing to Landlord within the time period specified herein, all rights and privileges granted to Tenant to extend this Lease shall lapse and become null and void. No later option may be exercised if Tenant has failed to exercise a prior option. If Tenant has validly exercised its option(s) to extend the Term, references herein to the "Term" shall be deemed to include an Extension Term.

Section 3.7 Rent.

(a) Beginning in the first (1st) Lease Year of the Term and for each succeeding Lease Year thereafter, including during any and all Extension Terms, Tenant shall pay Landlord an amount ("Fixed Rent"). computed on an annualized basis, equal to the sum of the amounts provided for in clauses (i) through (iv), less the amount provided for in clause (v):

(i) the annual debt service payments (principal and interest) that Landlord is required to pay to Lender pursuant to the first Mortgage, plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations;

(ii) the annual debt service payments or preferred equity payments that the Landlord is required to pay pursuant to the Mezzanine or second Mortgage, plus such additional amounts as Landlord may be required to pay under any of the Loan Documents with respect to tax, insurance and other reserve requirements and/or payment obligations under the Mezzanine or second Mortgage;

(iii) an annual amount equal to as sum computed by multiplying the amount of Landlord's Unreturned Capital Value by Twelve Percent (12%);

(iv) an additional amount of \$250,000 per year during Lease Years one through three; \$350,000 per year during Lease Years 4 and 5; and \$400,000.00 per Lease Year thereafter until the end of the Term.

(v) \$32,400 annually for years one through thirty five

(b) Tenant shall pay the Rent to Landlord during the term without deduction or setoff and without demand.

(c) The terms "Additional Rent" or "additional rent" means all sums, amounts, fees, expenses and costs (including, without limitation, legal fees and disbursements) payable or reimbursable to Landlord under this Lease other than Fixed Rent, and all of same shall be and constitute Additional Rent hereunder. The terms "Fixed Rent" and "Additional Rent" shall be collectively referred to as "Rent." Landlord shall have the same rights and remedies hereunder consequent upon a failure of Tenant to pay any item of Additional Rent as upon a failure of Tenant to pay any item of Fixed Rent.

(d) Rent shall be due and payable in advance in equal monthly installments during each year on the first (1st) day of each calendar month thereof (or in the event the first day of the calendar month is not a business day, on the first business day following the first day of each calendar month) throughout the Term. Rent for any period which is less than a full calendar month or full year, as the case may be, during the Term, shall be prorated on a daily basis. Rent shall not be paid more than one (1) month in advance. Rent shall be paid to Landlord at Landlord's address set forth in Section 13.1 or at such other place as Landlord designates from time to time by written notice to Tenant. Tenant agrees to pay Rent, at Landlord's direction, by electronic transfer or wire, as directed by Mortgagee in writing.

(e) TENANT HEREBY ACKNOWLEDGES THAT LATE PAYMENT BY TENANT TO LANDLORD OF RENT WILL CAUSE LANDLORD TO INCUR COSTS NOT CONTEMPLATED HEREUNDER, THE EXACT AMOUNT OF WHICH IS PRESENTLY ANTICIPATED TO BE EXTREMELY DIFFICULT TO ASCERTAIN. SUCH COSTS MAY INCLUDE PROCESSING AND ACCOUNTING CHARGES AND LATE CHARGES WHICH MAY BE IMPOSED ON LANDLORD BY THE TERMS OF ANY LOAN AGREEMENT AND OTHER EXPENSES OF A SIMILAR OR DISSIMILAR NATURE. ACCORDINGLY, IF ANY INSTALLMENT OF RENT THAT IS PAYABLE TO LANDLORD OR HIS DESIGNEE SHALL NOT BE PAID WITHIN FIVE (5) DAYS OF THE DATE WHEN DUE, TENANT WILL PAY LANDLORD ON DEMAND A LATE CHARGE EQUAL TO FIVE PERCENT (5%) OF THE UNPAID PORTION OF THE AMOUNT OF SUCH INSTALLMENT. THE PARTIES AGREE THAT THIS LATE CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE COSTS THAT LANDLORD WILL INCUR BY REASON OF LATE PAYMENT BY TENANT. THE PARTIES FURTHER AGREE THAT SUCH LATE CHARGE IS RENT AND NOT INTEREST AND SUCH ASSESSMENT DOES NOT CONSTITUTE A LENDER OR BORROWER/CREDITOR RELATIONSHIP BETWEEN LANDLORD AND TENANT. IN ADDITION, THE AMOUNT UNPAID, INCLUDING ANY LATE CHARGES, SHALL BEAR INTEREST AT THE OVERDUE RATE FROM THE DUE DATE OF SUCH INSTALLMENT TO THE DATE OF PAYMENT THEREOF, AND TENANT SHALL PAY SUCH INTEREST TO LANDLORD ON DEMAND. THE PAYMENT OF SUCH LATE CHARGE AND/OR SUCH INTEREST SHALL NOT CONSTITUTE A WAIVER OF, NOR EXCUSE OR CURE, ANY DEFAULT UNDER THIS LEASE. NOR PREVENT LANDLORD FROM EXERCISING ANY OTHER RIGHTS AND/OR REMEDIES AVAILABLE TO LANDLORD.

(f) If a default is declared by the Commissioner under the provisions of the Regulatory Agreement, provided a copy of Notice of Default is given to Tenant, Tenant shall thereafter make all future payments under this Lease to the Commissioner.

Section 3.3 Net Lease Provisions. Landlord and Tenant intend that the Rent herein specified shall be net to Landlord in each year during the Term, and that all costs, expenses and obligations of every kind and nature, (known or unknown, general or special, ordinary or extraordinary, foreseen or unforeseen, direct or indirect, contingent or otherwise) relating to the operation, repair and maintenance of the Leased Premises (except Landlord's income taxes) which may arise or become due during the Term shall be timely paid by Tenant and that Landlord shall be indemnified by Tenant against such costs, expenses and obligations. Tenant's obligation to pay Rent is independent of all, and is in no manner conditioned upon any, other covenants, conditions and obligations of Landlord or Tenant under this Lease. There shall be no abatement of Rent payments for any reason nor shall Tenant be entitled to any offsets or deductions from Rent payments due hereunder.

Section 3.4 Rent Tax. If any governmental taxing authority levies, assesses, or imposes any tax, sales or use tax, privilege tax, excise or assessment (other than income or franchise taxes) upon or against the Rent payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise or assessment, or, if Landlord pays same,

Tenant shall reimburse Landlord for the amount thereof within ten (10) days after written demand by Landlord.

It is the intent of this Section 3.4 and all other provisions of this Lease to insure that the Rent (including Additional Rent) paid to Landlord by Tenant will be received by Landlord without diminution by any tax, assessment, charge or levy of any nature whatsoever, except United States, State of New York and local net income taxes, and the terms and conditions of this Lease shall be liberally construed to effect such purpose. Without limiting the generality of the foregoing, if any tax is assessed or based on gross income actually or constructively received by Landlord pursuant to this Lease, Tenant shall pay such amount which, when added to said gross income, shall yield to Landlord, after deduction of all such tax payable by Landlord with respect thereto, a net amount equal to that which Landlord would have realized therefrom had no such tax been imposed.

Section 3.5 Assignment of Lease to Mortgagee. Tenant acknowledges that all of the interest of Landlord in and to this Lease has been or will be assigned to Mortgagee pursuant to the Loan Documents.

Tenant agrees to promptly execute and deliver to Landlord from time to time any and all documents required by a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender, or any successor, commercial, agency or private lender, including, without limitation, a lease addendum, regulatory agreement, subordination agreement, non-disturbance and attornment agreement, and/or estoppel certificate, in order to finance or refinance the Facility or otherwise.

Tenant will on request at any time or from time to time by Landlord or any Mortgagee or Prospective Mortgagee subordinate this lease and all of Tenant's rights and estate hereunder to such Person's Mortgage and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, or declare such Mortgage to be prior to this lease and to any renewals, extensions, substitutions, refinancings, modifications or amendments thereof, and agree with such holder that Tenant will attorn thereto in the event of foreclosure. Landlord agrees to use reasonable efforts (except that Landlord shall not be obligated to expend money for any such agreement) to obtain a written agreement from any such holder in the form typically used by such holder which consents to this lease and provides that, notwithstanding such mortgage or any default, expiration, termination, foreclosure, sale, entry or other act or omission under, pursuant to or affecting said Mortgage, Tenant shall not be disturbed in peaceful enjoyment of the Leased Premises or this lease terminated or canceled at any time, except in the event Landlord shall have the right to terminate this lease under the terms and provisions set forth herein.

Section 3.6 True Lease. It is the intent of Landlord and Tenant and the parties agree that this Lease is a true lease and that this Lease does not represent a financing agreement. Each party shall reflect the transaction represented hereby in all applicable books, records and reports (including income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

Section 3.7 Right of First Refusal; Buyout. (a) Landlord shall not sell, transfer or convey the Leased Premises to a third person or entity unless Tenant first is given the

opportunity to purchase the Leased Premises pursuant to the terms and conditions set forth in this Section 3.7(a). If at any time during the first eleven years of Term Landlord receives from any third person or entity an Offer (as hereinafter defined) to purchase the Leased Premises which Landlord desires to accept, Landlord shall notify Tenant of such Offer by delivering written notice to Tenant, which notification (the "Offer Notice") shall contain a copy of the written Offer or, at Landlord's election, a written summary of the terms of the Offer. For purposes of this Lease, an "Offer" shall mean any bona fide written instrument or verbal communication setting forth the terms pursuant to which Landlord will convey the Leased Premises. Tenant shall have ten (10) Business Days after receipt of the Offer Notice in which to elect by written notice delivered to Landlord (the "Acceptance Notice") to enter into a formal agreement on the same terms and conditions as those contained in the Offer ("Tenant's Purchase Right"). Such election shall be effective only if within ten (10) Business Days after delivery of the Acceptance Notice the parties enter into a written purchase agreement on terms reasonably acceptable to Landlord in good faith for the sale of the Leased Premises to Tenant containing all terms of the Offer. If Tenant fails to timely deliver the Acceptance Notice, or if Tenant fails to timely enter into said purchase agreement as provided herein, Landlord shall have the right to accept the Offer or any modification thereof on terms substantially similar as those set forth in the Offer. Tenant's right to purchase the Leased Premises identified in the Offer Notice shall not apply to (i) transfers of less than one hundred percent of the ownership interests in Landlord, (ii) a public offering of ownership interests in Landlord, (iii) a recapitalization transaction of any kind involving Landlord, (iv) condemnation, eminent domain or similar proceedings, or (v) rights exercised by Mortgagees in foreclosure or in lieu thereof pursuant to Mortgages or other documents executed by Landlord in connection therewith, including the subsequent disposition of the Premises by Mortgagee or its affiliate or designee that acquires the Leased Premises in connection therewith.

(b) Notwithstanding anything to the contrary, if Landlord's Offer Notice states that it is purchasing from Tenant Tenant's Purchase Right, then (i) Tenant shall have no further rights under Section 3.7(a), and Section 3.7(a) shall be null and void without further effect, and (ii) upon the closing of the purchase and sale of the Leased Premises pursuant to the Offer, Landlord shall pay Tenant ten percent (10%) of the excess of the sales price agreed to pursuant to the Offer (less costs and fees, including broker's fees) over the "GPC, the "Offer Fee"), and (iii) the Rent shall be the greater of the amount as determined by Section 3.2(a) or fair market value, as shall be determined by an independent third party appraiser jointly appointed by Landlord or and Tenant, and absent their agreement appointed by the then chairman or similar officer of the Westchester County Society of Real Estate Appraisers. For purposes of clarification, Tenant shall not be entitled to the receipt of the Offer Fee if Tenant exercises Tenant's Purchase Right as set forth in Section 3.7(a) above.

(c) Upon expiration of the eleventh Lease Year, Tenant's Right of First Refusal as set forth in in Section 3.7(a) shall lapse and become null and void.

Section 3.8. Option to Purchase. Commencing on the first day of the twelfth Lease Year of the lease and ending on the last day of the fifteenth Lease Year of the lease, the Tenant shall have the right to purchase the Leased Premises from Landlord for a purchase price during each of the following Lease Years as follows:

- (a) During the Twelfth Lease Year the sum of (i) TPC plus (ii) One Million Five Hundred Thousand Dollars
- (b) During the thirteenth Lease Year the sum of (i) TPC plus (ii) One Million Six Hundred Fifty Thousand Dollars
- (c) During the fourteenth Lease Year the sum of (i) TPC plus (ii) One Million Eight Hundred Thousand Dollars
- (d) During the fifteenth Lease Year the sum of (i) TPC plus (ii) One Million Nine Hundred Fifty Thousand Dollars

Upon expiration of the fifteenth Lease Year, Tenant's the right to purchase the Leased Premises from Landlord, all as set forth above, shall lapse, become null and void, and Tenant shall have deemed to waived all such rights hereunder.

ARTICLE IV  
UTILITIES AND TAXES

Section 4.1 Utilities. From and after the Commencement Date, Tenant shall pay or cause to be paid all charges next coming due and payable for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the Leased Premises (the "Utilities") during the Term. Tenant covenants to place all Utilities in Tenant's name as of the Commencement Date. Adjustment shall be made for Utilities applicable to any period prior to the Commencement Date. In the event Landlord is billed directly by any service provider or utility company for any Utilities or services supplied to Tenant during the Term, Landlord shall send Tenant the bill and Tenant shall promptly pay the same. Landlord shall have no obligation or liability with respect to any interruption or failure in the supply of any such Utilities. If Landlord elects to or shall be required to pay for any Utilities to preserve and/or protect the Leased Premises, Tenant shall reimburse Landlord for the cost and expense thereof plus interest at the Prime Rate.

Section 4.2 Taxes. Tenant shall be solely responsible for the payment, prior to the date when penalties would attach, of all general and special real estate taxes and assessments (together with any excise taxes on such real estate taxes and assessments levied or imposed by any governmental taxing authority), fire district taxes, liens, impositions, including capital stock, franchise, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes; personal property taxes, assessments including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; ground rents; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Premises, and all interest and penalties thereon attributable to any failure in payment by Lessee which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon the Leased Premises (collectively, the "impositions") that

accrue from the Commencement Date through the Term. Adjustment shall be made for Impositions applicable to any period prior to the Commencement Date. Tenant shall pay all of the Impositions directly to the applicable taxing authorities and Tenant shall promptly forward proof of payment to Landlord in such form as shall be reasonably acceptable to Landlord unless Landlord elects to require escrow deposits in accordance with Section 4.3 hereof. Landlord shall promptly forward any tax bills which it may receive to Tenant. Landlord shall only bill Tenant for any of the Impositions if Tenant does not pay any of the Impositions before delinquency and Landlord is obligated or elects (in Landlord's sole and absolute discretion) to pay any of the Impositions directly to remain current with all taxing authorities. Tenant shall pay the full amount of any increases in any of the Impositions resulting from alterations or improvements made by or for the benefit of Tenant. After the expiration or termination of this Lease, Tenant shall pay all bills for any of the Impositions which become due and payable after the expiration or termination of the Lease covering any period through the expiration or earlier termination of the Lease. If any governmental taxing authority acting under any present or future ordinance or regulation, shall levy, assess or impose a tax, excise and/or assessment (other than any net income or franchise tax) upon Landlord or Tenant for rental payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, then Tenant shall be responsible for and shall pay such tax, excise and/or assessment or shall reimburse Landlord for the cost and expense thereof, as the case may be. Provided that Tenant shall have deposited a sufficient amount of funds to pay the Impositions pursuant to Section 4.3 and Tenant has done nothing to prevent payment by Landlord or its lender of the Impositions, then Tenant shall not be responsible for any and all late payment fees and/or penalties, including interest, imposed by any applicable taxing authorities with respect to the untimely payment of Impositions.

Section 4.3 Escrow Deposits.

(a) Escrow. At the option of Landlord, which may be exercised at any time by Landlord in its sole and absolute discretion Tenant shall, on the first day of the first calendar month commencing after notice from Landlord, and on the first day of each calendar month thereafter during the Term (each of which dates is referred to as a "Monthly Deposit Date"), pay to and deposit with Landlord a sum equal to one-twelfth (1/12th) of the Impositions to be levied, charged, filed, assessed or imposed upon or against the Leased Premises within one (1) year after said Monthly Deposit Date and a sum equal to one-twelfth (1/12th) of the premiums for the property insurance policies required pursuant to Article VI which are payable within one (1) year after said Monthly Deposit Date. If the amount of the Impositions to be levied, charged, assessed or imposed or insurance premiums to be paid within the ensuing one (1) year period shall not be fixed upon any Monthly Deposit Date, such amount for the purpose of computing the deposit to be made by Tenant hereunder shall be reasonably estimated by Landlord with an appropriate adjustment to be promptly made between Landlord and Tenant as soon as such amount becomes determinable. In addition, Landlord may, at its option, from time to time require that any particular deposit be greater than one-twelfth (1/12th) of the estimated amount payable within one (1) year after said Monthly Deposit Date, if such additional deposit is required in order to provide to Landlord sufficient funds from which to make payment of all Impositions on or before the next due date of any installment thereof, or to make payment of any required insurance premiums not later than the due date thereof. If any Mortgagee or the Commissioner requires Landlord to impound insurance premiums on a periodic basis during the

term, Tenant, on notice from Landlord indicating this requirement, shall pay a sum of money towards its liability under this Lease to Landlord on a periodic basis in accordance with Landlord's requirements. Landlord shall impound the premium payments received from Tenant in accordance with the requirements of Mortgagee and shall utilize such funds to timely pay insurance premiums

(b) Use of Deposits. The sums deposited by Tenant under this Section 4.3 shall be held by Landlord or Mortgagee and shall be applied in payment of the Impositions or insurance premiums, as the case may be, when due. Any such deposits may be commingled with other assets of Landlord or such Mortgagee, and shall be deposited by Landlord or such Mortgagee in an Eligible Institution in such account or accounts as Landlord or the Mortgagee may, from time to time select, and Landlord shall not be liable to Tenant or any other person (i) based on Landlord's or the Mortgagee's (or any bank's) choice of investment vehicles, (ii) for any consequent loss of principal or interest or (iii) for any unavailability of funds based on such choice of investment. Furthermore, subject to the foregoing regarding the use of depositories and accounts, Landlord and its Mortgagee shall bear no responsibility for the financial condition of, nor any act or omission by the depository bank. No income, if any, from such investment or interest on such deposits shall be paid to Tenant. To the extent that Landlord does not have an invoice or bill specifying the due date for payment, Tenant shall give not less than thirty (30) days prior written notice to Landlord in each instance when an Imposition or insurance premium is due, specifying the Imposition or premium to be paid and the amount thereof, the place of payment, and the last day on which the same may be paid in order to comply with the requirements of this Lease. If Landlord, in violation of its obligations under this Lease, does not pay any Imposition or insurance premium when due, for which a sufficient deposit exists, Tenant shall not be in default hereunder by virtue of the failure to pay such Imposition or such insurance premium and Tenant shall not be liable for any late payment fees and/or penalties, including interest imposed as a result of such failure to pay. The term "Eligible Institution" shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least "A-11" by S&P, "P-1" by Moody's and "F-1+" by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "AA" by Fitch and S&P and "Aa2" by Moody's).

(c) Deficits. If for any reason any deposit made by Tenant or held by Landlord under this Section 4.3 shall not be sufficient to pay any Imposition or insurance premium within the time specified therefor in this Lease, then, within ten (10) days after demand by Landlord, Tenant shall deposit an additional amount with Landlord, increasing the deposit held by Landlord so that Landlord holds sufficient funds to pay such Imposition or premium in full (or in installments as otherwise provided for herein), together with any penalty or interest thereon. Landlord may change its estimate of any Imposition or insurance premium for any period on the basis of a change in an assessment or tax rate or on the basis of a prior miscalculation or for any other good faith reason; in which event, within ten (10) days after demand by Landlord, Tenant shall deposit with Landlord the amount in excess of the sums previously deposited with Landlord for the applicable period which would theretofore have been payable under the revised estimate.

(d) Transfers. Consistent with Section 2.2, in connection with any assignment of Landlord's interest under this Lease and the assumption of this Lease by a new landlord, the original Landlord named herein and each successor in interest shall have the right to transfer all amounts deposited pursuant to the provisions of this Section 4.3 and not used pursuant to this Section 4.3 to such assignee (as the subsequent holder of Landlord's interest in this Lease) and upon such transfer, the original Landlord named herein or the applicable successor in interest transferring the deposits shall thereupon be completely released from all liability with respect to such deposits so transferred and Tenant shall look solely to said assignee, as the subsequent holder of Landlord's interest under this Lease, in reference thereto.

(e) Security. All amounts deposited with Landlord pursuant to the provisions of this Section 4.3 shall be held by Landlord as additional security for the payment and performance of Tenant's obligations under this Lease and, upon the occurrence and during the continuance of any Lease Default, Landlord may, in its sole and absolute discretion, apply such amounts towards payment or performance of such obligations.

(f) Return. Upon the expiration or earlier termination of this Lease, as long as all of the Rent and any and all other obligations due under this Lease have been fully paid and performed, any sums then held by Landlord under this Section 4.3 shall be refunded to Tenant, and subject to the rights of a Mortgagee, together with all interest, if any, earned thereon and all income, if any, earned therefrom; provided, however, that if a Lease Default has occurred and is continuing, all of such sums may be applied by Landlord towards any amounts owed to Landlord pursuant to this Lease.

(g) Receipts. Tenant shall deliver to Landlord copies of all claims and bills in relation to the Impositions and insurance premiums promptly upon receipt thereof by Tenant.

This Article and the obligations herein shall survive expiration or earlier termination of this Lease.

**ARTICLE V**

**LANDLORD'S WORK, MAINTENANCE AND REPAIR; IMPROVEMENTS**

Section 5.1 Landlord's Work. (a) Landlord shall cause the Facility to be constructed ("Landlord's Work").

(b) Landlord will give Tenant thirty (30) days' notice of the date Landlord expects to be the Substantial Completion Date. On or prior to the Substantial Completion Date, Landlord and Tenant shall jointly prepare a list of the items for the Facility that remain to be completed or corrected, set a dollar value for the cost to complete the work, and fix time for their completion or correction (collectively the "Punchlist").

(c) Notwithstanding anything in this lease to the contrary, on and after the Substantial Completion Date Tenant shall be deemed to have agreed Landlord has completed Landlord's Work to Tenant's complete satisfaction, except for (i) the Punchlist, (ii) such items of decoration or mechanical adjustment of which Tenant gives Landlord written notice within thirty

(30) days after the Substantial Completion Date (the "Initial Correction Items") or (iii) any defects in the Facility which were not known or reasonably discoverable by Tenant in the time period specified in the immediately prior clause (ii) ("Latent Defects"); provided that, as to Latent Defects, Landlord will have no responsibility or liability therefor, or for the correction thereof, unless (A) Tenant conducts at least one inspection of the Facility with a qualified engineer or other expert, within one year from the Substantial Completion Date, and (B) Tenant gives Landlord notice of such Latent Defects within thirty( 30) days after discovery thereof and in any event not later than one year after the Substantial Completion Date, which notice will be accompanied by the certification of such engineer or other experts, specifying, in detail, such Latent Defects in the Facility.

(d) At its sole expense, Landlord shall complete the Punchlist, and remedy the Initial Correction Items, and the Latent Defects provided with respect to Latent Defects that the conditions set out in clause (iii) of section (c) are satisfied.

(e) In the extent assignable at no cost to Landlord, Landlord assigns to Tenant all manufacturer warranties on materials and equipment. Tenant shall have the benefit and right to enforce such warranties at its sole cost and expense.

Section 5.2 Maintenance and Repair. Except as provided in Section 5.1, Tenant, at Tenant's sole cost and expense, shall keep the Leased Premises, including all buildings, fixtures, trade equipment, trade fixtures, furniture, beds and other personal property leased to Tenant pursuant to this Lease, including, without limitation, all structural and non-structural components, the roof, foundation, all outer walls, plumbing, sprinklers, electrical, mechanical, heating, ventilation, utility service, air conditioning, vertical transport, telephone, communications, cable, computer, fire-life-safety, nursing call, and all other systems of the Leased Premises in good condition and repair and in compliance with all Laws. Landlord shall not be responsible to make any improvements, repairs, maintenance or replacements whether occasioned by the act, omission, active negligence, or passive negligence of Landlord or Tenant and/or its agents, employees, invitees or licensees or otherwise, and Tenant shall pay for all improvements, repairs, replacements, maintenance and expenditures relating to the Leased Premises, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the commencement of the Lease, by Tenant's use or by a change in applicable Laws. The Leased Premises and its appurtenances shall at all times be kept clean, safe and sanitary and in good order, condition, replacement and repair by Tenant, at Tenant's sole cost and expense, except for ordinary wear and tear (provided, however, that, without limiting the generality of this Section 5.2, Tenant shall be obligated to replace any portion of the Leased Premises upon any obsolescence thereof or if proper repair is impractical). Tenant shall provide (if not currently a part of the Leased Premises) and maintain, repair and replace, as necessary, all furniture, fixtures, equipment and/or other personal property required by any Governmental Authority (other than furniture, fixtures, equipment and/or other personal property owned by contractors providing ancillary services at the Facility) necessary for the operation of the Facility and to comply with all Laws. All such property provided by Tenant shall immediately become the property of Landlord and Tenant shall execute such documentation as Landlord may reasonably require vesting title in such property in Landlord. Landlord shall have no liability or obligation with respect to such property or any of Tenant's operations relating thereto. All replacements made by Tenant hereunder shall

be made in a good and workmanlike manner in accordance with Laws using the same, similar or better quality of materials as being replaced and shall immediately become the property of Landlord. Tenant acknowledges that title and ownership of all repaired and replaced furniture, fixtures, equipment and/or other personal property made hereunder shall belong to and is for the benefit of Landlord. Tenant shall not enter into any equipment leases or conditional sales contracts for any furniture, fixtures, equipment and/or other personal property relating to the Facility without Landlord's consent which it may grant or withhold in its sole discretion. The term "Laws" means, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Leased Premises or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Tenant, at any time in force affecting the Leased Premises or any part thereof. The term "Governmental Authority" means any court, board, agency, arbitrator, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

Section 5.3 Improvements, Renovation, Alterations and Additions. Tenant shall have the right during the Term to make such non-structural interior alterations, changes and improvements to the Leased Premises as may be proper and necessary for the conduct of Tenant's business, to cause the Leased Premises to conform to all Laws, for patient comfort and safety, or for the full beneficial use of the Leased Premises, so long as such improvements do not (i) exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) in any given calendar year, (ii) interfere with any of the purposes for which the Facility was leased or affect the roof or structure, (iii) decrease the value of the Leased Premises, (iv) affect any building system, including, heating, ventilation, air conditioning, mechanical, electrical, plumbing or vertical transport systems, or (v) affect the exterior appearance of the Leased Premises. Tenant shall not make any other alterations, changes, or improvements without the express written approval in each instance by Landlord, which consent shall not be unreasonably withheld; provided, however, that the granting or withholding of consent shall not result in any liability to Landlord. Furthermore, Tenant may make all repairs or replacements required by a Governmental Authority without obtaining Landlord's consent, provided, however, Tenant shall give Landlord no less than ten (10) days prior written notice of such government mandated repairs or replacements prior to making or implementing same, unless emergency factors necessitate the making of such repairs before Tenant can reasonable give notice to Landlord, in which event Tenant shall give notice to Landlord as soon as reasonably possible. Tenant shall pay for all costs, fees and penalties imposed by the applicable state agencies or the Center for Medicare and Medicaid Services ("CMS") or other Governmental Authority in connection with any survey or the Change of Ownership. Tenant shall notify Landlord of any alterations, changes or improvements required and/or permitted by the applicable state agencies or the CMS or other Governmental Authority prior to the commencement thereof. Tenant shall pay all costs and expenses of any required and/or permitted alterations, changes, and improvements, shall make the same in a good and workmanlike manner, and in accordance with all Laws, having obtained all necessary permits and approvals from Governmental Authorities having jurisdiction over the Facility and work performed thereon or therein, and shall assure Landlord, in form reasonably satisfactory to Landlord, all necessary permits and authorizations have been received and that

payment for the work and materials will be made by Tenant. Tenant hereby completely and fully indemnifies Landlord against any mechanic's liens or other liens or claims in connection with the making of any alterations, changes, and/or improvements. Any liens arising out of any required and/or permitted alterations, changes, and/or improvements shall be discharged of record by Tenant within the earlier of thirty (30) days after the same have been filed by payment, bonding or otherwise, as permitted by law, or five (5) days after commencement of a foreclosure or enforcement action. Notwithstanding any provision of this Lease to the contrary, Tenant shall not undertake any alterations, renovations, or improvements to the Facility or otherwise commence any project or activity with respect to the Facility, which may result in any bed being taken out of service for more than seven (7) days without Landlord's and/or Mortgagee's prior written consent, which Landlord's consent shall not be unreasonably withheld. Tenant shall give Landlord written notice ten (10) days prior to commencing repairs, construction, or alterations whose costs exceed One Hundred Thousand Dollars (\$100,000.00).

**Section 5.4 Signage.** All signs installed by Tenant at the Facility shall comply with all Laws, and all necessary permits or licenses shall be obtained by Tenant. Tenant shall maintain all signs in good condition and repair, and/or replace as may be required by applicable law, at all times at Tenant's sole cost and expense. Upon vacating the Leased Premises, Tenant shall remove all signs and supporting material or installations so installed by Tenant, but only if Landlord shall request such removal, and Tenant shall repair all damage caused by such removal. Landlord acknowledges and agrees that neither Landlord nor any subsequent tenant of Landlord shall be authorized to use any company or registered trade name of Tenant or any of Tenant's affiliates or subtenants.

**Section 5.5 Surrender.** (a) Subject to applicable law and to receipt of any necessary DOH approval, Tenant shall deliver up and surrender to Landlord possession of the Leased Premises and all improvements and replacements thereof, including all of Tenant's alterations, improvements work (and all replacements thereof) and all fixtures permanently attached to the Leased Premises by Tenant during the Term, upon the expiration of this Lease or its termination in any manner whatsoever, in as good condition and repair and in substantially similar form, character and manner as the same shall be on the Commencement Date, reasonable wear and tear excepted (without compensation to Tenant), with permitted changes, improvements and additions made during the Term as authorized herein, subject to no liens, encumbrances, charges, restrictions, conditions, limitations or claims whatsoever to the extent not encumbering the Leased Premises as of the Commencement Date, and deliver the keys and/or operational security cards to the Leased Premises to Landlord or Landlord's designated agent.

(b) Licenses and Transfer of Operations. Upon the expiration of the Term or earlier termination of the Lease, Tenant shall and shall cause its subtenants to, (i) transfer to Landlord or Landlord's nominee a fully operational, licensed and certified, and staffed facility and shall cooperate with Landlord or Landlord's designee or nominee in connection with the processing by Landlord or Landlord's designee or nominee of any applications for all licenses, operating permits and other governmental authorization, all contracts, including contracts with all Governmental Authorities or quasi governmental entities (provided that except following a Lease Default, the reasonable costs and expenses of the processing of any such application shall be paid by Landlord or Landlord's designee or nominee), (ii) transfer to Landlord or Landlord's

continue all tangible personal property of Tenant, including financial and accounting records, business records, data, employee and/or personnel records, patient and resident records, and all records held in electronic form, (all subject to the Laws requiring confidentiality), all equipment and small ware and all inventory used in connection with the Facility, (ii) transfer to Landlord or Landlord's nominee all intangible property except accounts receivable of Tenant, and (iv) transfer to Landlord or Landlord's nominee all residents in the Facility. With respect to resident funds, Tenant shall transfer to Landlord or its designee, all patient and resident trust accounts, and shall cause its subtenant to prepare and submit to Landlord or its designee a true, correct, and complete accounting and inventory (properly reconciled) of any patient trust funds and resident property to be transferred to Landlord, or its designee. Tenant shall, and shall cause its subtenant, not to commit any act or be remiss in the undertaking of any act that would jeopardize the licensure or certification of the Facility, and Tenant shall and shall cause its subtenant to comply with all requests for an orderly transfer of the same upon the expiration or early termination of the Term, including, but not limited to, upon the request of Landlord or its designee, the transitioning of employees in compliance with applicable laws. Without limiting the generality of the foregoing, if requested by Landlord or a proposed replacement operator for the Facility, Tenant hereby agrees to enter into a reasonable operations transfer agreement with such replacement operator. Tenant shall not unreasonably withhold, condition or delay its consent to entering into any interim subleases or management agreements as may be necessary to effectuate an early transfer of the operations of the Facility prior to the time that such replacement operator holds all licenses and permits from all applicable Governmental Authorities with jurisdiction necessary to operate the Facility for its intended use. In addition, upon request, Tenant shall and shall cause subtenants, to promptly deliver copies to Landlord or Landlord's designee of all books and records relating to the Leased Premises and operations thereon (including inventories, employee lists and personnel records, and policies and procedures manuals). Tenant shall allow Landlord or a proposed replacement operator for the Facility to utilize Tenant's, subtenants' computer hardware and software for a minimum of ninety (90) days to facilitate the transfer of operations, the collection of accounts receivables, the billing of providers, and the provision of patient care. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any loss, damage, cost or expense incurred by Landlord or Landlord's designee or nominee in connection with the correction of any and all deficiencies of a physical nature identified by any Governmental Authority responsible for licensing the Leased Premises in the course of any change of ownership inspection and audit. Tenant shall be responsible for any alterations or renovations necessitated by, or imposed in connection with, a change of ownership inspection survey for the transfer of operation of the Leased Premises to Landlord or its designee. Tenant shall not commence to wind up and terminate the operations of the Facility or relocate the patients or occupants of the Facility to any other health care facility. In addition, Tenant shall not terminate the employees of the Facility except in connection with and upon the transfer of operations of the Facility to Landlord or its designee.

(c) If Landlord notifies Tenant in writing that it intends to transfer the operations of the Facility to a new operator and desires to have Tenant continue to operate the Facility after the Expiration Date or earlier termination of the Lease, then Tenant shall continue to operate the Facility until the earliest to occur of (i) the date on which such successor operator shall assume operation of the Facility, or (ii) the date that is 180 days after the applicable Expiration Date or termination date (the "Reimbursement Period"). During the Reimbursement Period (x) Landlord shall provide Tenant with an operating budget, (y) Landlord

shall include in the aforesaid operating budget, and Tenant shall continue to pay during the Reimbursement Period, all Rent that would have been owing under this Lease as to the Leased Premises if this Lease had not expired or terminated as to, and/or Tenant had not been dispossessed from, such Leased Premises, and (z) provided that this Lease was not terminated with respect to, and Tenant was not dispossessed from, such the Lease Premises due to a Lease Default, Landlord shall reimburse Tenant for any operating deficits with respect to the Facility that Tenant may be required to fund out-of-pocket on account of operating losses and expenses incurred by Tenant by reason of, or arising out of compliance with, such budget with respect to the Reimbursement Period. Any such reimbursement shall be due from Landlord to Tenant within 60 days after request by Tenant, provided that Tenant shall furnish such documentation of any operating deficits, losses and expenses as Landlord may reasonably request. The terms of this Section 5.5(c) shall survive the expiration or earlier termination of this Lease and/or any dispossession of Tenant from the Lease Premises.

(d) Use of Legacy Tradename. Without limitation of the other provisions of this Section 5.5 and notwithstanding anything to the contrary contained in this Lease, Tenant agrees to allow Landlord or its designee operator, at its option and at no cost to Landlord or any such designee, to continue to use, in its signage, marketing and advertising materials, operations and otherwise, any or all name(s) (including tradenames) associated with the operation of the Facility as a going concern for up to 180 days following (i) the expiration or termination of this Lease and (ii) the vacation from, and surrender of, the Leased Premises and Facility by Tenant. At the end of such 180 day period, or upon sooner written notice from Landlord to Tenant, Tenant shall, promptly and at its expense, remove its aforesaid name(s) from all signs on the Facility and repair any damage to such signs caused by such removal. Landlord acknowledges and agrees that Tenant, not Landlord, owns the aforesaid names and that neither Landlord nor any designee of Landlord may use the same except as described in this Section 5.5(d) or as otherwise agreed in writing by Tenant.

(e) Management of Terminated/Dispossessed Premises. Commencing on the applicable Termination/Dispossession Date as to any Terminated/Dispossessed Premises, Landlord or its designee, upon notice to Tenant, may elect to assume the responsibilities and obligations for the management and operation of the Business at such Terminated/Dispossessed Premises, and Tenant agrees to cooperate fully to accomplish the transfer of such management and operation without interrupting the operation of such Business to the extent allowable by Laws. Tenant shall permit Landlord or its designee to operate the Facility under Tenant's licenses, certifications and other authorizations pending the issuance of new licenses, certifications and other authorizations Landlord or its designee. Tenant shall not commit any act or be remiss in the undertaking of any act that would jeopardize any licenses, certifications and other authorizations related to the Facility, and Tenant shall comply with all requests for an orderly transfer of all licenses, certifications and other authorizations related to the Facility and any payor's certifications.

(f) In addition, upon any expiration or termination of this Lease, Tenant covenants and agrees to do such things and to take such action as may, from time to time, be necessary or appropriate to permanently surrender and withdraw from possession and operation (including but not limited to licensure and certification) of the Leased Premises, and shall thereafter be fully and permanently relieved of all powers, duties, responsibilities and obligations

that are conferred or imposed upon Tenant under this Lease (except those continuing obligations, including but not limited to the obligation to pay all Rent due and owing under this Lease, and the obligation to pay all amounts owed by Tenant to the Medicare, Medicaid, third party payor programs and residents for the period of the Term, which survive the termination hereof as provided herein) and to restore and place Landlord or its designee in possession and operation of the Leased Premises, or any portion thereof, and Tenant covenants and agrees to execute and deliver to Landlord or Landlord's designee (each subject to the approval of DOH) all assignments, operation transfer agreements, consents, consents to assignments (including Medicare and Medicaid provider agreements, if requested by Landlord) documents and other instruments, to the reasonable satisfaction of Landlord in order to effectuate the provisions hereof.

Section 5.6 Condition of Leased Premises. (a) Subject to Section 5.1, Tenant shall accept and take possession of the Leased Premises in its "AS IS," "WHERE IS" "WITH ALL FAULTS" condition, and acceptance of possession of the Leased Premises on the Commencement Date shall be deemed an acknowledgment by Tenant of Tenant's acceptance of the condition of the Leased Premises. Tenant acknowledges and agrees that Landlord is not making any representation, warranty or covenant whatsoever with respect to the condition of the Leased Premises, or any portion thereof, or its suitability for any particular purpose, and Tenant shall be relying solely on its inspection of the Leased Premises and due diligence investigations with respect thereto.

(b) LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND FOR COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. EFFECTIVE AS OF THE DATE OF THIS LEASE, TENANT SHALL RELEASE LANDLORD FROM ALL CLAIMS WHICH TENANT OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MANAGER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTING ON TENANT'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH TENANT ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES, INCLUDING THE INFORMATION AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS, AND TENANT SHALL NOT LOOK TO LANDLORD IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS LEASE: (A) TENANT WILL ACQUIRE THE LEASED PREMISES SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS, AND (B) WITHOUT LIMITING THE FOREGOING, WAIVES ANY RIGHT (IF OTHERWISE

MAY HAVE AT LAW OR IN EQUITY AGAINST LANDLORD WITH RESPECT TO ANY ASPECT OF LEASED PREMISES.

ARTICLE VI

INSURANCE

Section 6.1 Insurance. (a) Tenant shall obtain and maintain, or cause to be maintained, insurance for Tenant and the Facility providing at least the following coverages or as required from time to time by any Mortgagee:

(i) comprehensive "all risk" insurance on the Facility and the Personal Property, including Building Ordinance Coverage from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation (except with respect to the insurance pursuant to clauses (D), (x), (y) and (z) below); (B) containing an agreed amount endorsement with respect to the Facility and Personal Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Ten Thousand Dollars (\$10,000.00) for all such insurance coverage (except as stated in the penultimate sentence of this subsection); and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if the Facility or the use of the Facility shall at any time constitute legal non-conforming structures or uses and covering the increased cost of construction, demolition cost, value of the undamaged portion of the structure and any increased expenses to rebuild due to the enforcement of building or zoning laws or requirements following a covered loss of the Leased Premises. In addition, Tenant shall obtain: (x) if any portion of any of the Leased Premises is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of any loan encumbering the Leased Premises or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or successor legislation, or such greater amount as Landlord and/or Mortgagee shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in an area with a high degree of seismic activity and (z) coastal windstorm insurance in amounts and in form and substance satisfactory to Landlord and Mortgagee in the event the Facility is located in a coastal region; provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive insurance policy required under this Subsection (i); and further provided that the earthquake insurance pursuant to clause (y) may provide for a deductible of up to the greater of One Hundred Thousand Dollars (\$100,000.00) and two percent (2%) of the amount of such coverage, (iii) the flood insurance pursuant to clause (x) may provide for a deductible of up to One Hundred Thousand Dollars (\$100,000.00), and (iv) the ordinance and law coverage pursuant to clause (D) may have a sub-limit of Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Facility, such

insurance (A) with a combined limit of not less than Five Million Dollars (\$5,000,000.00) in the aggregate and Two Million Dollars (\$2,000,000.00) per claim (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) to continue at not less than the aforesaid limit until required to be changed by Landlord and Mortgagee in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability; and (5) contractual liability covering the indemnities contained in Section 9.1 of the Lease to the extent the same is available;

(iii) business income with extra expense insurance (A) with loss payable to Landlord and Mortgagee; (B) covering all risks required to be covered by the insurance provided for in Subsection (i) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Facility and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Facility is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred percent (100%) of the projected net profit and extra expense with respect to the Facility for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire at the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Tenant's reasonable estimate of the gross income from the Facility for the succeeding twelve (12) month period. Nothing herein contained shall be deemed to relieve Tenant of its obligations to pay the Rent when due except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Facility, and only if the Facility coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above and (3) with an agreed amount endorsement waiving co-insurance provisions;

(v) worker's compensation insurance with respect to any employees of Tenant, as required by any Governmental Authority, Health Care Authority, Legal Requirement or Health Care Requirement;

(vi) boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Landlord and Mortgagee on terms consistent with the commercial property insurance policy required under Subsection (i) above;

(vii) intentionally omitted;

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, including umbrella coverage, of One Million Dollars (\$1,000,000.00);

(ix) if the Facility is or becomes a legal "non-conforming" use, ordinance or law coverage and insurance coverage to compensate for the cost of (upon a Casualty) demolition or rebuilding of the undamaged portion of the Facility along with any reduced value and the increased cost of construction in amounts as requested by Landlord and Mortgagee;

(x) the commercial property and business income insurance required under Sections 6.1(a)(i) and (ii) above shall cover perils of terrorism and acts of terrorism and Tenant shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i) and (ii) above at all times during the Term;

(xi) professional liability and malpractice insurance with limits of at least Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate. Tenant shall also require each medical director for the Facility and the associated nurse practitioner at the Facility to carry professional liability and malpractice insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per claim / Five Million Dollars (\$5,000,000.00) in the aggregate; and

(xii) notwithstanding anything to the contrary in the foregoing, all insurance coverage required by any mortgagee of Landlord shall be met by Tenant, from time to time as necessary;

(xiii) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Landlord and/or Mortgagee from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Facility located in or around the region in which the Facility is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the "Policies" or, in the singular, the "Policy"), and shall be subject to the approval of Landlord and Mortgagee as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State of New York and having a claims paying ability rating of "A" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the companies (one of which shall be S&P if they are rating the securities and one of which will be Moody's if they are rating the companies), or if only one Rating Agency is rating the companies, then only by such Rating Agency and shall specifically name Landlord and Mortgagee as loss payees and additional insureds, as applicable. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Landlord and Mortgagee, certificates of insurance evidencing the Policies accompanied by evidence satisfactory to Landlord and Mortgagee of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Tenant to Landlord and Mortgagee.

(c) Any blanket insurance Policy shall specifically allocate to the Facility the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Facility in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Tenant as the insured and Landlord and Mortgagee as the additional insured, as their interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called lender's loss payee endorsement in favor of Mortgagee providing that the loss thereunder shall be payable to Mortgagee.

(e) All Policies provided for in Section 6.1 shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Tenant, or anyone acting for Tenant, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Landlord and Mortgagee are concerned;

(ii) the Policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' written notice to Landlord and Mortgagee and any other party named therein as an additional insured;

(iii) the issuers thereof shall give notice to Landlord and Mortgagee if the Policies have not been renewed fifteen (15) days prior to its expiration; and

(iv) Neither Landlord nor Mortgagee shall be liable for any insurance premiums thereon or subject to any assessments due thereunder.

(f) If at any time Landlord and Mortgagee is not in receipt of written evidence that all Policies are in full force and effect, either shall have the right, without notice to Tenant, to take such action as either deems necessary to protect its interest in the Leased Premises, including, without limitation, the obtaining of such insurance coverage as either in its sole discretion deems appropriate. All premiums incurred by Landlord and/or Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Tenant to Landlord and/or Mortgagee, as the case may be, upon demand and, until paid, shall be secured by the Mortgages and shall bear interest at the Overdue Rate.

(g) Tail Insurance. If Tenant has claims made insurance coverage of any type, upon expiration or earlier termination of this Lease, Tenant shall purchase so-called "tail" insurance for a period of three years in an amount not less than its existing coverages in order to assure Tenant is covered by insurance after the expiration or earlier termination of this Lease for all claims arising or relating to the period prior to the expiration or earlier termination of this Lease, and Landlord and Mortgagee shall be named as additional insured thereunder.

Section 6.2 Certificates of Insurance. Upon the Commencement Date of this Lease, Tenant shall furnish Landlord, Mortgagee and other third parties which Landlord shall designate with appropriate certificates of insurance on acceptable Acord forms, together with an additional insurance endorsement showing that each type of insurance required under this Article VI is in full force and effect and not cancelable or modifiable without thirty (30) days prior written notice to Landlord, and upon request of Landlord or one or more of such additional insureds, deliver copies of such insurance policies. Tenant will provide Landlord with acceptable certificates of insurance pursuant to this Section 6.2 evidencing the renewal of such Policies ten (10) Business Days prior to the Policies' expiration date. Tenant acknowledges that all such certificates shall name Landlord, its successors and assigns, and Mortgagee, its successors and assigns, as additional insureds on the general liability and umbrella policies and as a loss payee/mortgagee, as their interests may appear, on the property and boiler and machinery policies.

Section 6.3 Waiver of Subrogation. Landlord and Tenant hereby waive all rights of recovery for causes of action which either has or may have or which may arise hereafter against the other for any damage to the Leased Premises or the property or business of either of them or of anyone claiming through either of them, by way of subrogation or otherwise, caused by any of the perils covered by a special form policy of property insurance or contents insurance or by any other insurance for damage to property carried by the party whose property was damaged; provided, however, that the foregoing waiver shall apply only if and to the extent that a waiver of subrogation for property damage is not prohibited in the State of New York, has been consented to by the applicable insurance carrier, and only to the extent of such insurance coverage.

ARTICLE VII

SECURITY, ACCESS AND REPORTING OBLIGATIONS, WORKING CAPITAL

Section 7.1 Security Deposit/Guaranty.

(a) Contemporaneously with the execution of this Lease, Tenant, shall deliver a guarantee of this Lease (the "Guaranty") from Lizer Josefovic and Mark Neuman (collectively, the "Guarantors") in the form of Exhibit "B" attached hereto, or in form and amounts as may be otherwise required by the Landlord and Landlord's first and second Mortgagee. As further security for the Tenants performance under the Lease, the Tenant hereby agrees as follows:

(i) Tenant shall post at such times as required by Landlord's first and second Mortgagee, and Landlord in its reasonable discretion (but at least 45 days prior to the Commencement Date), and from time to time such Letters of Credit and/or reserves in such amounts and under such terms as required by Landlord's first and second Mortgagee, and Landlord in its reasonable discretion.

(ii) Tenant shall deposit at the time required by Landlord's first and second Mortgagee, and Landlord in its reasonable discretion, a sum in cash in an amount equal to the greater of (A) an amount determined by Landlord's first and second Mortgagee, and (B) one year's Fixed Rent with Landlord to be held by Landlord as a security

deposit ("Security Deposit") to secure the full and timely payment and performance of Tenant's obligations under this Lease. Tenant's failure to timely pay to Landlord the Security Deposit shall be deemed a Lease Default by Tenant. Landlord may retain the Security Deposit in such accounts as Landlord elects in its sole discretion and Landlord may commingle the Security Deposit with other funds of Landlord or its affiliates. Tenant shall have no right to any interest on the funds comprising the Security Deposit that it delivers to Landlord.

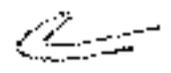
(iii) Guarantor Obligations:

(A) The Guaranty shall set forth that the Guarantors will be required to cooperate in turning the license over to the Landlord's designee or be personally liable for all costs, expenses and damages or deficiencies.

(B) The Guarantors shall ensure that the Tenant shall deliver all of the documents required to transfer the license in escrow to Posternak, Blankstein & Land, or such other party as Landlord designates.

(b) The term "Letter of Credit" shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit in favor of Landlord in form and content reasonably satisfactory to Landlord and entitling Landlord to draw thereon without the payment of any fees or charges in New York, New York, issued by a domestic banking institution or the U.S. agency or branch of a foreign banking institution; provided, that such banking institution has a long term senior unsecured debt obligation rating of at least "AA" by S&P. The Letter of Credit shall be in the initial amount determined by Landlord's first and second Mortgagee, and Landlord in its reasonable discretion and shall have an expiration date of the date that is the first anniversary of the date hereof. The Letter of Credit shall provide that it shall be deemed automatically renewed (without amendment) for consecutive periods of one year each thereafter during the Term unless the issuing bank sends written notice to Landlord and Tenant by certified mail, return receipt requested, not less than thirty (30) days preceding the then expiration date of the Letter of Credit that it elects not to have such Letter of Credit renewed. If such notice is sent, then at least twenty (20) days prior to the expiration of the Letter of Credit (and each subsequent or replacement Letter of Credit), Tenant shall deliver to Landlord a new Letter of Credit in the same amount and a failure to do so shall entitle Landlord to draw upon the existing Letter of Credit and to receive the proceeds therefrom and hold such proceeds as a cash Security Deposit pursuant to this Section 7.1 pending delivery of a new Letter of Credit.

(c) Upon a Lease Default, Landlord shall have the right, but not the obligation, in Landlord's sole and absolute discretion, to draw upon the Security Deposit and/or Letter of Credit and apply some or all of the funds to remedy such default or occurrence and to compensate Landlord for any loss or damage resulting therefrom, without prejudice to any other rights or remedies of Landlord under this Lease or at law or in equity. Upon any such application by Landlord, Tenant shall promptly deposit with Landlord an amount in cash equal to the amount from the Security Deposit so utilized by Landlord. Landlord shall at all times have, as security hereunder, Letter of Credit and cash Security Deposit in the amounts stated in Section 7.1(a). Upon the termination or expiration of this Lease, as long as Tenant has performed all of its obligations pursuant to this Lease and no Lease Default has occurred which is continuing, the



remaining amount of the Security Deposit shall be returned or refunded to Tenant, without interest, subject in all events to Landlord's right to apply the Security Deposit as provided herein.

(d) Upon the occurrence of a Lease Default, Landlord may use, apply or retain the whole or any part of the Security Deposit or draw under a Letter of Credit to the extent required for the payment of any Rent or any other sums as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the retaking of all or any portion of the Leased Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord. If Landlord shall so use, apply or retain the whole or any part of the Security Deposit, Tenant shall upon demand immediately deposit with Landlord a sum equal to the amount so used, applied or retained. In the event of any sale or financing of Landlord's interest in the Leased Premises, Landlord shall have the right to assign its interests in the Security Deposit to the transferee, assignee or mortgagee, as the case may be, and if Landlord has given notice to Tenant of the assignment of Landlord's interest in the Security Deposit and if assignee or transferee of the Security Deposit has accepted liability for the Security Deposit, Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof; and Tenant shall look solely to the new landlord or mortgagee for the return or payment of the same. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit and neither Landlord, nor its successors or assigns, shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Section 7.2 Access to Leased Premises. Tenant shall permit Landlord, Mortgagee and their agents to enter upon the Leased Premises at all reasonable times during ordinary business hours and upon at least twenty-four (24) hours advance oral notice (except that in the case of emergency, Landlord may enter at any time and without prior notice) to inspect and examine the Leased Premises, to perform repairs as to Landlord's Work pursuant to Section 5.1, and to inspect and copy any operating manuals, procedures manuals, training manuals, and other books and records concerning unemployment, workers' compensation, insurance, tax, and any other business issues pertaining to the Leased Premises (subject to applicable laws and regulations governing patient confidentiality and privacy and the confidentiality of medical records) and any information necessary for audit relating to cost reimbursement, collections, general financial matters, litigation, inquiries and related activities (as may be necessary in connection with the Lease or the Leased Premises or any matters relating to periods prior to the Commencement Date). Any access by Landlord to patient records or medical records shall be strictly governed by Laws governing patient confidentiality and privacy and the confidentiality of medical records and all appropriate consents and/or waivers from residents or their guardians or representatives shall have been obtained before access to such records shall be granted. Landlord shall make reasonable efforts not to materially interfere with or materially disrupt Tenant's business and use and enjoyment of the Leased Premises during any such inspection or examination. Landlord shall also have the right but not the obligation to conduct a physical inspection of the Facility and from time to time and within ninety (90) days prior to the expiration of the Term or earlier termination of the Lease, upon twenty-four (24) hours advance oral notice. If Landlord reasonably determines based on this inspection that the Facility, or any portion of the Facility, requires repairs or maintenance so that the condition of the Facility is in compliance with this Lease and all Laws, then within thirty (30) days of notification by

Landlord, Tenant shall commence making said repairs and diligently pursue such repairs to completion. Should Tenant fail to do so, within seven (7) days of notification by Landlord, Tenant shall pay to Landlord a deposit of funds in an amount equal to Landlord's reasonable estimate of the costs of such repairs or maintenance, which funds shall be released to Tenant from time to time during the progress of such repairs and maintenance based on submission by Tenant of evidence reasonably satisfactory to Landlord that such work is complete and all costs and expenses incurred to date have been paid in full. Tenant and Landlord acknowledge that the operations of the Facility and its maintenance are the sole and absolute responsibility of Tenant. Landlord shall have no liabilities or obligations with respect to the Facility, including no liabilities or obligations with respect to inspections of the Facility or the failure by Landlord to inspect the Facility.

Notwithstanding anything to the contrary in this in this Lease, Landlord and Tenant agree that all information, records and data collected or maintained regarding Facility residents shall be confidential. Landlord, Tenant, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable New York and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) and the regulations issued in connection therewith (collectively, "HIPAA"). No employee or agent of Landlord or Tenant shall discuss, transmit or narrate in any manner the Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility's assets, or otherwise fulfilling its obligations under this Lease or under law. The obligations under this Section 7.2 shall survive the termination of this Lease, whether by rescission or otherwise.

Section 7.3 Changes in Licensure and Certification Status. As of the Commencement Date, Tenant represents and warrants that the number of beds licensed or certified for the Facility is one hundred sixty (160). Tenant shall not increase or decrease the licensed or certified number of beds, or change the license or certification thereof, without the consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; Tenant may increase the number of licensed or certified beds of the Facility upon thirty (30) days prior written notice to Landlord, but without the prior written consent of Landlord. If required, Tenant shall not increase the number of beds without the consent of the Commissioner and/or the DOH and Tenant agrees to return to Landlord upon the expiration of the Lease, the Leased Premises. Should Tenant increase the number of licensed beds at the Facility, the Fixed Rent payable for the Facility shall be increased proportionately for such additional beds. In no event shall the Fixed Rent be reduced in the event the number of Licensed Beds at the Facility is reduced. Landlord and Tenant acknowledge that the Leased Premises are, and at all times under the Term of this Lease are, the sole and absolute property of Landlord. Upon any termination of this Lease or any Lease Default by Tenant hereunder (which breach or default is not cured within any applicable grace period), and subject to the approval of the DOH, Landlord shall have the right to cause the Facility's licenses to be reissued in Landlord's name or in the name of Landlord's designee upon application therefor to, and the receipt of approval from, the DOH and to further have the right to have any and all Medicare, Medicaid and any other provider and/or third party payer agreements issued in Landlord's name or in the name of Landlord's designee. In the event Landlord exercises its rights pursuant to this Section 7.3, Tenant and Guarantors



shall cooperate with Landlord in transferring the aforementioned items to Landlord's name or for the benefit of Landlord or as Landlord may direct pursuant to the terms of this Lease.

Section 7.4 Reporting and Other Obligations.

(a) During the Term, Tenant shall and shall cause all Subtenants, sub-subtenants and any operators of the Facility to provide (without duplication) Landlord and Mortgagee with the following reports, statements, and inspections:

(i) Annual Budget. Within 60 days prior to the projected Substantial Completion Date, and no later than thirty (30) days prior to the end of each calendar year thereafter, Tenant shall submit to Landlord an annual budget (each an "Annual Budget") covering the operations of and proposed capital expenditures to be made with respect to the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Annual Budget).

(A) Capital Expenditures. The Annual Budget shall include a capital budget (the "Capital Budget") outlining a program of capital expenditures as may be required by Laws, any lender to Landlord, or Tenant's reasonable business judgment during the next calendar year (or the remainder of the current calendar year, in the case of the initial Capital Budget), in which each proposed capital expenditure will be designated as either mandatory, highly recommended or desirable. Tenant shall be responsible for designating as a "mandatory capital expenditure" any expenditure which, if not made would, in Tenant's reasonable judgment: (a) cause the Facility to lose or put at risk its License; (b) place at risk the safety of a patient or resident or employee of the Facility; (c) cause the ineligibility of the Facility under any third party payor program applicable to the Facility; (d) cause the issuance of a formal notice that any of the operating licenses for the Facility or any substantial portion of the Facility will be revoked or suspended or qualified in any material adverse respect; or (e) subject Landlord or Tenant to criminal prosecution. Tenant shall make during the calendar year, or calendar quarter for which they are budgeted, all capital expenditures approved by Landlord. On and after the Commencement Date, Tenant shall expend at least Five Hundred Twenty-Three Dollars (\$523.00) per bed per annum for capital expenditures at the Facility, including amounts expended to comply with the licensure and other expenditures required by any Governmental Authority or such other amounts as may be required by Mortgagee from time to time. If Mortgagee requires Landlord to deposit sums for capital expenditures, replacements and/or refurbishments relating to furniture, fixtures, equipment and/or improvements to the Facility, then Tenant shall pay to Landlord, as Additional Rent hereunder, all reserve or escrow amounts, sums and/or deposits which Landlord is required to pay to such Mortgagee with respect to such capital expenditures, replacements and/or refurbishments. Tenant shall pay any and all of such amounts and sums to or as directed by Landlord as Additional Rent hereunder together with each payment of Fixed Rent hereunder. Tenant acknowledges that as of the date hereof, Mortgagee requires a monthly deposit of Five Hundred Twenty-Three Dollars (\$523.00) per bed with respect to the Facility. In the event that such deposits are made by Tenant hereunder, Landlord shall use its reasonable efforts, subject to the terms and conditions of the loan agreements with Mortgagee, to obtain disbursements of such funds to be used for the payment of or reimbursement for the costs of such capital expenditures, replacements and/or refurbishments.

(B) Operating Budget. The Annual Budget shall include an operating budget (the "Operating Budget") setting forth an estimate of operating revenues and expenses for the Facility for the next calendar year (or the remainder of the current calendar year, in the case of the initial Operating Budget), together with an explanation of anticipated changes in the Facility. Tenant shall provide to Landlord upon written request such other reports, including a cost comparison report, and all appropriate Medicare and Medicaid reports, as may be required under these programs, as are normally provided by Tenant to the owners of other similar rehabilitation hospitals, psychiatric hospitals, and skilled nursing facilities leased by Tenant.

(i) Financial Reporting. Tenant will keep and maintain or will cause to be kept and maintained on a calendar year basis, in accordance with GAAP, proper and accurate books, records and accounts reflecting all of the financial affairs of Tenant and all items of income and expense in connection with the operation on an individual basis of the Facility. Notwithstanding the foregoing, Tenant's interim unaudited financial statements shall be prepared in accordance GAAP for interim financial information, but may not include all information or notes required by GAAP for a complete set of financial statements; such financial statements shall include all adjustments and reclassifications of a normal recurring nature considered necessary for a fair and comparable presentation; all such interim financial statements shall be read in conjunction with most recent audited financial statements. Landlord and Mortgagee shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Tenant or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Landlord and/or Mortgagee shall desire. After the occurrence of a Lease Default, Tenant shall pay any costs and expenses incurred by Landlord and/or Mortgagee to examine Tenant's accounting records with respect to the Facility, as Landlord and/or Mortgagee shall reasonably determine to be necessary or appropriate in the protection of Landlord and/or Mortgagee's interest.

(ii) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, as soon as available, and in any event (A) within thirty (30) days after each calendar month's end, unaudited monthly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the month then-ended and year to date, prepared on a basis consistent with the annual statements; monthly census and revenue information of the Facility as of the end of such month and year to date in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average monthly census of the Facility and year to date; an aged accounts receivable report from the Facility in sufficient detail to show amounts due from each class of patient-mix by the account age classifications of 30 days, 60 days, 90 days, 120 days, and over 120 days; (B) within forty-five (45) days after the end of each calendar quarter, unaudited quarterly financial statements (which include income statements, balance sheets, statements of cash flows, occupancy and payor mixes) of Tenant for the quarter then-ended, prepared on a basis consistent with the annual statements; quarterly census and revenue information of the Facility as of the end of such quarter in sufficient detail to show by patient-mix and revenue-mix (i.e., private, Medicare, Medicaid and V.A. and managed care (by program)) the average quarterly census of the Facility; (C) no later than 120 days after the end of each calendar year of Tenant, audited annual financial statements of Tenant, prepared by an independent certified public accounting firm reasonably acceptable to Landlord, prepared



in accordance with generally accepted accounting principles, with an unqualified opinion, and including a balance sheet, a statement of income and expenses for the year then ended, a statements of cash flow, and a schedule audited by such independent certified public accountant reconciling Tenant's net operating income to net cash flow, which shall itemize all adjustments made to net operating income to arrive at net cash flow deemed material by such independent certified public accountant.

(iv) Each financial report provided by Tenant shall reconcile and show variances between the actual experience incurred during each such reporting period with respect to each metric to the metric shown on the Operating Budget and Capital Budget for such period.

(v) Tenant, at its expense, shall submit to Landlord and, upon Landlord's request to Mortgagee, any other reports and certificates reasonably requested by Landlord or Mortgagee from time to time.

(vi) In addition, Tenant shall prepare and deliver to Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, a written report providing an operational overview of significant events and circumstances at the Facility during the prior month, during the first six months of the Term and then quarterly thereafter, including, but not limited to, clinical events, employee relations and staffing matters and provide such other information as Mortgagee may require from time to time. Tenant shall provide Landlord, and upon request or if required by Landlord's then existing Mortgagee, to Mortgagee, with a copy of all federal income tax returns of Tenant and its Subtenants within fifteen (15) days after filing thereof. Whenever practicable, all reports shall be delivered to Landlord electronically in a format usable by Landlord.

(b) All unaudited financial reports from Tenant shall include an Officer's Certificate certifying that such financial statements present fairly the financial condition and the results of the operations of Tenant and the properties being reported upon and that such financial statements have been prepared in accordance with the Tenant's customary accounting procedures. The Officer's Certificate accompanying the annual audited financial statements of Tenant shall also include a statement that they have been prepared in accordance with GAAP and whether there exists an event or circumstance which constitutes a default or an event of default under the Lease, the nature thereof, the period of time it has existed, and the action then being taken to remedy the same.

(c) Tenant shall furnish Landlord and Mortgagee, within five (5) days of the receipt by Tenant, any and all notices (regardless of form) from any Health Care Authority that Tenant's license, Medicare or Medicaid certification, or VA or other governmental program participation is being, or could be revoked or suspended, that action is pending, being considered or being taken to revoke or suspend the Tenant's license or certification or to fine or penalize the Tenant, or that action is pending, being considered, or being taken, to discontinue, suspend, deny, decrease or recoup any payments due, made or coming due to Tenant or related to the operation of the facility other than in the ordinary course of business related to billing adjustments.

(d) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the receipt by Tenant, any and all notices (regardless of form) from any Governmental Authority or third party payor (i) alleging that the Facility has three or more deficiency(ies) of a scope and severity of "G" or hire, or one or more deficiency(ies) of a scope and severity of "J" or higher, (ii) alleging that the residents of the Facility are in jeopardy, (iii) freezing admissions to the Facility or (iv) denying reimbursement for any class of residents by any third party payor.

(e) Tenant shall furnish Landlord and Mortgagee, within two (2) days of the sending or receipt by Tenant of any communication copies thereof, including a plan of correction, with respect to the matters referenced in Section 7.4(d).

(f) Tenant shall file all required reports, including without limitation, Medicare or Medicaid cost reports, on or prior to the date such reports are due (such due date to include approved regulatory extensions allowed by the applicable Governmental Authority for the filing of such reports) and shall furnish Landlord and Mortgagee, within thirty (30) days of the date of filing, a complete and accurate copy of the annual Medicare or Medicaid cost report for Tenant, which will be prepared by Tenant and accompanied by an Officer's Certificate of Tenant certifying as of the date thereof that such report is accurate, complete and not misleading, and promptly furnish Landlord and Mortgagee any amendments filed with respect to such reports and all notices, responses, audit reports or inquiries with respect to such reports.

(g) Tenant shall furnish Landlord and Mortgagee, within thirty (30) days of the receipt by Tenant, the annual Medicaid and Medicare provider agreement(s) and the annual Medicaid and Medicare reimbursement rate sheets for the Facility.

(h) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt but at least five (5) days prior to the earliest date on which Tenant is required to take any action with respect thereto or would suffer any adverse consequence, a copy of any Medicare, Medicaid or other licensing or accreditation or rating agency or entity survey, report, warning letter, or notice, and any statement of deficiencies, and within the time period required by the particular agency for furnishing a plan of correction also furnish or cause to be furnished to Landlord and Mortgagee a copy of the plan of correction generated from such survey, report, warning letter, or notice to Tenant and any subsequent correspondence related thereto, and correct or cause to be corrected any deficiency, the curing of which is a condition of continued licensure or of full participation in Medicare or Medicaid or a care program offered by an insurance company, managed care company, or other third-party payor by the date required for cure by such agency or entity (plus extensions granted by such agency or entity).

(i) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any other notices or charges issued relating to the non-compliance by Tenant with any Governmental Authority, insurance company, managed care company, or other third-party payor laws, regulations, requirements, licenses, permits, certificates, authorizations or approvals, but only such matters which could reasonably be expected to have a material adverse effect on the financial condition of such Person or the operation of the Facility.

(j) Tenant shall furnish Landlord and Mortgagee, within ten (10) days of receipt by Tenant, any new, revised or amended Medicare or Medicaid reimbursement rate sheets which may be issued subsequent to the annual reimbursement rate sheets.

(k) Tenant shall notify Landlord within five (5) days of any condition or event that constitutes a breach of any term, condition, warranty, representation or provision of this Lease or any other agreement between Landlord or its Affiliates and any Tenant, any Guarantor or any of their Affiliates, and of any adverse change in the financial condition of any Tenant, any Guarantor or any Affiliate of any Tenant or any Guarantor and of any Event of Default. Additionally, Tenant shall notify Landlord within seven (7) days after receipt of any formal or informal written notice or advice from its insurance carrier, reinsurance provider, accountants, actuary, any Governmental Authority, or any third party payor program provider of any actual, pending, threatened or contemplated increase in Tenant's reserves for expenses relating to malpractice or professional liability claims or any material increase in the premium costs for malpractice or professional liability insurance.

(l) To the extent performed, Tenant shall furnish Landlord and Mortgagee, a copy of written external consultant reports (including environmental, operations, quality assurance, physical plant, property inspection, etc.) (which shall be delivered promptly upon receipt from the consultant).

(m) Tenant shall furnish Landlord and Mortgagee, a copy of cost reports as filed by Tenant.

(n) Any supporting documents or data requested by Landlord in connection with the items in this Section 7.4.

(o) Within 10 days of event of any of the following, Tenant shall deliver to Landlord, notice of:

(i) any rate appeal brought before any Governmental Authority or any administrator of any third party payor program or referral source;

(ii) any reimbursement appeals or recoupment claims made or contests pending or threatened as a result of any audits by any third party payor; and

(iii) any claim, requirement or demand (excluding all claims, requirements, and demands, if any, that have been waived) of any Governmental Authority, third party payor or insurance body or carrier having or claiming any licensing, certifying, supervising, evaluating or accrediting authority over the Leased Premises to rework or redesign the Leased Premises, its professional staff or its professional services, procedures or practices in any material respect or to make any of the Leased Premises conform to or comply with a legal requirement.

(p) The receipt by Landlord of (p) reports, statements, financial information, surveys or otherwise from Tenant or its Affiliates shall not in any way impose any obligation or liability upon Landlord to act or take any action upon any information, facts or circumstances which may be disclosed or shown therein and Landlord shall have no liability for its failure to act thereon or as a result thereof.

(g) Financial Covenants. Tenant covenants and agrees to the following, as may be amended time to time as required by Landlord's 1st or 2nd Mortgagee:

(i) Commencing the third full quarter of the Term Tenant's Current Ratio shall not be less than 1.1 to 1.0. The term "Current Ratio" means the current assets of Tenant divided by the current liabilities of Tenant determined in accordance with GAAP.

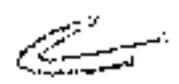
(ii) For each quarter of the Lease Term commencing the third full quarter following the Commencement Date, Tenant's Lease Coverage Ratio shall be not less than 1.25 to 1.0.

(iii) For each quarter of the Lease Term commencing the second full quarter following the Commencement Date, the Facility shall have achieved the EBITDAR benchmarks as described on Schedule 7.4, attached hereto. The term "EBITDAR" is defined in Schedule 7.4.

Section 7.5 Payment in the Ordinary Course. Tenant shall pay in full: (a) prior in each case to the date when penalties would attach, all Impositions (except only those so long as and to the extent that the same shall be contested in good faith by appropriate and timely proceedings and for which adequate reserves have been established in accordance with GAAP), provided that (i) Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) for which Tenant may be or become liable; (ii) no Lease Default has occurred and remains uncured, (iii) such proceeding shall suspend the collection of such Impositions or the Impositions shall have been paid, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Tenant is subject and shall not constitute a default thereunder, (v) no part of or interest in the Leased Premises will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Tenant shall have furnished such security as may be required in the proceeding, or as may be requested by Landlord or Mortgagee, to insure the payment of any such Impositions, together with all interest and penalties thereon, which shall not be less than 125% of the unpaid Impositions being contested and (vii) Tenant shall promptly upon final determination thereof pay the amount of such Impositions, together with all costs, interest and penalties; (b) all of Tenant's wage obligations to Tenant's employees in compliance with the Fair Labor Standards Act (29 U.S.C. §§ 206-207) or any comparable provisions under federal, state or local law; (c) all obligations owed in connection with any claim, demand or notice of any overpayment received from Medicare, Medicaid or other third party payor; and (d) all of Tenant's obligations calling for the payment of money (except only those so long as and to the extent that the same shall be contested in good faith and for which adequate reserves have been established in accordance with GAAP, provided that Landlord has given its prior written consent to such contest, which consent shall not be unreasonably withheld or delayed) before such payment becomes overdue

Section 7.6 Security Agreement. In order to secure the payment and performance of all of Tenant's obligations under this Lease and all of Tenant's obligations to Landlord, and all and all other documents contemplated thereby, Tenant hereby grants to Landlord a first priority security interest in and lien upon, all of the assets of Tenant including, without limitation, (i) all trade fixtures, equipment, furniture, merchandise, inventory and other personal property located from time to time in or upon the Leased Premises (including the

proceeds thereof), and (ii) to the fullest extent permitted by applicable law, all accounts, accounts receivable, licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, certificates of need, and other authorizations issued to or held by Tenant with respect to the operation of the Facility skilled nursing facility and Tenant's interest in and rights under all third party payor provider agreements with respect to the Facility (the items listed in clauses (i) and (ii), together with the proceeds of same, are collectively, "Collateral"). The security interest granted to Landlord with respect to Tenant's tangible personal property is intended to be subordinate to any purchase money security interest or capital lease on any of Tenant's tangible personal property provided that Tenant has notified Landlord of the creation of such security interest or capital lease prior to the creation thereof and Landlord has approved same. Landlord agrees to subordinate its lien on Tenant's accounts receivable in favor of Tenant's accounts receivable lender, which shall be a nationally recognized nursing home accounts receivable lender with experience acceptable to HUD or Mortgagee on at least 20 nursing homes, securing up to a \$2,000,000.00 accounts receivable loan, provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. Should Mortgagee require a subordination of the priority of Landlord's security interest in the Collateral, Landlord and Tenant shall execute such documents as Mortgagee may request to subordinate Landlord's lien to the Mortgagee's security interest in the collateral. In addition, Tenant's members shall grant to Landlord a first lien pledge (subject to the following sentence) of the membership interests of Tenant. To the extent required by Tenant's accounts receivable lender, Landlord agrees to subordinate its lien on Tenant's membership interests to a lien in favor of such lender securing up to a \$2,000,000.00 accounts receivable loan; provided such lender enters into an intercreditor agreement reasonably acceptable to Mortgagee and Landlord. On or before the Commencement Date, Tenant shall provide Landlord with a detailed list and description of all the Collateral. Upon a Lease Default by Tenant, Landlord shall have all the rights and remedies of a secured party under the laws of the State of New York. Tenant, as debtor, shall cause to be executed (if appropriate or necessary) and delivered to Landlord, as the secured party, upon execution of this Lease by Tenant, UCC-1 Financing Statements in proper form, and thereafter, from time to time, deliver to Landlord such extensions and/or updates of such financing statements as are required for the purpose of perfecting and maintaining the priority of the security interest granted to Landlord herein, and to perform any other acts reasonably necessary to the perfection of such security interest. Tenant and Tenant's members consent to Landlord's preparation of and the filing of such financing statements by Landlord and agrees that the provisions of this Section 7.6 shall constitute a security agreement for the purposes contemplated hereby. The security interest granted by this Section 7.6 shall be in addition to any lien of Landlord that may now or at any time hereafter be provided by law. In the event Landlord exercises its remedies to foreclose the security interest created under this Section 7.6, or elsewhere in this Lease, Tenant shall cooperate with Landlord in transferring all of the aforementioned items promptly as requested by Landlord in Landlord's or its designee's name or for the benefit of Landlord. Tenant covenants and agrees that it shall not sell, move, surrender, cancel, modify, transfer, assign, relocate, pledge, grant a security interest in, convey or in any other manner encumber any assets of Tenant including, without limitation, the personal property, the certificate of need approval or any of the licensed or Medicare- and/or Medicaid-certified beds at the Facility, or any licenses for the Facility, or attempt at any time to do same, except as expressly provided hereunder and with the written consent of Landlord. This Section 7.6 and Landlord's rights and remedies hereunder shall survive the termination of the Lease.



Section 7.7 Working Capital. As of the Effective Date, Tenant shall have and maintain until the Commencement Date in accounts, acceptable to Landlord in its sole and complete discretion, an amount of funds equal to the greater of ("Working Capital") (i) any debt service reserve required by Mortgagee, (ii) the aggregate negative net operating income of Tenant for the period of months from the Commencement Date to the first day of the first two month period in which aggregate net income from operations exceeds zero, all as reflected in the projections attached hereto as Schedule 7.7 ("Cash Requirement"); for the purpose of this calculation net operating income shall be determined on a cash basis, and (iii) 4.5 million dollars. Working Capital shall not include any accounts or reserves established to satisfy the requirements of Section 7.1(a) (i) and (ii). From and after the Commencement Date, the Working Capital, subject to any requirement of the Mortgagee, may be used by Tenant only to fund the Cash Requirement.

## ARTICLE VIII

### PERSONAL PROPERTY

Section 8.1 Landlord's Personal Property. Upon the expiration or termination of this Lease, Tenant shall leave all personal property leased to Tenant hereunder, as repaired, rebuilt, replaced, restored, altered or added to as permitted or required by provisions of this Lease, in or on the Leased Premises, except for ordinary wear and tear. Any and all restorations, alterations or replacements of, or repairs, reconstructions or additions to, the personal property at the Facility made by Tenant shall become part of Landlord's personal property, and any and all security interests (except in favor of Landlord) in Tenant's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Tenant shall pay off in full the remaining payments due on all personal property leased by Tenant and such personal property shall become part of Landlord's personal property and financing statements shall be cleared, terminated and/or released to the satisfaction of Landlord at Tenant's expense. Any of Tenant's software, software licenses, proprietary information, and policies, and procedures of Tenant ("**Retained Assets**") shall not become part of Landlord's personal property except in the event of the termination of this Lease as a result of a Lease Default, in which case the Retained Assets shall become the personal property of Landlord, provided, however, upon request of Landlord, in consideration of a payment by Landlord or its designee of Ten Dollars (\$10.00) and any applicable lease, rent, or license fees owed to any third parties during the Transition Period (hereinafter defined), Tenant shall license Landlord or its designee(s) (at Tenant's cost with no mark-up) to utilize the Retained Assets for a period of one hundred twenty (120) days (the "**Transition Period**") in connection with the transition of operations from Tenant and Landlord's new operator(s). To the extent Tenant or any Subtenants are obligated under license agreements with third party vendors supplying software (and/or computer hardware which Tenant does not own or lease) to such Tenant, Tenant shall use its best efforts to arrange for Landlord or Landlord to enter into licensing agreements with such third party vendors to allow Landlord or its designee to utilize such software and computer hardware supplied by such third party vendors for the duration of the Transition Period.

Section 8.2 Tenant's Retained Assets. At the termination of the Lease, Landlord shall have the right to purchase all or a portion of Tenant's Retained Assets located at the Facility at the lower of its fair market value or book value. To the extent any of Tenant's Retained Assets is subject to a license, Landlord shall have the right but not the obligation to assume some or all of such license Landlord's sole cost and expense and at no additional liability to Tenant.

**ARTICLE IX**  
**INDEMNIFICATION**

Section 9.1 Tenant's Indemnification (a) During the Term of this Lease and after the surrender of the Leased Premises in accordance with Section 5.5 of this Lease, Tenant shall protect, defend (at Landlord's request), indemnify and hold harmless Landlord, Landlord's members, managers, officers, owners, directors, employees, agents, representatives, and Mortgagee and their respective agents, executors, heirs, representatives and assigns, and any entity providing financing which is secured by the Leased Premises (collectively the "Landlord's Indemnitees"), from and against any claims, losses, costs, penalties, damages, charges and/or expenses (including reasonable attorneys' and consultants' fees and expenses) imposed or resulting from, arising out of or attributable in whole or in part to any of the following: (i) any violation of any Law, order of Governmental Authority, whether occasioned by the intentional act, omission, or negligence of Tenant or those holding under Tenant, (ii) any accident or other occurrence on or about the Leased Premises on or after the Commencement Date causing injury to any person or property whomsoever or whatsoever, including but not limited to patient care claims or elder abuse, (iii) any failure of Tenant in any respect to comply with or perform any term, condition, covenant, requirement and/or provision of this Lease, or a breach of this Lease by Tenant, including, but not limited to, a breach of any of Tenant's representations and warranties under Section 19.1 of this Lease, (iv) in any way relating to Tenant's use, operation and/or maintenance of the Facility (including, without limitation, third-party claims, whether by the State of New York, the United States, private insurers, private parties, for recoupment, false claims, or any other claims, assumption of and use by Tenant of Landlord's permits, variances, waivers, and certificate of need approval or its possession of the Leased Premises and/or (v) any liability under Section 20.14. The indemnity provided for herein shall survive the expiration of this Lease or the surrender of the Leased Premises for the period of the relevant statute of limitations.

(b) Any amounts which become payable by Tenant under this Article IX shall be paid within ten (10) days after liability therefor is determined by litigation or otherwise, and if not timely paid shall bear interest at the Prime Rate plus 5% (the "**Overdue Rate**") from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or may compromise or otherwise dispose of the same as Tenant sees fit provided that Landlord receives a full and complete release with respect to such claim, action or proceeding. Any legal counsel selected by Tenant to defend Landlord shall be reasonably satisfactory to Landlord. All indemnification covenants are intended to apply to losses, damages, injuries, claims, costs, penalties, charges and/or expenses (including reasonable attorneys' and consultants' fees and

expenses) incurred directly or indirectly by the indemnified parties and their property, as well as by the indemnifying party or third party, and their property. For purposes of this Article IX, any acts or omissions of Tenant, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant. It is understood and agreed that payment shall not be a condition precedent to enforcement of the foregoing indemnification obligations. The "Prime Rate" shall mean on any date, a rate equal to the annual rate on such date publicly announced by Citibank, N.A., as its prime, base or reference rate. Such rate need not be the lowest rate charged by Citibank, N.A. If Citibank, N.A. discontinues its use of such prime, base or reference rate or ceases to exist, Landlord shall designate the prime, base or reference rate of another state or federally chartered bank with offices in New York, N.Y. to be used for the purpose of calculating the Prime Rate hereunder.

ARTICLE X

USE OF LEASED PREMISES

Section 10.1 Compliance with Laws and Regulations. Tenant shall use the Leased Premises solely as a licensed Medicare- and Medicaid-certified skilled nursing facility with at least the number of licensed and certified beds existing at the Facility on the Commencement Date, and for no other purpose (the "Intended Use"). On or before the Commencement Date, Tenant shall have acquired, and thereafter Tenant shall maintain all licenses, certificates, accreditations, approvals, permits, variances, waivers, provider agreements and other authorizations needed to operate the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility. Tenant hereby covenants, warrants and represents to Landlord that as of the Commencement Date and throughout the Term: (a) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be validly licensed and Medicare and Medicaid certified to operate a skilled nursing facility in accordance with the applicable rules and regulations of the DOH, federal governmental authorities and accrediting bodies, including, but not limited to, the United States Department of Health and Human Services ("DHHS"), CMS, and the DOD; (b) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be, certified by and the holder of valid provider agreements with Medicare and Medicaid issued by DHHS, DOH and/or CMS and shall remain so certified and shall remain such a holder in connection with its operation of the Leased Premises as a licensed and Medicare and Medicaid certified skilled nursing facility; (c) Tenant (and any subtenant, operator or manager of Tenant) shall be, and shall continue to be in compliance with and shall remain in compliance with all applicable Laws with regard to the operation of the Facility, including, without limitation, compliance under Laws governing patient confidentiality and privacy and the confidentiality of medical records; (d) Tenant (and any subtenant, operator or manager of Tenant) shall operate the Facility in a manner consistent with high quality skilled nursing services and sound reimbursement principles under the Medicare and Medicaid programs and as required under Laws; and (e) Tenant (and any subtenant, operator or manager of Tenant) shall not abandon, terminate, vacate or fail to renew any licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or any other authorization which relates to the operation of the skilled nursing facility business or other permitted operations on the Leased Premises or in any way commit any

act which will or may cause any such licenses, certifications, accreditations, certificates, approvals, permits, variances, waivers, provider agreements or other authorization to be revoked by any Governmental Authority or accrediting body having jurisdiction thereof.

Section 10.2 No Waste. Tenant shall not commit or suffer to be committed any waste on the Leased Premises nor shall Tenant cause or permit any nuisance thereon.

Section 10.3 Hazardous Materials and Hazardous Waste. (a) Tenant shall not place or hold any Hazardous Materials on or at the Leased Premises, except as is necessary for the ordinary course of its business as a skilled nursing facility in compliance with Section 10.1. If Tenant's business requires the use of any Hazardous Materials, other than such cleaning materials as are typically found in skilled nursing facilities in compliance with Section 10.1, Tenant shall notify Landlord in writing and shall comply with hazard communication and notification requirements of the Occupational Safety and Health Act ("OSHA") and all Laws which require notification of employees, the community or any governmental agency of the hazardous properties of such Hazardous Materials. For purposes of this Lease, "Hazardous Materials" means and includes any hazardous substance defined as such in OSHA, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous substance or material, as now or at any time hereafter in effect.

(c) Tenant shall not cause or allow any asbestos or any asbestos containing materials to be incorporated into any improvements or alterations which it makes or causes to be made on or to the Leased Premises. Tenant shall obtain and maintain O&M Programs for the Facility is if the Facility is determined to contain asbestos or asbestos containing materials and upon Landlord's request, shall furnish copies of same to Landlord, Mortgagee or their designee(s).

(d) Tenant shall not place, hold or dispose of any Hazardous Waste on, under or at the Leased Premises except as specifically allowed in this Section 10.3. Tenant further agrees that it shall not use the Leased Premises as a treatment, storage, or disposal (whether permanent or temporary) facility for Hazardous Waste. If Tenant, in the ordinary course of its business as a skilled nursing facility generates Hazardous Waste, then Tenant shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to the appropriate use, storage, transportation and disposal of Hazardous Waste. For the purposes of this Lease, "Hazardous Waste" means and includes any hazardous material that has entered the waste stream or any contaminant or pollutant as defined as such in the Resource Conservation and Recovery Act, CERCLA, as amended, any so-called "Superfund" or "Superfund" law, the TSCA, or any other Law, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste. Tenant further agrees that it shall properly dispose in accordance with Laws of all "infectious waste" such as laboratory waste, pathological waste, blood specimens or products, patient or resident waste including, without limitation, bandages and disposable gowns, sharp waste and any material generated by the production or testing of biological agents. Immediately upon receipt of any Environmental Notice (as hereinafter defined) from any Person, Tenant shall deliver to Landlord a true, correct

and complete copy of same. "Environmental Notice" shall mean any note, notice, or report of any suit, proceeding, investigation, order, consent order, injunction, writ, award, or action related to or affecting or indicating the treatment, storage, handling, disposal, generation, spill, release or discharge of any Hazardous Waste or Hazardous Materials in upon, under, from or affecting the Leased Premises. All of the terms, covenants, warranties and indemnifications contained in this Section 10.3 shall survive the expiration or termination of this Lease.

(e) Without in any way limiting Tenant's obligation to indemnify Landlord and Landlord's Indemnitees under Section 9.1 of this Lease, Tenant shall indemnify, defend (at Landlord's request) and hold harmless Landlord and Landlord's Indemnitees from and against any claims, losses, costs, damages or expenses of any and every kind whatsoever (including reasonable attorney's fees and expenses and consultant's and expert's fees and expenses) which at any time or from time to time may be paid, incurred or suffered by, or asserted against Landlord and/or Landlord's Indemnitees for, with respect to, or as a direct or indirect result of: (a) a breach by Tenant of the covenants set forth in Section 10.3 or, (b) caused, permitted or allowed by Tenant or any agent, employee, invitee, or licensee of Tenant, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, onto, or into the Leased Premises, the atmosphere, or any watercourse, body of water, or groundwater, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, as amended, any so-called "Superfund" or "Superlien" law, or any other Law, relating to or imposing liability or standards of conduct concerning any Hazardous Material) occurring from and after the Commencement Date; and the provisions of and undertakings and indemnification set out in this Section 10.3(d) shall survive the termination of this Lease, and shall continue to be the personal liability, obligation and indemnification of Tenant, binding upon Tenant, forever. If required by Mortgagee, Tenant shall enter into an agreement to indemnify, defend and hold harmless Mortgagee with respect to matters contained in this Section 10.3 and other similar matters pursuant to a form of agreement reasonably acceptable to Mortgagee. In no event however shall Tenant have any liability to Landlord or Landlord's Indemnitees for Hazardous Materials located at or under the Leased Premises prior to the Commencement Date or for the remediation of same.

(f) If Tenant or its employees, agents, or contractors violate the provisions of this Section 10.3, then, in addition to any other duty or obligation of Tenant hereunder, at law or in equity, Tenant shall be obligated to clean up, remove, and dispose of the material causing the violation, in compliance with all applicable environmental laws and repair any damage to and remediate the Leased Premises within such period of time as may be reasonable under the circumstances after written notice by Landlord; provided that such work shall commence no later than thirty (30) days from the date of such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time and procedure for any clean-up, remediation or removal of material causing the violation under this provision, and Landlord shall have the right to require reasonable changes in such method, time or procedure.

(g) Landlord reserves the right from time to time, but not more than once a year, except in the event of an emergency or during the occurrence and continuation of an uncured Lease Default during the Term hereof, at Landlord's cost and expense (except that, in the event



of a continuing and uncured Lease Default, at Tenant's sole cost and expense), to have the Leased Premises inspected by environmental engineers and/or specialists for the purpose of determining compliance by Tenant with any environmental laws, rules and regulations applicable to Tenant's operations in or about the Leased Premises and with the terms and conditions of this Lease dealing with environmental matters, including without limitation, the provisions of this Section 10.3. If the environmental assessment or report resulting from such inspection discloses any non-compliance with Laws, Tenant shall immediately, following receipt of the environmental assessment, take all such steps as are necessary to put the Leased Premises into compliance, including without limitation, cleaning up any spills or other emissions of Hazardous Wastes or Hazardous Materials, and reimburse Landlord for the costs of its inspection.

(h) Upon the expiration of the Term, or the earlier termination thereof, subject to the last sentence of Section 10.3(d) above, Tenant shall forthwith remove all Hazardous Materials and Hazardous Waste from the Leased Premises or any portion thereof in accordance with applicable Law. Landlord shall have the right to inspect the Leased Premises with regard to the management and disposal of Hazardous Materials and Hazardous Waste at all reasonable times during the Term.

**ARTICLE XI**

**DAMAGE OR DESTRUCTION**

Section 11.1 Damage or Destruction. Tenant shall immediately notify Landlord of any casualty, fire, damage, destruction or injury ("Casualty") affecting the Facility, including a description of the Casualty, and whether the Casualty is such as to cause the Leased Premises to be unsuitable, in whole or in part, for the Intended Use. Tenant shall proceed with reasonable diligence to repair or reconstruct the Leased Premises and Tenant shall be liable for any costs of repair or replacement to the Leased Premises, whether or not such Casualty, or the costs of repairing such Casualty, are fully covered by the proceeds of Tenant's insurance required to be carried hereunder. If such Casualty renders the Facility unsuitable for the purpose of this Lease and if Landlord's Mortgagee so requires, Landlord, upon notice to Tenant, Landlord may terminate this Lease and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance to the extent such difference results from Tenant's breach of Article VI. Notwithstanding the foregoing, if Landlord's obligations to its Mortgagee have been satisfied in full and the DOH approves and agrees to reimburse the costs of rebuilding the Facility, Landlord shall not so terminate this Lease with respect to the Facility, and Tenant shall repair or reconstruct the Leased Premises in substantially the same condition as just prior to the incident with the proceeds of the property casualty insurance carried by Tenant, as required hereunder (if not otherwise paid to the Mortgagee), and/or with funds of Tenant. Regardless of any Casualty, except as provided above, this Lease shall continue in full force and effect without any abatement of Rent, and Tenant shall not be entitled to surrender possession of the Leased Premises as a result of such casualty. Landlord's receipt of Rent from Tenant's rental interruption insurance shall be credited against Rent payments due from Tenant hereunder. If Tenant fails to commence such repair or

reconstruction within thirty (30) days of the Casualty. Landlord shall have the option, subject to the approval of the DOH if required by Laws, to either terminate this Lease upon written notice to Tenant or repair and reconstruct the Leased Premises in substantially the same condition just prior to the incident and costs and expenses incurred as a result thereof shall be deemed Additional Rent hereunder and shall be payable to Landlord by Tenant, upon demand. Upon payment of all such sums demanded by Landlord, Tenant may re-enter and resume possession of the Leased Premises pursuant to the terms of this Lease. All insurance proceeds collected under the Policies shall be paid to Landlord, and made available to Tenant to pay for or reimburse Tenant for the costs and expenses for such repairs and reconstruction subject to the terms, conditions and provisions of any mortgage or other loan documents encumbering the Leased Premises. If Mortgagee does not make the insurance proceeds available to Landlord, then Landlord may terminate this Lease upon thirty (30) days' notice to Tenant, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except that Tenant shall be responsible and shall pay Landlord an amount equal to the difference between the fair market value of the Leased Premises immediately prior to such Casualty and the proceeds of Tenant's insurance.

Section 11.2 Precedence of Rights of Mortgagee. All provisions contained in the loan documents between Landlord and Mortgagee, or any other document in connection therewith which concern or pertain to the restoration of the Leased Premises, the application of insurance proceeds and any and all matters concerning a casualty, shall take precedence over and be in lieu of any contrary provision provided for in this Lease, and in all respects are binding upon Tenant who agrees to and acknowledges the same.

Section 11.3 Tenant hereby waives the provisions of Section 227 of the Real Property Law of the State of New York and acknowledges that the terms of this Article XI shall govern in lieu thereof.

**ARTICLE XII**

**EMINENT DOMAIN**

Section 12.1 Eminent Domain. a) In the event that all or substantially all of the Leased Premises, or such portion of the Real Property which renders the balance of the Facility unsuitable for the purpose of this Lease, shall be taken by condemnation or right of eminent domain, this Lease shall terminate as of the day the taking authority takes possession of the Leased Premises, and Landlord and Tenant shall be released from any further liability hereunder thereafter accruing with respect to the Facility, except as otherwise expressly provided in this Lease. In the event only a portion (and less than substantially all) of the Leased Premises is taken by condemnation or right of eminent domain and the portion so taken does not render the balance of the Leased Premises unsuitable for the purposes of this Lease, as determined by Landlord, this Lease shall not terminate. In such an event, Tenant shall restore the Leased Premises with reasonable diligence with its own funds and with the proceeds of any award from the applicable public or quasi-public authority, or private corporation or individual having the power of condemnation ("Award") to an architectural unit as nearly like its condition prior to such taking as shall be practicable. Notwithstanding anything to the contrary herein, this

Section 12.1(a) is subject to the terms, conditions and provisions of any mortgage and other loan documents encumbering the Leased Premises.

(i) Notwithstanding anything to the contrary contained in Section 12.1(a), Landlord may cancel this Lease with no further liability to Tenant, in the event that following a taking by condemnation or right of eminent domain, Mortgagee elects to require Landlord to repay the mortgage on the Leased Premises.

(j) Tenant shall not be entitled to any part of any award or settlement of damages representing the value of land and buildings appropriated, the value of this Lease or any estate therein, or damage to the residue of the Leased Premises or other property of Landlord; it being agreed as between Landlord and Tenant any such award shall be the sole property of Landlord. No appropriation of part or all of the Leased Premises or cancellation of this Lease pursuant to this Article XII shall be deemed an eviction of Tenant or a breach of any covenants of Landlord hereunder.

ARTICLE XIII

NOTICES

Section 13.1 Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if (a) hand delivered or sent by (b) certified or registered United States mail, postage prepaid, return receipt requested or (c) Federal Express or other nationally recognized overnight next business day courier service at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 13.1):

If to Tenant:

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, New York 10520

with a copy to:

Michelman & Robinson  
800 Third Avenue, 24th Floor  
New York, NY 10022  
Attn: Mark Zafin, Esq.  
Telephone: 212.730.7700

If to Landlord:

White Plains Healthcare Properties I, LLC,  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960

with a copy to:

Gerald J. Billow, Esq.  
Posternak Blankstein & Lund LLP  
800 Boylston Street, Suite 3200  
Boston, Massachusetts 02199

-and-

Howard Fensterman, Esq.  
Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042

The effective date of such notices shall be as follows: (a) upon delivery or refusal of delivery if sent by personal delivery, (b) two (2) Business Days after mailing (or upon actual receipt, if earlier), if sent by certified or registered mail, (c) one (1) Business Day after deposit with the courier for next business day delivery, if sent by overnight courier. The term "Business Day" means any day other than (i) a Saturday or a Sunday, and (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

Section 13.2 Notices to Mortgagee. (a) Tenant hereby agrees, upon request of Mortgagee, to give to Mortgagee copies of all notices given by Tenant of default by Landlord under this Lease at the same time and in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord. Such Mortgagee shall have the right to remedy any default under this Lease, or to cause any default of Landlord under this Lease to be remedied, and for such purpose Tenant hereby grants such Mortgagee such period of time as may be reasonable to enable such Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default which is a default. Tenant shall accept performance by such Mortgagee of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No default by Landlord under the Lease shall exist or shall be deemed to exist (i) as long as such Mortgagee, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (ii) if possession of the Leased Premises is required in order to cure such default, or if such default is not susceptible of being cured by such Mortgagee, as long as such Mortgagee, in good faith, shall have notified Tenant that such Mortgagee intends to institute proceedings under the mortgage and, thereafter, as long as such proceedings shall have been instituted and shall prosecute the same with reasonable diligence and, after having obtained possession, prosecutes the cure to completion with reasonable diligence. This Lease shall not be assigned by Tenant or modified, amended or terminated without Mortgagee's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed. In the event of the termination of this Lease by reason of any default thereunder or for any other reason whatsoever except the expiration thereof, upon such Mortgagee's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such Mortgagee or its designee or nominee a new

lease of the Leased Premises for the remainder of the Term of the Lease upon, at a minimum, all of the terms, covenants and conditions of this Lease. Neither such Mortgagee or its designee or nominee shall become liable under this Lease unless and until such Mortgagee or its designee or nominee becomes, and then only for so long as such Mortgagee or its designee or nominee remains, the fee owner of the Leased Premises or the owner of the leasehold interest of Landlord under this Lease. Such Mortgagee shall have the right, without Tenant's consent, to, as the case may be, foreclose its mortgage or to accept a deed in lieu of foreclosure of such mortgage.

(b) In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Mortgagee, and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such Mortgagee within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Mortgagee shall have become entitled under its loan documents with Landlord in connection therewith, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy).

ARTICLE XIV

QUIET ENJOYMENT

Section 14.1 Quiet Enjoyment Landlord covenants, warrants and represents to Tenant that, provided no Lease Default exists under this Lease, Tenant shall at all times during the Term peaceably and quietly have, hold, occupy and enjoy the Leased Premises, subject to the terms and conditions of this Lease, without any hindrance, interference or molestation by Landlord or by, under or through Landlord.

ARTICLE XV

SUBLETTING AND ASSIGNMENT

Section 15.1 Subletting and Assignment (a) Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in the Landlord's sole and absolute discretion (and, if required by law, without the prior written consent of the Commissioner, which consent may be withheld in the Commissioner's sole and absolute discretion), transfer or assign this Lease or Tenant's interest in the Leased Premises or any part thereof or sublease all or any part of the Leased Premises. In all events of assignment, transfers or subletting, the prior approval of the DOH shall be required. Tenant shall not at any time, without the prior written consent of Landlord, which consent may be withheld or given in the sole and absolute discretion of Landlord, pledge, mortgage, or hypothecate the leasehold estate hereby created or any interest of Tenant therein. The issuance of or a transfer or series of transfers (including transfers caused

by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant aggregating to forty-nine percent (49%) or more of the stock, membership or ownership interest in Tenant or any subtenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; notwithstanding anything to the contrary, any change in the management or control of Tenant such that Lizer Josefovici does not control all of the decisions of Tenant shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof. Notwithstanding anything to the contrary, the issuance of or a transfer or series of transfers (including transfers caused by mergers, acquisitions or consolidations of any direct or indirect interests in the equity ownership interests in Tenant or any subtenant resulting in the aggregate interest of Lizer Josefovici, Marc Neuman, and their spouse or issue, or a trust for their benefit, equaling less than seventy-five percent (75%) of the stock, membership or ownership interest in Tenant or any subtenant to any person or entity shall constitute an assignment for purposes of this Lease, requiring Landlord's consent thereof; provided that any assignment by Lizer Josefovici to Joseph Josefovici made after five years after the Commencement date shall not be unreasonably denied by Landlord taking into account, among other things, the experience, performance record, and financial strength of Joseph Josefovici. The consent by Landlord to any transfer shall not constitute consent to any subsequent transfer or to any successive transfer. Further, subject to the provisions of Section 2.2, and without in any way limiting or otherwise affecting the provisions of this Lease, Landlord shall be permitted to assign this Lease and all agreements, duties, obligations and rights incidental thereto to any entity related to, or affiliated with Landlord, without any consent from Tenant. The term "transfer" shall mean any direct or indirect sale, conveyance, transfer, lease (including any amendment, extension, modification, waiver or renewal thereof), sublease, sub-sublease, assignment, mortgage, pledge, grant of a security interest or hypothecation, whether by operation of law or otherwise, whether voluntary or not, of or in (i) all or part of the Leased Premises (including any legal or beneficial direct or indirect interest therein) or (ii) any direct or indirect interest in Tenant. Notwithstanding anything to the contrary contained herein, Tenant may assign this Lease to, or enter into a sublease with, or transfer interests in an entity comprising Tenant to, an affiliate under common control with Tenant, or owned by Lizer Josefovici, Marc Neuman, or their spouse or issue, or a Trust for their benefit, without Landlord's consent, provided (x) Landlord is given thirty (30) days prior written notice of such intended transfer, assignment or sublease with copies of the organizational documents of the assignee, transferee or sublessee, (y) after such transfer, assignment or sublease, Lizer Josefovici controls all of the decisions of the assignee, transferee or sublessee, and (z) all required consents from, the Mortgagee, the DOH and/or the Commissioner (if required), have been obtained by Tenant. Notwithstanding the foregoing and any other provision contained herein to the contrary, no transfer or series of transfers of legal, economic, beneficial or equitable (direct or indirect) interest in the Lease or in Tenant's membership interest that requires DOH's consent shall occur without the prior written consent of Landlord and DOH. Tenant shall enter into such subordination agreements or subordination, non-disturbance agreements ("SNDAs") as Mortgagee may request from time to time.

Section 15.2 Attornment and Related Matters. Any sublease shall be expressly subject and subordinate to all applicable terms and conditions of this Lease and provide that upon the expiration or earlier termination of this Lease, Landlord, at its option and without any obligation to do so, may require any subtenant to attorn to Landlord, its successors and assigns, in which event Landlord shall undertake the obligations of Tenant, under such sublease from the

time of the exercise of such option to the termination of such sublease; provided, however, that in such case Landlord shall not be liable for any prepaid rents, fees or other charges or for any prepaid security deposits paid by such subtenant to Tenant or for any other prior defaults of Tenant under such sublease. In the event that Landlord shall not require such attornment with respect to any sublease, then such sublease shall automatically terminate upon the expiration or earlier termination of this Lease, including any early termination by mutual agreement of Landlord and Tenant. In addition, any such sublease shall provide that in the event that the subtenant or other transferee receives a written notice from Landlord stating that a Lease Default has occurred or that an event or circumstance has occurred which with notice and/or passage of time would constitute a Lease Default, such subtenant or other transferee thereafter shall without further consent or instruction of Tenant pay all rentals accruing under such sublease directly to Landlord or as Landlord may direct; provided, however, that (a) as and to the extent that the amounts so paid to Landlord, together with other amounts paid to or received by Landlord on account of this Lease, exceed the amounts then due Landlord from Tenant under this Lease, the excess shall be promptly remitted to Tenant, and (b) at such time as the Lease Default has been cured and this Lease reinstated (if ever), Landlord shall notify and direct the subtenant(s) in writing to resume making payments of rentals under their sublease(s) directly to Tenant, or as Tenant may direct. Any such rentals collected from such subtenant or other transferee by Landlord shall be credited against the amounts owing by Tenant under this Lease in such order of priority as Landlord shall reasonably determine. Furthermore, any sublease or other agreement regarding a transfer shall expressly provide that the subtenant, assignee, manager or other transferee shall furnish Landlord, its lender, the Mortgagee, if applicable, the HUD Mortgagee, and/or the Commissioner, and /or DOH, if applicable, with such financial, operational and other information about the Facility and subtenant, etc., as Landlord may request from time to time.

Section 15.3 Assignment of Subleases. To secure the prompt and full payment by Tenant of the Rent and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to the conditions hereinafter set forth and any required consent(s) from DOH, all of Tenant's right, title and interest in and to all permitted subleases, assignments, licenses and occupancy agreements, to the extent permitted by law, involving the Facility, as set forth on Schedule 15.3 attached hereto (the "Sublease", and the subtenant under a Sublease herein referred to as a "Subtenant") and hereby confers upon Landlord, its agents and representatives, a right of entry (subject to prior notice) in, and sufficient possession of, the Leased Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Sublease, and further agrees that the exercise of said right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Leased Premises or any portion thereof and that should said right of entry and possession be denied Landlord, its agent or representative, Landlord, in the exercise of said right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever, provided, however, that such assignment shall become operative and effective only if (a) a Lease Default shall occur and be continuing or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof or (c) there occurs a repossession under a dispossessory warrant or other re-entry or repossession by Landlord under the provisions hereof or (d) a receiver for all or a portion of the Leased Premises is appointed, and then only as to such of the subleases that

Landlord may elect to take over and assume. At any time and from time to time within ten (10) days after Landlord's written demand, Tenant promptly shall deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants, with a photostatic copy of each of the Subleases. Upon request of Landlord, Tenant shall permit Landlord and its agents and representatives, and Mortgagee, its agents and representatives, to inspect all Subleases affecting the Leased Premises. Tenant covenants that each Sublease shall provide that the Subtenant thereunder shall be required from time to time, upon request of Landlord or Tenant, to execute, acknowledge and deliver, to and for the benefit of Landlord, an estoppel certificate confirming with respect to such Sublease the information set forth in Section 20.11 hereof.

Section 15.4 Additional Sublease Requirements. Tenant covenants and agrees that all Subleases hereafter entered into affecting the Leased Premises shall provide that (a) they are subject to this Lease and that the principals of the Subtenant acknowledge that they have read this Lease and accept the terms hereof, (b) the term thereof shall not end less than one (1) day prior to the Expiration Date hereof, unless Landlord shall consent otherwise, which consent may be withheld in Landlord's sole and absolute discretion, (c) the Subtenants will not do, authorize or execute any act, deed or thing whatsoever or fail to take any such action which will or may cause Tenant to be in violation of any of its obligations under this Lease, (d) the Subtenants will not pay rent or other sums under the Subleases with Tenant for more than one (1) month in advance, (e) the Subtenants shall give to Landlord at the address and otherwise in the manner specified in Section 13.1 hereof, a copy of any notice of default by Tenant as the landlord under the Subleases at the same time as, and whenever, any such notice of default shall be given by the Subtenants to Tenant; and (f) all of the representations, warranties and covenants given by Tenant to Landlord in this Lease, including but not limited to all reporting requirements and covenants set forth in Section 7.4 above, shall be made and given by each Subtenant for the benefit of Landlord, Mortgagee, and their respective successors and assigns.

Section 15.5 Transfers in Bankruptcy. (a) In the event of a transfer pursuant to the provisions of Title 11 of the United States Code or any statute of similar purpose or nature (the "Bankruptcy Code"), all consideration payable or otherwise to be delivered in connection with such transfer shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any consideration constituting Landlord's property pursuant to the immediately preceding sentence and not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. For purposes of this Section 15.5, the term "consideration" shall mean and include money, services, property and any other thing of value such as payment of costs, cancellation or forgiveness of indebtedness, discounts, rebates, barter and the like. If any such consideration is in a form other than cash (such as in kind, equity interests, indebtedness earn-outs, or other deferred payments, consulting or management fees, etc.), Landlord shall be entitled to receive in cash the then present fair market value of such consideration. If Tenant assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to Tenant, then notice of such proposed assignment shall be given to Landlord by Tenant no later than fifteen (15) days after receipt of such offer by Tenant, but in any event no later than ten (10) days prior to the date that Tenant shall file any application or motion with a court of competent jurisdiction for authority and approval to enter into such assumption and

assignment. Such notice shall set forth (a) the name and address of the assignee, (b) all of the terms and conditions of such offer, and (c) the proposal for providing adequate assurance of future performance by such person under the Lease, including, without limitation, the assurance referred to in Section 365 of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease from and after the date of such assignment. Any such assignee shall execute and deliver to Landlord upon demand an instrument confirming such assumption.

(h) The term "adequate assurance of future performance" as used in this Lease shall mean (in addition to the assurances called for in Bankruptcy Code Section 365(i)) that any proposed assignee shall, among other things, (i) deposit with Landlord on the assumption of this Lease an amount equal to the greater of (x) two (2) times the then monthly Fixed Rent and Additional Rent or (y) such other amount deemed by the Bankruptcy Court to be reasonably necessary for the adequate protection of Landlord under the circumstances, as security for the faithful performance and observance by such assignee of the terms and obligations of this Lease, (ii) furnish Landlord with financial statements of such assignee for the prior three (3) calendar years, as finally determined after an audit and certified as correct by a certified public accountant, which financial statements shall show a net worth at least equal to the amount of the deposit referenced in (i) above, (iii) if determined by the Bankruptcy Court to be appropriate under the circumstances, grant to Landlord a security interest in such property of the proposed assignee as Landlord shall deem necessary to secure such assignee's future performance under this Lease, and (iv) provide such other information or take such action as Landlord, in its reasonable judgment, shall determine is necessary to provide adequate assurance of the performance by such assignee of its obligations under the Lease.

(e) If, at any time after Tenant may have assigned Tenant's interest in this Lease in a proceeding of the type described in Section 16.1 (iv) through (vii), this Lease shall be disaffirmed or rejected in any proceeding of the types described in Section 16.1 (iv) through (vii) hereof, or in any similar proceeding, or in the event of termination of this Lease by reason of any such proceeding or by reason of lapse of time following notice of termination given pursuant to Article XVI based upon any of the Lease Defaults set forth in said Section 16.1 (iv) through (vii) Tenant, upon request of Landlord given within thirty (30) days next following any such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord), shall (a) pay to Landlord all Rent due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant", enter into a new lease with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the expiration date of the term, unless sooner terminated as in such lease provided, at the same Fixed Rent and Additional Rent upon the then executory terms, covenants and conditions as are contained in this Lease, except that (i) Tenant's rights under the new lease shall be subject to the possessory rights, if any, of the assignee under this Lease and the possessory rights of any person claiming through or under such assignee or by virtue of any applicable Law, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant with due diligence, and (iii) such new lease shall require Tenant to pay all Rent reserved in this Lease which, had this Lease not been so disaffirmed, rejected or terminated, would have accrued under the provisions of this Lease after the date of such

disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant shall default in its obligation to enter into said new lease for a period of ten (10) days next following Landlord's request therefor, then in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant as if Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 15.6 Management Agreement. Tenant agrees and acknowledges that it will not enter into any management agreements during the Term with regard to the Facility except with an entity (i) owned wholly by a an individual principal of Tenant which entity has been received establishment approval from the New York State Department of Health Public Health and Health Planning Council in compliance with 10 NYCRR 600.9(d)(1) and (ii) approved by HUD if the Facility is, or is about to be financed by a HUD program, and/or Mortgagee. Any such management agreement shall be subordinate to Landlord's rights hereunder, to the rights of Mortgagee and to the rights of the Commissioner. Tenant shall cause such manager to execute such documents as are required by Landlord or Mortgagee or by the Commissioner to effect such subordination.

Section 15.7 Memorandum of Lease. This Lease shall not be recorded, but either party may record a memorandum of lease in which shall describe the parties to this Lease, a description of the Leased Premises and a recitation of the Term. The party requesting that the memorandum of lease be recorded shall prepare and pay all costs of recording the memorandum of lease, and the other party agrees to execute at any and all times such instruments as may be reasonably required for such recording. Upon the expiration or earlier termination of this Lease, Landlord may release the memorandum of lease. For this purpose Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to execute a release of such memoranda in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. To the extent any transfer tax, conveyance tax, excise tax, or similar tax is imposed by any Governmental Authority as a result of the recording of such Memorandum of Lease, or is otherwise due and payable as to Tenant's leasehold interest granted pursuant to this Lease, Tenant shall pay same to the applicable Governmental Authority.

ARTICLE XVI

DEFAULT

Section 16.1 Default by Tenant and Remedies of Landlord. (a) Tenant shall be in default under this Lease upon the occurrence of any of the following events referred to herein individually or collectively as a "Lease Default" (any reference to such event occurring or involving Tenant shall be deemed to include any such event occurring or involving any of Tenant's Subtenants):

(i) if Tenant fails to pay any installment of Rent within five (5) days after the date when due;

(ii) if Tenant defaults in the prompt and full performance of any other of Tenant's covenants, obligations or agreements hereunder which are not specifically enumerated herein as a Lease Default and fails to correct such failure within thirty (30) days of receipt of written notice from Landlord of such default (unless such default cannot reasonably be cured within thirty (30) days, in which event such period shall be extended, provided Tenant shall have commenced in good faith to cure such default within the first such thirty (30) day period and shall proceed with all due diligence to correct such default thereafter but in no event more than ninety (90) days of receipt of such written notice);

(iii) if the leasehold interest of Tenant shall be levied upon under execution or be liened or attached and such levy, lien or attachment is not removed within sixty (60) days of the date Tenant receives notice of it;

(iv) in the event of a filing by or against Tenant of a petition under federal or state law pertaining to bankruptcy or insolvency or for a reorganization or other relief;

(v) if Tenant shall admit in writing its inability to pay its debts generally as they become due;

(vi) if Tenant is adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, with or without the consent of Tenant, a receiver or trustee of Tenant or of the whole or substantially all of its property;

(vii) if Tenant makes any general assignment for the benefit of creditors;

(A) if Tenant abandons the Leased Premises or if, except as a result of damage, destruction or a partial or complete condemnation, Tenant ceases operations of the Facility, or Tenant closes any portion of the Facility;

(viii) if Tenant receives a state or federal notice of termination of license or de-certification and such notice has not been suspended, extended, withdrawn or terminated prior to 30 days before the effective date of such termination or decertification by any Governmental Authority;

(ix) if Tenant fails to maintain its qualifications for licensure as required by this Lease if failure to do so would result in an inability to operate the Facility or would result in the appointment of a receiver with respect to the Facility;

(x) if any transfer or assignment of this Lease or Tenant's direct or indirect interest therein or a transfer of Tenant's direct or indirect equity ownership interests occurs in violation of this Lease;

(xi) if any malpractice award or judgment exceeding any applicable malpractice insurance coverage and any applicable umbrella coverage by more than One Million Dollars (\$1,000,000.00) shall be rendered against Tenant or any subtenant, and either (A) enforcement proceedings shall have been commenced by any creditor upon such award or judgment or (B) such award or judgment shall continue unsatisfied and in effect for a period of

sixty (60) consecutive days without an insurance company reasonably satisfactory to Landlord having agreed to fund such award or judgment in a manner reasonably satisfactory to Landlord, or (C) such award or judgment has been appealed and without a bond having been posted to cover such amount that exceeds any insurance coverage, and in any case such award or judgment shall, in the reasonable opinion of Landlord, have a material adverse affect on the ability of Tenant or any subtenant to operate the Facility;

(xii) upon the denial, refusal to issue, or loss of any licenses, certifications, certificates, approvals, permits, variances, waivers, provider agreements and other authorizations necessary or required for Tenant to operate the Facility in accordance with the requirements of this Lease;

(xiii) if any of the representations or warranties made by Tenant under this Lease or any subtenant under its Sublease or otherwise proves to be untrue when made in any material respect;

(xiv) if any Governmental Authority having jurisdiction over the operation of the Facility removes ten percent (10%) or more of the patients or residents who reside in the Facility for violations of standards of care;

(xv) Tenant fails to give Landlord and Mortgagee timely notice or timely deliver copies of documents within the times required under Section 7.4 (c) through (o);

(xvi) Tenant's receipt of notice of an allegation or determination of "Immediate Jeopardy" (as such term is customarily used) or equivalent notice from any Governmental Authority or officer, acting on behalf thereof relating to the Facility;

(xvii) Tenant's receipt of notice of the freeze on admissions or the imposition of a denial of payment for new admissions or equivalent notice from any Governmental Authority or officer acting on behalf thereof relating to the Facility;

(xviii) Tenant's breach of its obligations under Section 3.5 including Tenant's failure to execute and deliver to Landlord within seven days of its request therefore any and all documents, certificate or agreement required or reasonably requested by Landlord, a Mortgagee, Prospective Mortgagee, HUD and/or HUD's Approved Lender or the Commissioner, including confirming the subordination required hereunder;

(xix) Tenant's breach of its obligations under Section 5.6 Management Agreement;

(xx) Tenant's breach of its obligations under Section 7.6 Security Agreement;

(xxi) Tenant fails to notify Landlord within twenty-four (24) hours after receipt of any notice from any Governmental Authority, terminating or suspending or threatening termination or suspension of any material license or certification relating to the Facility;

(xxii) a default beyond any applicable notice and cure periods under any Sublease, operating agreement, management agreement or any other material agreement relating to the Leased Premises or to which Landlord and Tenant are a party,

(xxiii) the creation of any indebtedness relating to the Leased Premises (other than trade payables which are not more than 30 days past due, not evidenced by a note and not in excess of One Million Dollars \$1,000,000.00);

(xxiv) the amendment, modification, restatement, termination or cancellation of any material contract relating to the Leased Premises, including but not limited to any Sublease, without Landlord's prior written consent, which consent shall not be unreasonably withheld;

(xxv) default or breach by Guarantor under the Guaranty beyond the expiration of any applicable cure period contained therein,

(xxvi) failure by Tenant to deposit all or any portion of the Security Deposit or Letter of Credit or to replace any portion of the Security Deposit or Letter of Credit utilized by Landlord;

(xxvii) a default or breach of any of the provisions set forth in Article XIX;

(xxviii) Tenant violates any term, covenant or condition of Tenant's Regulatory Agreement (with respect to a HUD financing) which violation is not cured within thirty (30) days of written notice to Tenant;

(xxix) a default or breach of the provisions set forth in Section 7.4(b) or a report required by Section 7.4 proves to be untrue in any material respect;

(xxx) any act or omission by Tenant or any Subtenant referenced in Section 7.4 that constitutes a default by Landlord under its loan documents with Mortgagee;

(xxxi) Tenant's failure to meet the covenants provided in Section 7.4 (q)

(xxxii) the sale or transfer or attempted sale or transfer of all or any portion of any certificate of need, bed or unit right or other similar authorization relating to any portion of the Facility or the Leased Premises, assignment or subletting in violation of the provisions of Section 15.1;

(xxxiii) the use of any portion of the Premises other than for the Intended Use;

(xxxiv) the Facility appears on the Special Focus Facility List, or similar list established by CMS;

(xxxv) Tenant fails to procure the insurance coverage, or loss of the insurance coverage, required by this Lease;

(xxxvi) Tenant enters into any corporate integrity agreement, settlement or consent decree, or deferred prosecution agreement with any Governmental Authority;

(xxxvii) Any Governmental Authority assesses a fine or penalty against, or with, Tenant that imposes a payment or fine upon Tenant in excess of \$75,000;

(xxxviii) The conviction of, or plea of no contest or nolo contendere by, Tenant or any member or beneficial owner of Tenant with respect to (1) any felony or (2) any misdemeanor that involves any act of fraud, embezzlement, theft or misappropriation;

(xxxix) Tenant fails to comply with its obligations in Section 18.1(n) within 10 days after written notice from Landlord; or

(xxxxi) Tenant or any Subtenant fails or refuses to execute estoppel certificate required pursuant to Section 20.11, or otherwise complying with the requirements of Section 23 within ten (10) days after Tenant's receipt thereof.

Upon the occurrence of a Lease Default, Landlord, may, if Landlord so elects, upon five (5) days written notice of such election, forthwith terminate this Lease and Tenant's right to possession of the Leased Premises and, at Landlord's sole and absolute discretion, accelerate the payment of all Rent for the balance of the Term and declare the same presently due and payable in full provided, however, that with respect to a Lease Default under Section 16.1(a)(iv), this Lease shall automatically terminate. In the event of such Lease termination, Tenant shall immediately pay Landlord the then present value of all such accelerated Rent. Landlord, in addition to all other remedies given to Landlord at law or in equity, may by written notice to Tenant, without terminating this Lease, cause Tenant to apply to the DOH to install a manager and/or management consultant and/or a receiver having the necessary approvals from Governmental Authorities, of Landlord's choice, at Tenant's sole cost and expense or to the extent permitted by applicable law, reenter the Leased Premises by summary proceedings or otherwise. In any event, upon a Lease Default, Landlord may require Tenant to consent to a so-called "Change of Ownership" and Landlord may dispossess Tenant upon approval of the Change of Ownership or Certificate of Need by DOH, it being the understanding that under no circumstances is this Lease to be an asset for Tenant's creditors by operation of law or otherwise. In the event of such reentry, Landlord may relet the Leased Premises without being obligated so to do, and in the event of a reletting may apply the Rent therefrom first to the payment of Landlord's cost and expenses, including consultant and/or expert and attorneys' fees and expenses incurred by reason of such Lease Default, and the cost and expense of reletting including, but not limited to, repairs, renovation, or alteration of the Leased Premises and then to the amount of Rent and all other sums due from or payable by Tenant hereunder, Tenant remaining liable for all other sums due from or payable by Tenant hereunder and for any deficiency. Tenant shall also be liable for and indemnify Landlord against all amounts owed to Medicare, Medicaid, all applicable third-party payor programs, third party payors, or residents, including, but not limited to, any overpayments received by Tenant, relating to the Term. Any and all such deficiencies shall constitute Additional Rent hereunder and shall be payable by

Tenant monthly on the date herein provided for the payment of Rent. In addition to the foregoing remedies, Landlord shall immediately be entitled to retain the Security Deposit and draw on and retain proceeds of the Letter of Credit, and thereafter Tenant shall have no further claim, right, title or interest therein to the extent of Landlord's claims only.

Landlord acknowledges that its rights of reentry onto the Leased Premises set forth in this Lease do not confer on Landlord the authority to operate a nursing facility as defined in Article 28 of the Public Health Law on the Leased Premises and agrees that except in the event of a Lease Default Landlord will give the DOH, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of its intent to reenter the Leased Premises or to initiate dispossessory proceedings or that the Lease is due to expire at least thirty (30) days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least sixty (60) days before expiration of the Lease.

Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossessory proceedings and sixty (60) days prior to the expiration of the Lease, Tenant shall immediately notify by certified mail the DOH, Tower Building, Empire State Plaza, Albany, NY 12237 (or its then current address), of the receipt of such notice or service of such process or that the Lease is about to expire.

(b) Except as provided in this Lease to the contrary, Rent and other sums not paid when due (unless paid within any applicable grace period) shall bear interest from the date when the same are first payable under the terms of this Lease until the same shall be paid at an annual rate of interest equal to the Overdue Rate.

(c) Upon the filing of a petition by or against Tenant pursuant to the Bankruptcy Code, Tenant, as debtor and as debtor-in-possession, and any trustee who may be appointed shall: (i) timely perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (ii) pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Leased Premises an amount equal to the Rent and other charges otherwise due pursuant to this Lease; and (iii) reject or assume this Lease within one hundred twenty (120) days after the filing of such petition under the Bankruptcy Code or within such time period as the Bankruptcy Code may allow. Tenant, as debtor and as debtor-in-possession and any trustee shall be deemed to have rejected this Lease in the event of the failure to comply with any of the above. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor, in the event of assumption and/or assignment is the prior written consent of any mortgagee to which this Lease has been assigned as collateral security.

(d) In the event of termination of this Lease by reason of any Lease Default by Tenant, or upon the expiration of the Term, then, and in any of such events, Tenant, upon Landlord's written request, shall to the greatest extent permitted by law, transfer to Landlord or its designees or assigns, or cause its Subtenants and/or Affiliates, to transfer to Landlord or its designees or assigns, the following: (i) all federal, state or municipal licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements (including non-governmental) and other authorizations which relate to the operation of the Facility; and (ii) the name of the Facility as then commonly known to the general public

Tenant shall also prepare and file all notices required by applicable law in connection with such termination and shall also prepare and timely file all final Medicare and Medicaid cost reports. In the event Tenant fails or refuses to transfer any such licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements, other authorization or trade name, then this provision shall constitute an act of assignment by Tenant to Landlord or its assigns without the necessity of any further written instrument. For this purpose, Tenant constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to complete or undertake such replacements in the name of Tenant. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

(e) Landlord shall have the option of taking over the operation of the Facility, or having the operation of the Facility taken over by a designee, in the event of a termination of this Lease for any reason, without Landlord or designee assuming any of Tenant's liabilities or obligations, including Tenant's liabilities and obligations with respect to employees, such as vacation, sick leave, health insurance and pension liabilities and Tenant's obligations under applicable law to offer and provide group health continuation coverage. Landlord shall give Tenant written notice of Landlord's intent to exercise the right set forth above, in which event, upon the approval of the DOH of the Change of Ownership, Tenant shall and shall cause the Subtenant to immediately turn over possession and control of the Facility without any further action having to be taken on the part of Landlord. At the request of Landlord, Tenant shall and shall cause the Subtenant to turn over any or all of inventories, personal property (including computer and telecommunications equipment but excluding any leased equipment) vehicles, and material contracts (including hospital, transfer, vendor, and managed care contracts).

(f) No failure of Landlord to enforce any rights or remedies upon default of Tenant shall prejudice or affect the rights of Landlord upon any subsequent or similar default.

(g) In the event of a Lease Default by Tenant of any of the terms, covenants, conditions or provisions of this Lease, which Lease Default is not cured within any applicable grace or cure period, Landlord shall have the right to invoke any remedy permitted to Landlord at law, in equity or otherwise. All remedies available to Landlord are declared to be cumulative and concurrent and the exercise of one shall not preclude or waive the right to exercise any other. No termination of this Lease and no taking or recovering of possession of the Leased Premises shall deprive Landlord of any of its remedies or actions against Tenant and Tenant shall remain liable for all past or future Rent, including all taxes, insurance premiums and all other charges and Rent payable by Tenant under this Lease, during and for the balance of the Term hereof. The bringing of any action for Rent or other default shall not be construed as a waiver of the right to obtain possession of the Premises.

(h) If suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent, or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and breach shall be established, Tenant shall pay to Landlord all expenses, including reasonable attorney fees, incurred therefor. This subsection shall survive termination of this Lease.



**Section 16.2 Facility Operating Deficiencies.** On written notice of a request therefor by Landlord to Tenant, upon a Lease Default and for a period of time necessary to fully remedy the Lease Default, Tenant shall engage the services of a consultant, unaffiliated with Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to review the management of the facility for the purpose of making recommendations to remedy the Lease Default. Subject to applicable legal requirements governing confidentiality of patient records, the consultant shall have complete access to the Facility, its records, offices and facilities, in order that it may carry out its duties. Tenant shall cause such consultant to prepare and deliver to Landlord and Tenant a written report of its recommendations within ten (10) days after its engagement. If Tenant shall fail to designate a consultant approved by Landlord as provided above within five (5) days after Tenant's receipt of Landlord's notice, Landlord may designate such consultant by further notice to Tenant. Tenant shall be responsible for payment of all fees and expenses reasonably charged and incurred by the consultant in carrying out its duties. Tenant shall promptly implement any and all reasonable recommendations made by such consultant in order to promptly correct or cure the Lease Default; provided, however, that in no event shall Tenant implement any such recommendations if the same would constitute a violation of applicable legal requirements, violate any rule or regulation of the DOH, or would otherwise cause a Lease Default hereunder (e.g., a transfer or change in use of the Leased Premises), unless Landlord consents in writing to such Lease Default, which consent may be given or withheld in Landlord's sole and absolute discretion. Nothing herein shall impose any liability or obligation on Landlord to (a) request the appointment of a consultant or (b) otherwise remedy the Facility Operating Deficiency(ies) nor shall it deem Landlord an operator of the Facility.

### **Section 16.3 Receivership.**

Tenant acknowledges that one of the rights and remedies available under applicable law for nursing facilities which fail to comply with the conditions of participation for Medicare or Medicaid is to apply to a court of competent jurisdiction for the appointment of a receiver to take possession of the Facility, to collect the rents, issues, profits and income of the Facility and to manage the operation of the Facility. Tenant further acknowledges that the revocation, suspension or material limitation of the certification of the Facility for provider status under Medicare or Medicaid (or successor programs) and/or the revocation, suspension or material limitation of a license relating to the operation of the Facility for its intended use under the laws of the State of New York will materially and irreparably impair the value of Landlord's investment in the Facility. Therefore, in the event of a Lease Default, and in addition to any other right or remedy of Landlord under this Lease, at the request of Landlord, Tenant shall request DOH to, or to the extent permissible under law, Tenant shall, petition any appropriate court, for the appointment of a receiver to take possession of the Facility, to manage the operation of the Facility under Tenant's licenses and certifications, to collect and disburse all rents, issues, profits and income generated thereby and to preserve or replace to the extent possible any such license and provider certification for the Facility or to otherwise substitute the licensee or provider thereof. The receiver shall be entitled to a reasonable fee for its services as a receiver. All such fees and other expenses of the receivership estate shall be added to the monthly Rent due to Landlord under this Lease as Additional Rent. Tenant hereby irrevocably stipulates to the voluntary appointment of a receiver under such circumstances and for such purposes and agrees not to contest such appointment.

**Section 16.4 Tenant's Waiver, Mitigation.** In connection with the exercise by Landlord of any of its remedies under this Section 16, including the termination of this Lease, in whole or in part, Tenant waives, to the maximum extent permitted by applicable Laws, (1) any right of redemption, re-entry or repossession, (2) the benefit of any moratorium laws or any laws now or hereafter in force exempting property from liability for rent or for debt, (3) any duty on the part of Landlord to mitigate the damages recoverable from Tenant on account of any Lease Default by Tenant, except that, notwithstanding the foregoing or anything in this Lease to the contrary, Landlord agrees to comply with any duty to mitigate damages where applicable Laws do not allow Tenant to waive such right, (4) the right to interpose any counterclaim (other than compulsory counterclaims) in any summary proceeding instituted by Landlord against Tenant in any court or in any action instituted by Landlord in any court for unpaid Rent under this Lease, and (5) any other right provided to Tenant under applicable Laws relating to a breach of or Lease Default under this Lease, including any rights to cure such breach or Lease Default.

**ARTICLE XVII**

**ENTRY AND REIMBURSEMENT RIGHTS OF LANDLORD**

**Section 17.1 Entry and Reimbursement Rights of Landlord.** In addition to those rights set forth in Section 7.2 of this Lease, Landlord reserves the right at all reasonable times during business hours and upon at least twenty-four (24) hours' advance oral notice to go upon and inspect the Facility and every part thereof (subject to applicable Laws pertaining to patient confidentiality and privacy and the confidentiality of medical records). If Landlord shall make any payments or perform any repairs on behalf of Tenant which are Tenant's obligation and which Tenant has failed to make after applicable notice from Landlord, then any reasonable amounts so paid by Landlord are agreed and declared to be Additional Rent, and shall be due and payable to Landlord by Tenant upon submission to Tenant of an invoice, bill, or statement therefor, together with interest charged at the Overdue Rate commencing on the date of such invoice, bill, or statement. Nothing in this Section 17.1 shall impose any liability or obligation upon Landlord.

**ARTICLE XVIII**

**REPRESENTATIONS AND WARRANTIES**

**Section 18.1 Tenant's Representations, Warranties and Additional Covenants.** Tenant represents, warrants and covenants to Landlord and agrees (all of which shall survive the delivery and execution of this Lease) as follows (all of Tenant's representations, warranties, and covenants shall be deemed to include, in addition to that specified herein, the identical warranties, representations, and covenants of all Subtenants, which Tenant agrees to set forth in any Sublease and which are hereby incorporated herein by reference as if set forth in full herein):

- (a) **Corporate.** Tenant is a limited liability company duly formed and validly existing and in good standing under the laws of the State of New York, and has the

limited liability company power and authority to own its property and assets and to carry on its business as now being conducted or as will be conducted on and after the Commencement Date.

(b) No Breach of Statute or Contract. The execution, delivery and performance of this Lease by Tenant and any Sublease by a subtenant will not breach any statute or regulation of any Governmental Authority, and will not as of the Commencement Date conflict with or result in a breach of or default under any of the terms, conditions or provisions of Tenant's articles of organization, operating agreement, other material agreements, or any order, writ, injunction, decree, agreement or instrument to which Tenant is a party, or by which it or its property, may be bound.

(c) Authorization of Lease. The execution, delivery and performance of this Lease, and all Subleases, has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Tenant and this Lease constitutes the valid and binding obligation of Tenant, fully enforceable in accordance with its terms.

(d) No Litigation or Adverse Events. Except as set forth on Schedule 18.1(d) attached hereto and incorporated herein, there is no suit, claim, action or legal, administrative, arbitration, or other proceeding or governmental investigation pending or threatened, by or against Tenant, and there exists no event or condition of any character, which could prevent the consummation of the transactions contemplated by this Lease or materially adversely affect Tenant's performance of the terms and conditions hereunder.

(e) Conduct of Business Subject to the express provisions herein, at all times after the Effective Date, Tenant shall, and cause its subtenants to (i) operate the Leased Premises (after the Commencement Date) and otherwise conduct its/their business in the ordinary course, and in compliance with all statutory and regulatory requirements of any federal, state or local authority, (ii) continue to operate the Leased Premises after the Commencement Date and maintain it in substantially its condition as of the Commencement Date, reasonable wear and tear excepted, including but not limited to repairs and replacements permitted or required under this Lease, and in a lawful manner, (iii) not encumber all or any portion of its assets or properties or the Leased Premises, including without limitation, certificates of need, bed rights, or provider agreements, (iv) preserve the goodwill of the Facility, (v) not take any action from an accounting perspective which would materially adversely affect the reimbursement formula or tax benefits with respect to the Leased Premises or any portion thereof, (vi) utilize the Leased Facility only for the Intended Purpose, (vii) not relinquish or attempt to transfer the location of or sell the skilled nursing facility license, certificate of need approval, Medicare or Medicaid certification or any other licenses, certifications, certificates, accreditations, approvals, permits, variances, waivers, provider agreements or other authorizations, (viii) not refuse to admit patients without 30 days' written notice of intent to, and prior written consent of, Landford, (ix) not dissolve, merge or consolidate with or into any other person or entity, or otherwise change its identity or company or capital structure, or (x) not change its name or its business address.

(f) Continued Existence. At all times on and after the Effective Date, Tenant shall cause to be done all things needed to preserve its rights and franchises and comply with all Laws applicable to it, and to continue to conduct its business in the ordinary course.

(g) Payment of Obligations. At all times on and after the Effective Date, Tenant shall timely pay, and cause its subtenants to timely pay, all of its/their obligations, indebtedness, taxes, charges and impositions, whether or not relating to the Leased Premises or this Lease, as they become due unless contested in good faith and diligently pursued only if permitted under and subject to the terms and conditions of this Lease.

(h) Notice of Default. At all times on and after the Effective Date, Tenant shall promptly notify Landlord of (i) any material default by Tenant relating to any indebtedness or obligation of Tenant, whether or not relating to the Leased Premises or this Lease, and (ii) any material violations by the Facility of any applicable Law.

(i) Compliance with Law. At all times on and after the Effective Date, Tenant shall comply in all respects, and cause its subtenants to comply in all respects, with all applicable Laws, including Medicare and Medicaid conditions of participation, to which it is subject or which are applicable to the Leased Premises and to Tenant's operation of the Leased Premises as a licensed, Medicare and Medicaid certified skilled nursing facility.

(j) Bids and CON. Tenant has been awarded a CON for construction and operation of 160 skilled nursing facility beds for use at the Lease Premises by DOH and such CON may be used in connection with this Lease.

(k) Tenant, on behalf of itself and its Subtenants, makes the Health Care warranties and representations set forth in Schedule 18(k) attached hereto and incorporated herein, to Landlord, its successors and assigns, which warranties and representations shall be true and correct as of Commencement Date and at all times during the Term.

(l) Except for the Subleases of the Leased Premises to the Operators, there are no subleases or sub-subleases or occupancy agreements (other than residence agreements with patients or residents) for any portion of the Leased Premises.

(m) Tenant shall maintain and comply at all times with all O&M Plans (Operation and Maintenance Plans covering the handling, treatment or maintenance of asbestos or Hazardous Materials) relating to the Leased Premises, or that shall be required in the future by Mortgagee or any HUD mortgagee or, where applicable, the Commissioner.

(n) Obligations prior to Commencement Date. In addition to all of Tenant's obligations provided in this Lease, Tenant shall:

(i) as soon as practical after the Effective Date, apply for and rigorously pursue until obtained all Health Care Licenses;

(ii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain from DOI the maximize total project cost for the Facility approvable by DOH;



(iii) as soon as practical after the Effective Date and continuing thereafter take all actions necessary or appropriate to obtain the highest possible reimbursement rate with respect to the Medicare and Medicaid programs;

(iv) as soon as practical after the Effective Date, apply for and rigorously pursue until obtained provider agreements with third party payors providing reimbursement for skilled nursing facility services in the geographic area of the Facility;

(v) after the Effective Date take all actions requested by Landlord in order for Landlord to finance and complete Landlord's Work.

(vi) as soon as practical prior to the Commencement Date, hire, employ and train a staff adequate to provide services to the residents of the Facility immediately after the Commencement Date;

(viii) as soon as practical prior to the Commencement Date, purchase a sufficient inventory of food, medicines and other perishable items necessary to provide services to the residents of the Facility immediately after the Commencement Date;

(ix) as soon as practical prior to the Commencement Date, purchase and deliver to the Facility all small wares necessary provide services to the residents of the Facility immediately after the Commencement Date;

(x) six months after the Effective Date and thereafter every six months until the Commencement Date, deliver to Landlord a detailed projected statement of income and expenses and cash flow for a three year period.

Section 18.2 Representation and Warranties. Landlord hereby represents and warrants to Tenant, all of which shall survive the delivery and execution of this Lease, and agrees, as follows:

(a) No Breach of Statute or Contract. The execution, delivery, and performance of this Lease will not violate any provision of law, any order of any court or other agency of federal or state government or any provision of any indenture, agreement, or other instrument to which Landlord is a party or by which it or any of its properties or assets are bound; conflict with, result in a breach of, or constitute (with passage of time or delivery of notice, or both), a default under any such indenture, agreements or other instrument; or result in the creation or imposition of any lien or other encumbrance of any nature whatsoever upon any of the properties or assets of Landlord.

(b) Authorization of Lease. This Lease has been duly authorized by all necessary individuals, shareholders, members, officers, directors, managers and/or owners of Landlord and this Lease constitutes the valid and binding obligation of Landlord, fully enforceable in accordance with its terms.

(c) No Litigation or Adverse Events. There is no action, suit, examination, review, or proceeding by or before any governmental instrumentality or agency now pending or, to the knowledge of Landlord, threatened against Landlord, which, if adversely determined,

would materially impair the right of Landlord to carry on the business as contemplated under this Lease.

(d) No Default. Landlord is not in default in the performance, observation, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which it is a party relating to the Leased Premises and which default would have a material adverse affect on the Leased Premises; and

(e) Corporate. Landlord is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of New York and is qualified to do business in the State of New York, and has the limited liability company power and authority to own its properties and assets and to carry on its business as now being conducted.

ARTICLE XIV

OPERATION, MERGER AND CONSOLIDATION RESTRICTIONS

Section 19.1 Intentionally Omitted

Section 19.2 SPE Provisions. At all times during the term of this Lease, Tenant represents, warrants and covenants that Tenant and each Subtenant, and all successors and assigns of Tenant and Subtenants, is, shall be and shall continue to be a "Special Purpose Entity" as defined in Schedule 19.2. The Operating Agreement of Tenant and each subtenant shall include the Special Purpose Entity provisions set forth in Schedule 19.2.

Section 19.3 Injunctive Relief. Notwithstanding anything to the contrary set forth in this Lease, the Parties hereto understand and agree that: (a) each term of Article XIX of this Lease is fully required to protect Landlord's interests, and that no such term confers a benefit on Landlord that is disproportionate to the detriment imposed on Tenant, if any; (b) the remedy at law for any breach by Tenant of Article XIX would be inadequate; (c) the damages flowing from such breach are not readily susceptible to measurement in monetary terms; and (d) Landlord shall be entitled to immediate injunctive relief restraining any breach thereof. Nothing in this Agreement shall be deemed to limit Landlord's remedies at law or in equity for any such breach by Tenant of any term or provision of Article XIX of this Lease.

Section 19.4 Equity Interests. In the event that Tenant or any constituent entity under this Lease is ever a form of entity other than a limited liability company, the term "membership interest" as used in Articles XIX and XX hereof shall be deemed to mean the analogous form of equity ownership interest in such other type of entity, such as capital stock, partnership interest, beneficial interest or the like.

Section 19.5 No Merger or Consolidation. Except as expressly provided elsewhere in this Lease, Tenant shall not sell, or offer for sale, its assets or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity other than selling non-material assets in the ordinary course of business, to any other entity, business or activity involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and

representatives. Except as expressly provided elsewhere in this Lease, Tenant, Subtenants, Guarantor(s) and their Affiliates, shall not sell or offer to sell, assign, transfer, convey, pledge, or encumber its/their membership interests to, or otherwise attempt to merge with or otherwise merge, consolidate, amalgamate or otherwise combine with any other entity; business or activity, whether involving any of Tenant's officers, directors, members, managers, owners, representatives, agents, successors and assigns, and their respective successors, assigns, agents and representatives, or otherwise.

ARTICLE XX

MISCELLANEOUS

Section 20.1 GOVERNING LAW. (a) ALL MATTERS PERTAINING TO THIS LEASE OR THE LEASED PREMISES SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS LEASE, AND THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LANDLORD OR TENANT ARISING OUT OF OR RELATING TO THIS LEASE MAY AT LANDLORD'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF WHITE PLAINS, COUNTY OF WESTCHESTER, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND TENANT WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TENANT HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. TENANT DOES HEREBY DESIGNATE AND APPOINT:

Lizer Josefovic  
HBL SNF, LLC  
1280 Albany Post Road  
Crotton-on-Hudson, New York 10520

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO TENANT IN THE MANNER PROVIDED IN ARTICLE XIII OF THIS LEASE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON TENANT IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE

STATE OF NEW YORK. TENANT (A) SHALL GIVE PROMPT WRITTEN NOTICE TO LANDLORD OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE, IN THE FORM OF A WRITTEN NOTICE TO LANDLORD, A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN WHITE PLAINS, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR AND NOTIFY LANDLORD IN WRITING OF SUCH SUBSTITUTION.

Section 20.2 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Lease shall not operate as, or be construed to be a waiver of, any subsequent breach of the same or other provision hereof. No waiver shall be effective unless set forth in writing and signed by the party against whom such waiver is asserted.

Section 20.3 Delay Not a Waiver. Neither any failure nor any delay on the part of any party hereto in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or any other document or instrument entered into or delivered in connection herewith or pursuant hereto, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. A waiver of one default with respect to any Person shall not be construed to be a waiver of any subsequent default with respect to such Person or any other Person or to impair any remedy, right or power consequent thereon.

Section 20.4 Force Majeure. Neither party shall be liable nor deemed to be in default (other than monetary defaults) for any delay or failure in performance under this Lease or other interruption of service or employment deemed resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Parties' employees, or any similar or dissimilar cause beyond the reasonable control of either party ("Force Majeure").

Section 20.5 Severability. In the event any provision of this Lease is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Lease so long as the intent of the parties under this Lease can still be effected, which shall remain in full force and effect and enforceable in accordance with its terms.

Section 20.6 Entire Agreement; Amendments. This instrument contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All representations, promises and prior or contemporaneous undertakings between such Parties are merged into and expressed in this instrument, and any and all prior agreements between such Parties are hereby canceled. The agreements contained in this instrument shall not be amended, modified, or supplemented except by a written agreement duly executed by both Landlord and Tenant.

Section 20.7 Counterpart Execution; Electronic Execution. This Lease may be executed in any number of counterparts with the same effect as if the Parties hereto had signed the same document. All counterparts will be construed together and shall constitute one lease. Signatures transmitted by email as PDFs shall have the same effect as original signatures.

Section 20.8 Survival of Representations and Warranties. Except as specifically provided otherwise in this Lease, all representations and warranties of Landlord and Tenant shall survive the Term of this Lease.

Section 20.9 Use of Brokers. Landlord and Tenant each represent and warrant to the other that no broker, finder or other person has been involved in regard to this Lease. Landlord and Tenant hereby agree to indemnify, defend and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind (including the injured party's reasonable attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of a party to this Lease in connection with the transactions contemplated herein. The provisions of this Section 20.9 shall survive the expiration and termination of this Lease.

Section 20.10 Owner for Federal Tax Purposes. It is hereby agreed between Landlord and Tenant that for federal, state and local income tax purposes Landlord will be the owner of the Leased Premises and Tenant will be the lessee thereof, and each party hereto agrees to characterize this Lease as a lease for federal, state and local income tax purposes and to file all tax returns consistent therewith.

Section 20.11 Estoppel Certificates. Tenant shall, without charge, at any time and from time to time, within ten (10) days after written request by Landlord or Mortgagee, deliver a written instrument to Landlord or any other person specified by Landlord, duly executed and acknowledged, certifying the following and such other matters as may be reasonably required by Landlord, including without limitation, current financial information relating to Tenant:

(a) That Tenant has accepted and is in possession of the Leased Premises;

(b) That this Lease is unmodified and in full force and effect or, if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;

(c) Whether or not there are then existing any setoffs or defenses in favor of Tenant against the enforcement of any of the terms, covenants, and conditions of this Lease by Landlord and, if so, specifying the same, and also whether or not Landlord has observed and performed all of the terms, covenants, and conditions on the part of Landlord to be observed and performed and, if not, specifying same;

(d) That no Lease Defaults exist or are continuing; and

(e) The dates to which Rent and all other charges hereunder have been paid.

Section 20.12 Confidentiality. (a) Landlord and Tenant agree to keep all aspects of (but not the existence of) this Lease confidential, and shall not disclose to any person other than the members, managers, owners, directors, officers, employees, agents, advisors, affiliates, brokers, lenders, attorneys or accountants (collectively the "Representatives") of the Parties hereto on a need-to-know basis, or to any Governmental Authority pursuant to regulatory authority, any confidential or proprietary information, knowledge or data concerning the business, affairs, operations, secrets, dealings or finances of the other party furnished directly or indirectly by such other party (collectively referred to as the "Confidential Information"). As used in this Lease, the term "Confidential Information" does not include any information which: (i) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by either party or their Representatives); (ii) was available to either party on a non-confidential basis from a source other than a party to this Lease or its Representatives, provided that such source is not and was not bound by a confidentiality agreement with the party hereto; (iii) has been independently acquired or developed by either party or their Representatives without violating any of the obligations hereunder; (iv) is required by law to be disclosed; or (v) relates to the tax structure, tax strategy or tax planning of this transaction.

(f) In the event that either party or any of the Representatives receives notice of a legal request for disclosure of any of the Confidential Information (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), the party receiving such notice ("Receiving Party") shall promptly notify the other party ("Notified Party") so that the Notified Party may seek a protective order or other appropriate remedy if it chooses to do so. Failure by the Notified Party to take action to seek a protective order or other remedy and to notify the Receiving Party of such action prior to the required disclosure date, shall be deemed a waiver of the provisions of this section. In the event that a protective order or other remedy is not obtained or that the Notified Party waives compliance with the provisions hereof, the Receiving Party shall exercise its best efforts to obtain a confidentiality agreement or protective order concerning the Confidential Information, and in the absence thereof, shall disclose only that portion of the Confidential Information which it is advised by written opinion of counsel is legally required to be disclosed, or which is compelled by court order.

(g) In the event of any breach or threatened breach hereof, Landlord or Tenant shall be entitled to equitable relief, including a temporary preliminary and permanent injunction and specific performance, in addition to all other remedies available to them at law or in equity.

(h) Notwithstanding anything herein to the contrary, Landlord (and each employee, agent, or other Representative of Landlord) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of this Lease, related documents and all materials of any kind (including opinions or other tax analyses) that are provided to Landlord relating to such tax treatment and tax structure. For this purpose, the tax treatment of a transaction is the purported or claimed U.S. federal income tax treatment of the transaction and the tax structure of a transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of the transaction.

Section 20.13 Holdover. If, at the expiration of the Term, or earlier termination of the Lease, Tenant continues to occupy the Leased Premises except during a Reimbursement Period, with Landlord's consent, such holding over shall not constitute a renewal of this Lease, but Tenant shall be a Tenant from month-to-month at 300% of the most recent Rent payable by Tenant hereunder, at Landlord's sufferance, and under the same terms and conditions as were in force and effect at the expiration of the Term (except only as to the Term), and except that in the event Tenant shall continue to occupy the Leased Premises after the expiration of the Term, without a duly executed extension agreement in writing having been entered into by and between Landlord and Tenant, then if Landlord shall suffer any damage, loss, cost or expense as a result of such holdover, then Tenant, in addition to such increased Rent, shall pay the amount thereof to Landlord immediately on demand. The provisions of this Section shall be deemed to be "an agreement expressly provided" otherwise as provided in Section 252-C of the Real Property Law of the State of New York. Holdover. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the Expiration Date or earlier termination of this Lease, nor shall anything contained herein be deemed to limit Landlord's remedies.

Section 20.14 Tenant's Waiver of Claim for Physical Injury. Landlord and Landlord's Indemnitees shall not be liable for, and Tenant waives and indemnifies Landlord and Landlord's Indemnitees against all claims for, damage or injury to person or property sustained by Tenant or any person claiming through Tenant, or otherwise, resulting from any accident or occurrence in, about, or upon the Leased Premises, whether occurring as a result of Landlord's active or passive negligence, or otherwise.

(a) Such waiver shall include, but not be limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair or any other capital improvement, replacement, repair or maintenance; (ii) injury done or occasioned by wind; (iii) any defect in or failure of plumbing, heating, or air conditioning equipment, electric wiring, gas, water and steam pipes, stairs, rail or walks; (iv) broken glass; (v) the backing up of any sewer pipe or washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Leased Premises; (vi) the escape of steam or hot water; (vii) water, snow or ice being upon, falling from or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Leased Premises; (viii) the falling of any fixture, plaster, drywall or stucco; and (ix) any act, omission or negligence of trespassers.

Section 20.15 Binding Effect. This Lease does not constitute an offer to lease and shall not bind Landlord or Tenant unless and until each such party elects to be bound hereby by executing and delivering to the other party an executed original counterpart hereof.

Section 20.16 Default by Landlord. Landlord shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within sixty (60) days of when they are due to be performed, except in cases when documents are required or consents needed in less than sixty (60) days in which case failure to render timely shall be deemed to be approval or consent of Landlord (or such additional time as is reasonably required to correct any such default) except for Landlord's default in making timely payment of taxes and interest, in which case Landlord shall be in default when such payments are delinquent or past due. Tenant agrees to give to the

holder of record of any mortgage covering the Leased Premises notice simultaneously with any notice given to Landlord to correct any default of Landlord as hereinabove provided and agrees that the holder of record of any mortgage shall have the right, after receipt of notice of such default, within sixty (60) days after the expiration of Tenant's applicable cure period with respect thereto, to correct or remedy such default before Tenant may take any action under this Lease by reason of such default. Landlord shall also give to the holder of any mortgage copies of any notices of default which it may give or send to Tenant.

Section 20.17 Liens. Tenant shall not do or suffer anything to be done whereby the Leased Premises, or any portion thereof, or any interest therein, may be encumbered by any liens of mechanics, laborers, or materialmen, chattel mortgages or any other liens. Tenant shall, whenever and as often as any such liens are filed against the Leased Premises, or any portion thereof, purporting to be for labor or material furnished or to be furnished to Tenant, discharge the same of record within thirty (30) days after the date of filing by payment, bonding or otherwise, as provided by law. In the event of the default of Tenant in procuring the discharge, as aforesaid, of any such lien, Landlord may, with five (5) days prior notice, procure such discharge and the expenses incurred by Landlord in obtaining such discharge shall be paid by Tenant as Additional Rent within ten (10) days after notice from Landlord of the amount thereof.

Section 20.18 Publicity. All news releases, publicity or advertising by Tenant or their Affiliates through any media intended to reach the general public which refers to Landlord, or its Affiliates, this Lease or the purchase of the Real Property shall be subject to the prior written approval of Landlord.

Section 20.19 Trial by Jury **TENANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS LEASE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TENANT.**

Section 20.20 Construction and Interpretation. The Parties have each negotiated the terms and conditions hereof and reviewed this Lease carefully. It is the intent of the Parties that each word, phrase, sentence and other part hereof shall be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part hereof against the draftsman, by virtue of being the draftsman, shall not apply.

Section 20.21 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than shall be due hereunder, shall be deemed to be other than a payment on account nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be given any effect or be deemed an accord and

satisfaction, and Landlord may accept such checks without prejudice to any other rights or remedies which Landlord may have.

Section 20.22 Captions and Headings. The captions and headings set forth in this Lease are included for convenience and reference only, and the words obtained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of, or the scope or intent of, this Lease, or any parts hereof or thereof.

Section 20.23 Time is of the Essence. Time is of the essence of each and every term, condition, covenant and warranty set forth herein or in any of the other Lease Documents.

Section 20.24 Successors and Assigns. This Lease and the other Lease Documents shall (a) be binding upon Tenant and Tenant's legal representatives and permitted successors and permitted assigns, and (b) inure to the benefit of Landlord and any other person or entity who may now or hereafter hold the interest of Landlord under this Lease and their respective successors and assigns.

Section 20.25 No Third Party Beneficiaries This Lease is solely for the benefit of Landlord, its successors and assigns, and Tenant, and nothing contained herein shall confer upon any person other than Tenant or Landlord or their respective successors and assigns, any right to insist upon or to enforce the performance or observance of any of the obligations contained herein, except only as may be otherwise specifically provided for in this Lease. All conditions to the obligations of Landlord to advance or make available proceeds of insurance or condemnation are imposed solely and exclusively for the benefit of Landlord, its successors and assigns. No other person or entity shall have standing to require satisfaction of such conditions in accordance with their terms, and no other person or entity shall, under any circumstances, be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Landlord at any time, if in Landlord's sole and absolute discretion, Landlord deems it advisable or desirable to do so.

Section 20.26 Non Competition and Non Solicitation.

Tenant agrees to the following restrictive covenants and agreements which covenants are not severable from this Lease and which are included to protect the value of the Leased Premises. Accordingly, Tenant agrees that it and their Affiliates will not, during the Term of this Lease at any time for a period of two (2) years after the expiration or early termination of this Lease, directly or indirectly, together or alone or in conjunction with any others, engage in the following:

- (i) compete with the business conducted at the Facility, and for these purposes will not own, manage, operate, join, control or participate in, or be connected as an officer, employee, partner, director, trustee or otherwise in any manner with a company which owns or operates (or provides consulting and/or management services to any skilled nursing facility located within the Primary Market of the Facility or (ii) any company providing hospice services in the Commonwealth of Massachusetts, or, otherwise lend credit to a person, firm or entity of a type which they prohibited from owning,

(ii) solicit or hire any then current or former (having provided services during the period commencing one year prior to such date of solicitation or hire) employees of the Facility (except for employment at the Facility),

(iii) solicit or cause any then current resident of the Facility to move to another nursing facility unless, except during the Term of this Lease the Facility can no longer provide adequate care for such resident.

Tenant acknowledges and agrees that the remedy at law for any breach or threat of breach of the foregoing agreements will be inadequate and that Landlord shall be entitled to injunctive relief in addition to any rights or remedies available to it for any breach or threat of breach hereof. The foregoing covenants shall be deemed to be severable and if the same be held invalid by reason of length of time or area covered, or both, the Tenant agrees that such length of time or area covered, or either of them, shall be reduced to the extent necessary to cure such invalidity and the provisions hereof shall be enforceable to the fullest extent permitted by law.

Section 20.27 Subdivision. If the Leased Premises are in excess of that which is required to operate the Facility in accordance with the Intended Use, Landlord may subdivide the Leased Premises and amend this Lease to include only so much of the Leased Premises as is necessary to operate the Facility in accordance with the Primary Intended Use. If Landlord subdivides the Leased Premises there shall be no change in the Rent payable hereunder. After any such subdivision, Tenant shall have no rights to any land which is no longer part of the Leased Premises and Landlord may sell, lease or develop any land which is no longer part of the Leased Premises. If Landlord elects to subdivide the Leased Premises Tenant shall cooperate with Landlord and take all actions reasonably requested by Landlord to effect such subdivision.

Section 20.28 Landlord Not in Control; No Partnership. None of the covenants or other provisions contained in this Lease shall, or shall be deemed to, give Landlord the right or power to exercise control over the affairs or management of Tenant, the power of Landlord being limited to the rights to exercise the remedies referred to in this Lease. The relationship between Tenant, on the one hand, and Landlord, on the other hand, is, and at all times shall remain, solely that of landlord and tenant. No covenant or provision of this Lease is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand. Landlord undertakes or assumes no responsibility or duty to Tenant or to any other person with respect to the Facility or this Lease, except as expressly provided in this Lease; and notwithstanding any other provision of this Lease (a) Landlord shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Tenant or its stockholders, members, or partners and Landlord never intends to ever assume such status; (b) Landlord shall not in any event be liable for any debts, expenses or losses incurred or sustained by Tenant; and (c) Landlord shall not be deemed responsible for or a participant in any acts, omissions or decisions of Tenant or their stockholders, members, or partners. Landlord, on the one hand, and Tenant, on the other hand, disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Landlord, on the one hand, and Tenant, on the other hand, or any sharing of liabilities, losses, costs or expenses.

Section 20.29 Tenant Cooperation. Tenant agrees to cooperate with Landlord in providing, and upon request by Landlord or its lender, Tenant shall provide or cause its subtenants to provide, such documents, information, financial reports, and such other items as may be required by Mortgagee in connection with Landlord's loan or loans to acquire the Leased Premises. Tenant agrees to cause its outside counsel to provide updated healthcare opinions required by Mortgagee in connection with the healthcare operations by Tenant or its subtenants at the Facility, and if required by Mortgagee, an opinion of counsel as to the due formation of Tenant and its subtenants and due execution by said parties, and Tenant Affiliates, of the Lease, all subleases, all guaranties of the Lease, and any other documents executed by such parties in connection with the loan(s) from Mortgagee to Landlord. Tenant agrees to execute, and cause the subtenants to execute, SNUAs in form and substance required by Mortgagee and by its prospective lender who will be making HUD-insured loans to Landlords. Tenant further agrees to cooperate with Landlord and with its lenders who are processing and will be making HUD Loans to Landlords.

Section 20.30 Capitalized Terms. To the extent capitalized terms used herein are not defined, they shall have the same meaning as capitalized terms in the Loan Documents.

Section 20.31 Affiliate. The term "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

**ARTICLE XXI**

**REMEDIES CUMULATIVE**

Section 21.1 The rights and remedies set forth under this Lease are in addition to all other rights and remedies afforded to Landlord under any of the other documents contemplated under this Lease ("Lease Documents") or at law or in equity, all of which are hereby reserved by Landlord, and this Lease is made and accepted without prejudice to any such rights and remedies. All of the rights and remedies of Landlord under each of the Lease Documents shall be separate and cumulative and may be exercised concurrently or successively in Landlord's sole and absolute discretion.

**ARTICLE XXII**

**LIMITATION OF LIABILITY**

Section 22.1 Liability. No member, manager, officer, shareholder, employee or agent of Landlord or its respective affiliates shall be held to any personal liability, jointly, or severally, for any obligation of, or claim against Landlord under this Lease. All persons dealing with Landlord, in any way, shall look only to the assets of Landlord for the payment of any sums or the performance of any obligations

Section 22.2 Consequential Damages. Under no circumstances shall Landlord be liable to Tenant or any subtenant or Affiliate of Tenant for any consequential, specified, exemplary or permitted damages.

Section 22.3 Liability Limited to Interest in Premises. Tenant shall look solely to Landlord's interest in the Leased Premises owned by Landlord to satisfy any liability arising under this Lease. It is specifically agreed that no constituent partner in Landlord or officer, director, member, manager or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. Except as otherwise expressly provided herein, in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause.

**ARTICLE XXIII**

**REGULATORY ACTIONS**

Section 23.1 Notice of Litigation. (a) Promptly after receipt by Tenant or its Affiliates of notice of the commencement thereof, Tenant shall provide Landlord with notice of all actions, suits, and proceedings before any Governmental Authority affecting Tenant, or its Affiliates or its Subtenants, which, if determined adversely to Tenant, its Affiliates or its Subtenants, could result in a judgment equal to or greater than Fifty Thousand Dollars (\$50,000.00).

(b) Notice of Regulatory Actions. Promptly after receipt by Tenant or its Affiliates of the notice of commencement thereof, Tenant shall provide Landlord with notice of (i) any audit, investigation, claim (excluding adjustments, complaints, and corrective activity in the ordinary course of business), proceeding, settlement, judgment, consent order, or corporate integrity agreement by or imposed by any Governmental Authority, (ii) any suspension, debarment or disqualification of Tenant, its officers and members, or its Affiliates from being a health care provider, government contractor, holder of any health care license or recipient of reimbursement from any third party payor, (iii) any suspension, termination, or revocation of any health care license of Tenant or any or any of Tenant's Affiliates or (iv) any self or voluntary disclosure of any overpayment to a third party payor by Tenant or any of Tenant's Affiliates.

(c) Notice of Settlement Negotiations. Tenant shall provide Landlord with reasonable notice of any and all settlement discussions and/or negotiations (excluding adjustments, complaints and corrective activity in the ordinary course of business) between representatives of Tenant and/or its Subtenants and any Governmental Authority, including without limitation negotiations with respect to any claim, settlement agreement, consent order or corporate integrity agreement between Tenant and its Affiliates and any Governmental Authority ("Settlement Discussions"). In connection with Settlement Discussions, (i) Tenant shall timely provide Landlord with copies of any and all documents that Tenant and/or its Subtenants intends to submit, or that Tenant and/or its Subtenants receives, in connection with any Settlement Discussions, and (ii) Tenant shall advise Landlord as to the status of the Settlement Discussions.

No receipt of any such notice under subsections (a), (b) and (c) shall impose any obligation on Landlord to take any action or to enforce its rights hereunder or otherwise remedy the circumstances leading to such notice.

ARTICLE XXIV

ANTI-TERRORISM AND ANTI-MONEY LAUNDERING COMPLIANCE

Section 24.1 Compliance with Anti-Terrorism Laws Tenant represents and warrants to Landlord that it is not, and, after making due inquiry, that no person who owns a controlling interest in or otherwise controls Tenant is, (i) listed on the Specially Designated Nationals and Blocked persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (ii) a person (a "Designated Person") either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). The OFAC Laws and Regulations and the Executive Orders are collectively referred to in this Agreement as the "Anti-Terrorism Laws". Tenant represents and warrants that it requires, and has taken reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Tenant is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section 24.1 shall not apply to any person to the extent that such person's interest in Tenant is through a U.S. Publicly-Traded Entity. As used in this Lease, "U.S. Publicly-Traded Entity" means a person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person.

Section 24.2 Funds Invested in Tenant. Tenant represents and warrants that it has taken reasonable measures appropriate to the circumstances (and in any event as required by law), with respect to each holder of a direct or indirect interest in Tenant, to assure that funds invested by such holders in Tenant are derived from legal sources ("Anti-Money Laundering Measures") The Anti-Money Laundering Measures have been undertaken in accordance with the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.* ("BSA"), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, "Anti-Money Laundering Laws").

Section 24.3 No Violation of Anti-Money Laundering Laws. Tenant represents and warrants to Landlord, to its actual knowledge after making due inquiry, that neither Tenant nor any holder of a direct or indirect interest in Tenant (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties

under any Anti-Money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

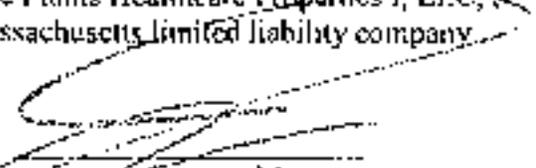
Section 24.4 Tenant Compliance with Anti-Money Laundering Laws. Tenant represents and warrants to Landlord that it has taken reasonable measures appropriate to the circumstances (in any event as required by law), to ensure that Tenant is in compliance with all current and future Anti-Money Laundering Laws and laws, regulations and government guidance for the prevention of terrorism, terrorist financing and drug trafficking.

[SEE ATTACHED SIGNATURE PAGES]

IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

White Plains Healthcare Properties I, LLC,  
a Massachusetts limited liability company

By:   
William A. Nicholson, Manager

**TENANT:**

HBL SNF, LLC,  
a New York limited liability company

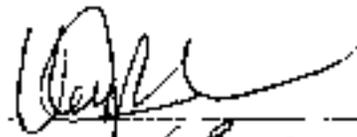
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



STATE OF Massachusetts )  
 ) ss.  
COUNTY OF Essex )

On November 19, 2015, before me, the undersigned, a Notary Public, personally appeared William A. Nicholson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Signature:  (Seal)  
Wendy S. Bradshaw

STATE OF )  
 ) ss.  
COUNTY OF )

On \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)



IN WITNESS WHEREOF, the Parties have executed or caused the execution of this Lease by their respective officers duly authorized as of the day and year first above written.

**LANDLORD:**

White Plains Healthcare Properties I, LLC,  
a Massachusetts limited liability company

By:   
William A. Michalek, Manager

**TENANT:**

HBL SNF, LLC,  
a New York limited liability company

By:   
Name: Robert G. Goffin  
Its: \_\_\_\_\_



STATE OF Massachusetts )  
COUNTY OF Essex ) ss.

On November 19, 2015, before me, the undersigned, a Notary Public, personally appeared William A. Nicholson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature  (Seal)  
Wendy S. Bradshaw

STATE OF )  
COUNTY OF ) ss.

On November 19, 2015, before me, the undersigned, a Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



**LIST OF EXHIBITS AND SCHEDULES**

EXHIBIT "A"	Legal Description
EXHIBIT "B"	Guaranty
SCHEDULE 3.1	Definition of Material Default
SCHEDULE 4.3(b)	Permitted Investments
SCHEDULE 7.4	EBITDAR
SCHEDULE 18.1(d)	Litigation/Adverse Events
SCHEDULE 18(k)	Health Care Warranties and Representations
SCHEDULE 19.2	Special Purpose Entity Provisions

**EXHIBIT "A"**

**Legal Description**

All that certain plot, piece or parcel of land, situate, lying and being in the City of White Plains, County of Westchester and State of New York. Said parcel being more particularly described as follows:

**BEGINNING** at a point in the easterly line of Church Street where the same is intersected by the southerly line of Barker Avenue;

**THENCE** from said point North 70 degrees 40 minutes 10 seconds East a distance of 173.57 feet along the southerly line of Barker Avenue to a point where the same is intersected by the division line herein described parcel on the West and lands now or formerly of Koepfel & Mohr Equities on the East;

**THENCE** from said point and along said division line South 17 degrees 59 minutes 50 seconds East a distance of 200.51 feet to a point in the division line between the herein described parcel on the north and lands now or formerly of Hamilton Plaza Company, Inc. on the south;

**THENCE** from said point and along said line South 71 degrees 01 minutes 50 seconds West a distance of 173.24 feet to the easterly line of Church Street; and

**THENCE** from said point and along said line North 18 degrees 05 minutes 04 seconds West a distance of 199.41 feet to the point and place of **BEGINNING**.

**EXHIBIT "B"**

**GUARANTY**



**SCHEDULE 3.1**

**Definition of Material Default**

Material Default shall mean the occurrence of any of the following:

(a) Any Lease Default except 16.1 (a) (xxv) and (xxxx), provided that the following Lease Defaults shall not be deemed a Material Default unless they occur two or more times within such period: 16.1 (a) (ix), (xvii), (xxx), (xxxxi), and the following Lease Defaults shall not be deemed a Material Default unless they occur three or more times within such period: 16.1 (a) (i), (ii), (xvii).

(b) Any Lease Default during such period constitutes an "Event of Default" by Landlord under any Loan Document between Landlord and its Mortgagee(s) evidencing or documenting a loan secured by the Facility;

SCHEDULE 7.4

<u>PERIOD</u>	<u>EBITDAR TARGET</u>
Quarter 1 (____, 201__ through ____, 201__)	\$ _____
Quarter 2	\$ _____
Quarter 3	\$ _____
Quarter 4	\$ _____
Quarter 5	\$ _____
Quarter 6 and thereafter	\$ _____

"EBITDAR" means with respect to any quarterly period for the Facility an amount determined on a consolidated basis equal to the sum of the following amounts for the Facility for a trailing twelve month period: (a) earnings/(net income or net loss) (including, as an expense an actual or theoretical management expense of five percent (5%) of gross receipts) from operations before (b) interest expense, (c) income tax expense, (d) depreciation expense, (e) amortization expense, and (f) Fixed Rent, defined in accordance with GAAP for such quarterly period. EBITDAR is not considered a measure of financial performance under GAAP. In calculating earnings for the trailing twelve months that encompasses any month prior to the Commencement Date, for the months prior to the Commencement Date, revenue shall be calculated using current rates of reimbursement, meaning reimbursement rates in effect as of the start of the applicable quarterly period.

**SCHEDULE 18.1(d)**

**Litigation/Adverse Events**



SCHEDULE 18(k)

Health Care Representations

**Health Care Representations.** Tenant, for itself, and for the Subtenants, do hereby represent and warrant to Landlord, its successors and assigns, as of the date of the Lease, that:

(a) All Medicare and Medicaid provider agreements, certificates of need, if applicable, certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by Health Care Authorities (as defined in the Lease) for the legal use, occupancy and operation of the Facility (collectively, the "Health Care Licenses") for the Facility have been obtained by the party required to hold such Health Care Licenses and are in full force and effect, including approved provider status in any approved third-party payor program. Each Subtenant (hereinafter "Operator") owns and/or possesses, and holds free from restrictions or conflicts with the rights of others, all such Health Care Licenses and will operate or cause the Facility to be operated in such a manner that the Health Care Licenses shall remain in full force and effect;

(b) The Facility is duly licensed as a skilled nursing facility as required under the applicable laws of the State of New York. The licensed bed capacity of the Facility and the actual bed count operated at the Facility is 160. The Tenant has not applied to reduce the number of licensed or certified beds of the Facility or to move or transfer the right to any and all of the licensed or certified beds of the Facility to any other location or to amend or otherwise change the Facility and/or the number of beds approved by the DOH or other applicable state licensing agency, and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility;

(c) The Health Care License with respect to the Facility (i) has not been and will not be (A) transferred to any location other than the Facility or (B) pledged as collateral security (other than any pledge as collateral security to Tenant's accounts receivable lender approved by Landlord which pledge is subject to the interests of (x) Landlord under the Lease and (y) Mortgagee, including the liens and security interests of the Loan Documents), (ii) is and will continue to be held free from restrictions or known conflicts that would materially impair the use or operation of the Facility as intended, and (iii) is not provisional, probationary, or restricted in any way, except in instances where a Governmental Authority or Health Care Authority has issued a provisional, probationary or restricted license, permit or certification in the ordinary course pending issuance of a final license, permit or certification;

(d) Tenant has or will take any action to rescind, withdraw, revoke, amend, modify, supplement or otherwise alter the nature, tenor or scope of any Health Care

License or applicable provider payment program participation other than non-material alterations effected in the ordinary course of business;

(c) Tenant and the operation of the Facility are in material compliance with the applicable provisions of the Laws and all orders, standards, policies, restrictions or rules of any Health Care Authority having jurisdiction over the ownership, use, occupancy or operation of the Facility, including (i) staffing requirements, (ii) health and fire safety codes including quality and safety standards, (iii) accepted professional standards and principles that apply to the Operator's provision of services at the Facility, (iv) federal, state or local laws, rules, regulations or published interpretations or policies relating to the prevention of fraud and abuse, (v) insurance, reimbursement and cost reporting requirements, government payment program requirements and disclosure of ownership and related information requirements, (vi) requirements of applicable Health Care Authorities, including those relating to the Facility's physical structure and environment, licensing, quality and adequacy of nursing facility care, distributions of pharmaceuticals, rate setting, equipment, personnel, operating policies, and additions of Facility and services, and (vii) any other applicable laws, regulations or agreements for reimbursement for the type of care or services provided by Tenant and/ with respect to the Facility. As used herein, "material compliance" means a level of compliance that would keep Tenant and/ (and the operation of the Facility) free from any final orders or sanctions by any Governmental Authority or Health Care Authority having jurisdiction over the operation of the Facility and would not adversely affect Tenant's and/'s operations, including, but not limited to, its right to receive reimbursement or insurance payments;

(f) Tenant and the Facility are each in material compliance with the requirements for participation in the Medicare and Medicaid programs with respect to the Facility that currently participates in such programs and has a current provider agreement under Title XVIII and/or XIX of the Social Security Act which is in full force and effect. Facility has not had any deficiencies on its most recent survey (standard or complaint that would result in a denial of payment for new admissions with no opportunity to correct prior to termination. The Facility had not any deficiencies at "level G" or above on its most recent survey (standard or complaint), nor has Tenant been cited with any substandard quality of care deficiencies (as that term is defined in Part 488 of 42 C.F.R.) for the past two consecutive surveys. The Facility has not been designated as a Special Focus Facility (as such term is defined by the Centers for Medicare and Medicaid Services Special Focus Facility Program);

(g) Neither Tenant nor the Facility is a target of, participant in, or subject to any action, proceeding, suit, audit, investigation or sanction by any Health Care Authority or any other administrative or investigative body or entity or any other third party payor or any patient or resident (including, without limitation, whistleblower suits, or suits brought pursuant to federal or state False Claims Acts, and Medicaid/Medicare/State fraud/abuse laws, but excluding medical malpractice claims and other civil liability lawsuits for which the Facility is maintaining insurance coverage in the ordinary course of business) which may result, directly or indirectly or with the passage of time, in the imposition of a fine, penalty, alternative, interim or final sanction, a lower rate

certification, recoupment, recovery, suspension or discontinuance of all or part of reimbursement from any Health Care Authority, third-party payor, insurance carrier or private payor, a lower reimbursement rate for services rendered to eligible patients, or any other civil or criminal remedy, or which could reasonably be expected to have a material adverse effect on Landlord, Tenant, or the operation of the Facility, including the Facility's ability to accept or retain residents, or which could result in the appointment of a receiver or manager, or in the modification, limitation, annulment, revocation, transfer, surrender, suspension or other impairment of a Health Care License, or affect Tenant's participation in the Medicare, Medicaid, or third-party payor program, as applicable, or any successor program thereto, at current rate certification, nor has any such action, proceeding, suit, investigation or audit been threatened;

(h) There are no agreements with residents of the Facility or with any other persons or organizations that deviate in any material adverse respect from or that conflict with any statutory or regulatory requirements. All resident records at the Facility, including patient and/or resident accounts records, are true, complete, and correct in all material respects;

(i) Other than the Medicare, Medicaid, and Veteran Administration programs, Tenant is not a participant in any federal, state or local program whereby any federal, state or local government or quasi-governmental body, or any intermediary, agency, board or other authority or entity may have the right to recover funds with respect to any Individual Property by reason of the advance of federal, state or local funds, including, without limitation, those authorized under the Hill-Burton Act (42 U.S.C. 291, et seq.). Tenant has received no notice, and is not aware of any violation of applicable antitrust laws;

(j) Tenant's private payor, Medicaid, Medicare, and/or managed care company, insurance company or other third-party insurance accounts receivable with respect to the Facility are free of any liens and Tenant has not pledged any of its receivables as collateral security for any loan or indebtedness;

(k) Tenant is not a party to any collective bargaining agreement or other labor contract applicable to persons employed by it at the Facility and there are no threatened or pending labor disputes at the Facility;

(l) Tenant has instituted, and the Facility is operated in material compliance with, a compliance plan which follows applicable guidelines established by Health Care Authorities;

(m) Tenant is in compliance with the Health Care Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder;

(n) There is no threatened or pending revocation, suspension, termination, probation, restriction, limitation, or non-renewal affecting Tenant and/or the Facility or provider agreement with any third-party payor, Medicare or Medicaid;

(o) All Medicare, Medicaid, and private insurance cost reports and financial reports submitted by or on behalf of the Facility are and will continue to be materially accurate and complete and have not been and will not be misleading in any material respects;

(p) The Facility and the use thereof complies in all material respects with all applicable local, state, and federal building codes, fire codes, and other similar regulatory requirements and no waivers of such physical plant standards exist at the Facility;

(q) Any existing agreement relating to the management or operation of the Facility is in full force and effect and is not in default by any party. In the event any management or operating agreement is terminated or in the event of foreclosure or other acquisition, the subsequent operator need not obtain a certificate of need prior to applying for and receiving a license to operate the Facility or prior to receiving Medicare or Medicaid payments, as applicable;

(r) There are no actions, suits, or proceedings at law or in equity by any person or entity, including any Governmental Authority or any Health Care Authority or other agency now pending or threatened against or affecting Tenant and/or the Facility, which actions, suits or proceedings, individually or collectively, if determined against Tenant and/or the Facility, might materially adversely affect the condition (financial or otherwise) or business of Tenant and/or the condition, ownership or operation of the Facility.

SCHEDULE 19.2

"Special Purpose Entity" shall mean a corporation, limited partnership or limited liability company (such entity sometimes referred to herein as the "Company") which at all times on and after the date hereof:

(d) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Leased Premises, entering into this Lease with Landlord, subleasing the Leased Premises to affiliated subtenants; and (ii) transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(e) is not engaged and will not engage, directly or indirectly, in any business unrelated to those activities required or permitted to be performed under the Lease, including pursuant to this definition of "Special Purpose Entity" and Subsection (a) above, as applicable;

(f) does not have and will not have any assets other than those (i) related to the Leased Premises or its partnership interest in the limited partnership or the member interest in the limited liability company that operates the Leased Premises or acts as the general partner or managing member thereof, as applicable, and (ii) incidental personal property necessary for the conduct of its business, as applicable;

(g) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(h) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(i) has not failed and will not fail to correct any known misunderstanding regarding its separate identity;

(j) has maintained and will maintain its accounts, books and records separate from those of any other person, individual or entity (a "Person") and maintain its bank accounts separate from those of any other Person. To the extent required by law to file a tax return, will file its own tax returns, except to the extent it is required to file consolidated tax returns by law;

(k) has maintained and will maintain its own records, books, resolutions and agreements;

(l) has not commingled and will not commingle its funds or assets with those of any other Person and has not participated and will not participate in any cash management system with any other Person other than pursuant to its *insert any credit facilities or accounts receivables financings*;

(m) has held and will hold its assets in its own name;

(n) has conducted and will conduct its business in its name;

(o) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(p) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees, if any, in light of its contemplated business operations and in accordance with all Laws;

(q) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;

(r) has and will have no indebtedness other than (i) liabilities under this Lease or any Sublease (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Leased Premises and the routine administration of Tenant, and (iii) such other liabilities that are permitted under this Lease;

(s) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Lease;

(t) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(u) has allocated and will allocate fairly, reasonably and in accordance with all Laws, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(v) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name. The stationery, invoices, and checks utilized by the Tenant or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity;

(w) has not pledged and will not pledge its assets for the benefit of any other Person;

(x) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(y) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(z) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity;

(aa) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(bb) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (A) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are in compliance with all laws and no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party and (B) in connection with this Lease;

(cc) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Rent payable under this Lease and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Rent is insufficient to pay such obligation;

(dd) it shall consider the interests of its creditors in connection with all limited liability company actions;

(ee) does not and will not have any of its obligations guaranteed by any Affiliate except obligations under this Lease;

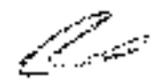
(ff) if such entity is a limited liability company, it shall have its own board of directors or board of managers, and shall cause such board to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other corporate formalities;

(gg) has complied and will comply with all of the terms and provisions contained in its organizational documents. The statement of facts contained in its organizational documents are true and correct and will remain true and correct;

(hh) has not and will not permit any other Person independent access to its bank accounts;

(ii) has caused and will cause all representatives of Tenant to act at all times with respect to Tenant consistently and in furtherance of the foregoing; and

(jj) has not and will not form, acquire, or hold any subsidiary or own any equity interest in any other entity.





# Exhibit 36

**From:** Mark H. Zafrin (NY) [<mailto:mzafrin@mrlip.com>]  
**Sent:** Tuesday, April 11, 2017 6:04 PM  
**To:** Linda Whitehead  
**Cc:** Bob Shapiro; William Nicholson; Andrew Blatt; Jim Holden; Vincequerra, James; Raymond L. Pink ([rpink@lippes.com](mailto:rpink@lippes.com))  
**Subject:** Re: Workshare Professional Document Distribution

Linda. Your bankruptcy was a large impediment to our financing package that is an immutable fact. I don't want to argue about it. Mr Nicholson will have to provide you with all of the details as to his next steps to finish the financing

**Mark H. Zafrin**

Los Angeles|Orange County|San Francisco|Chicago|New York

800 Third Avenue, 24th Floor, New York, NY 10022

T212.730.7700 F212.730.7725

[mzafrin@mrlip.com](mailto:mzafrin@mrlip.com) [www.mrlip.com](http://www.mrlip.com)

**BiopCard**

The contents of this e-mail message and its attachments are intended solely for the addressee(s) hereof. In addition, this e-mail transmission may be confidential and it may be subject to privilege protection. Communications between attorneys or solicitors and their clients. If you are not the named addressee, or if a message has been addressed to you in error, you are directed not to read, disclose, reproduce, distribute, disseminate or otherwise use this transmission. Delivery of this message to any person other than the intended recipient(s) is not intended in any way to waive privilege or confidentiality. If you have received this transmission in error, please alert the sender by reply e-mail; we also request that you immediately delete this message and attachments, if any. UNAUTHORIZED INTERCEPTION PROHIBITED BY FEDERAL LAW (18 U.S.C. 25252).

On Apr 11, 2017, at 5:37 PM, Linda Whitehead <[L.Whitehead@mgslawyers.com](mailto:L.Whitehead@mgslawyers.com)> wrote:

Mark, before you go making comments such as in your last email response to me where you indicated "I understand your outrage after not revealing your bankruptcy for a year" I suggest you get your facts straight as we never hid anything.

We advised you of the bankruptcy immediately prior to filing in January 2016. In fact, in the email from you to me on January 4, 2016 (before HHHW even filed) you recognize that the Agreement will be subject to Bankruptcy Court approval.

# Exhibit 37

TO: Security Benefit Life Insurance Company  
1 SW Security Benefit Pl  
Topeka, Kansas 66636  
Attention: Douglas Schneider

RE: Operating Lease dated November 19, 2015 (the "Lease") by and between WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a limited liability company organized and existing under the laws of Massachusetts ("Lessor"), and HBL SNF, LLC, a limited liability company organized and existing under the laws of New York ("Lessee"), with respect to the property known as White Plains Institute for Rehabilitation & Healthcare in White Plains, New York (the "Project")

**ESTOPPEL CERTIFICATE**

This Estoppel Certificate, dated as of this 1st day of August, 2017, is furnished by Lessor and Lessee to SECURITY BENEFIT CORPORATION, a corporation organized and existing under the laws of Kansas ("Agent"), as agent for the benefit of SECURITY BENEFIT LIFE INSURANCE COMPANY ("Lender"), in connection with a mortgage loan (the "Loan") that Lender is making to Lessor with respect to the Project. Lessor and Lessee each understand that Agent and Lender are relying upon this Estoppel Certificate in connection with making the Loan.

1. **Certifications of Lessee.** Except as set forth in Exhibit A attached hereto, Lessee hereby represents and certifies to Agent and Lender, and their respective successors and assigns, that as of the date hereof:

(a) Lessee is the lessee under the Lease and has not assigned, pledged, encumbered or transferred any of its rights or obligations thereunder. Lessee has not subleased all or any portion of the Project.

(b) The Lease sets forth the full and complete agreement between Lessor and Lessee with respect to the Project. The Lease has not been amended, is in full force and effect according to its terms, and is valid and binding upon Lessee.

(c) Lessee is not in default under the Lease, and no state of facts exists which, with the passage of time or the giving of notice, or both, could constitute a default by Lessee under the Lease. All rent, charges and other payments due to Lessor from Lessee under the Lease on or before the date hereof have been paid.

(d) Lessor is not in default under the Lease, and no state of facts exist which, with the passage of time or the giving of notice, or both, could constitute a default by Lessor under the Lease.

(e) Lessee has not paid any rent, charges or other payments due to Lessor from Lessee under the Lease more than thirty (30) days in advance, nor has Lessee paid any security deposit under the Lease, except for the Letter of Credit described in the Lease.

(f) All conditions under the Lease to be satisfied by Lessor or Lessee as of the date hereof have been satisfied.

(g) There are no actions, voluntary or involuntary, pending against Lessee under any bankruptcy, receivership, insolvency or similar laws of the United States or any state or other governmental authority thereof.

2. **Certifications of Lessor.** Except as set forth in Exhibit A, attached hereto, Lessor hereby represents and certifies to Agent and Lender, and their respective successors and assigns, that as of the date hereof:

(a) Lessee is the lessee under the Lease and has not assigned, pledged, encumbered or transferred any of its rights or obligations thereunder. Lessee has not subleased all or any portion of the Project.

(b) The Lease sets forth the full and complete agreement between Lessor and Lessee with respect to the Project. The Lease has not been amended, is in full force and effect according to its terms, and is valid and binding upon Lessor.

(c) Lessee is not in default under the Lease, and no state of facts exists which, with the passage of time or the giving of notice, or both, could constitute a default by Lessee under the Lease. All rent, charges and other payments due to Lessor from Lessee under the Lease on or before the date hereof have been paid.

(d) Lessor is not in default under the Lease, and no state of facts exist which, with the passage of time or the giving of notice, or both, could constitute a default by Lessor under the Lease.

(e) Lessee has not paid any rent, charges or other payments due to Lessor from Borrower under the Lease more than thirty (30) days in advance, nor has Lessee paid any security deposit under the Lease.

(f) All conditions under the Lease to be satisfied by Lessor or Lessee as of the date hereof have been satisfied.

(g) There are no actions, voluntary or involuntary, pending against Lessor under any bankruptcy, receivership, insolvency or similar laws of the United States or any state or other governmental authority thereof.

Lessee and Lessor hereby certify that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete and that each signatory has read and understands the terms of this instrument. This instrument has been

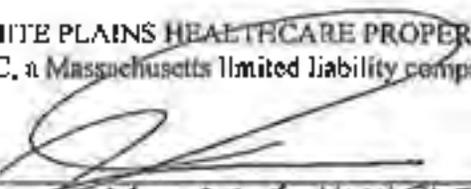
made, presented, and delivered for the purpose of influencing Agent and Lender to make the Loan, and may be relied upon by Agent and Lender as a true statement of the facts contained therein.

[SEE ATTACHED SIGNATURE PAGE]

IN WITNESS WHEREOF, Lessee and Lessor have executed this Estoppel Certificate as of the day and year first above written.

LESSOR:

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company

By:   
Name: WILLIAM A. NICHOLSON  
Title: A MANAGER

LESSEE:

HBL SNE, LLC, a New York limited liability company

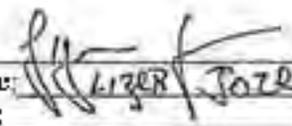
By:   
Name: LIZER JOZEYOY, L  
Title: \_\_\_\_\_

Exhibit A  
Exceptions

None

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
 Plaintiff,  
 – against –  
 HBL SNF, LLC, LIZER JOZEOFVIC A/K/A LIZER  
 JOZOFVIC and MARK NEUMAN,  
 Defendants and Third-Party Plaintiff,  
 against –  
 CCC EQUITIES, LLC, PROJECT EQUITY  
 CONSULTING, THE CONGRESS COMPANIES,  
 HOWARD FENSTERMAN, and WILLIAM  
 NICHOLSON,  
 Third-Party Defendants.

Index No. 60278/2020

AFFIDAVIT OF  
EDWARD O. TABOR

LIZER JOZEOFVIC,  
 Plaintiff,  
 – against –  
 WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
 HOWARD FENSTERMAN, and METROPOLITAN  
 COMMERCIAL BANK,  
 Defendants.

New York County Index No.  
655549/2020

Consolidated under Westchester  
County Index No. as per April 8,  
2021 Decision and Order.

STATE OF MASSACHUSETTS )  
 ) ss.:  
COUNTY OF ESSEX )

Edward O. Tabor, being duly sworn, deposes and says.

1. I am the Chief Financial Officer of third-party defendant The Congress Companies, which provides management and other services to its affiliate, plaintiff White Plains Healthcare Properties I, LLC ("WPH Properties"). I submit this affidavit in support of the motion of WPH Properties and the third-party defendants for an order granting summary judgment in favor of WPH Properties and dismissing the counterclaims and third-party claims asserted by defendants/third-

party plaintiffs, HBL SNF, LLC ("HBL"), Lizer Jozefovic ("Jozefovic") and Mark Neuman ("Neuman"). I am fully and personally familiar with the matters stated in this affidavit.

2. I am responsible for maintaining the books and records kept in the regular course of business of WPH Properties reflecting rent and all other obligations owed to and collected by WPH Properties as landlord with respect to the nursing home located at 116-120 Church Street, White Plains, New York (the "facility"). HBL is the tenant and operator of the facility. WPH Properties and HBL are parties to an amended and restated operating lease (the "lease") dated as of November 19, 2015, as amended July 12, 2017, under which WPH Properties, as landlord, leased the facility to HBL, as tenant. A true and correct copy of the lease is attached as exhibit 12.

3. HBL took possession of the facility as of September 30, 2019. Upon taking possession, HBL was in default for failure to pay the required security deposits sixty days in advance of possession. Within weeks, by November 2019, HBL had also defaulted with respect to other financial obligations under the lease. And on December 1, 2019, HBL defaulted under the letter of intent by failing to pay \$1,000,000 toward the security deposit. WPH Properties terminated the lease on January 13, 2020. HBL then defaulted on its obligations as a month-to-month tenant.

4. A document I personally prepared based on business records maintained by WPH Properties containing a true and accurate accounting of amounts received and amounts due as of July 30, 2021 from HBL to WPH Properties as a result of HBL's defaults is attached as exhibit 24 (the "itemization").

**HBL failed to provide the security deposit required by the lease**

5. The lease requires HBL to deliver to WPH Properties, before the commencement date of the lease, an unconditional letter of credit or cash in the amount of \$3,700,000 to secure the full and timely performance of its obligations under the lease. In addition, the lease requires HBL to

deposit into WPH Properties' rent security account an "Additional Security Deposit" in the amount of \$1,600,000. Exhibit 12, Lease. § 7.1.

6. HBL has never delivered the \$3.7 million security deposit, either in cash or by letter of credit, has never deposited the \$1.6 million additional security deposit and has never made the \$4.5 million working capital deposit.

**HBL has failed to pay rent as required**

7. The lease obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 and other amounts that are defined as "Additional Rent." Exhibit 12, Lease. § 3.2. WPH Properties' record detailing the amounts due for rent and the payments received is attached as exhibit 25.

8. The record attached as exhibit 25 shows the amount due for rent from September 30, 2019 through July 31, 2021, the due date, the amounts paid by HBL, the date WPH Properties received each payment made, the number of days late, if any, for each payment made, late charges, overdue interest, amount due and total charges. HBL defaulted by failing to pay rent when due in every month since September 30, 2019, except February 2020, July 2020 and April 2021. HBL remains in default in the payment of the monthly rent due on September 30, 2019 in the amount of \$10,839.79 and has incurred total late and interest charges at the overdue rate for defaulting on its obligation to pay timely rent of \$220,784.14.

**HBL failed to pay rent as a month-to-month tenant after WPH Properties terminated the lease**

9. On January 7, 2020, WPH Properties served a "Notice of Default and Landlord's Election to Terminate Lease and Accelerate all Rents Due For The Balance of the Lease Term" upon HBL. The notice of default itemizes HBL's material breaches and default of the lease including dates of HBL's default and amounts then due. A true and correct copy of the notice of

default is attached as exhibit 26.

10. The notice of default gave HBL notice that by reason of HBL's defaults under the lease, WPH Properties had exercised its right under section 16.1 of the lease to terminate the lease, including HBL's right of possession of the premises, effective January 13, 2020.

11. HBL continued, and still continues, to occupy the facility, despite WPH Properties' termination of the lease.

12. The lease provides that if HBL holds over after its default has resulted in the termination of the lease, HBL is a month-to-month tenant obligated to pay rent monthly at a rent equal to 300 percent of the most recent monthly rent payable by HBL under the lease. Exhibit 12, Lease, § 20.13.

13. HBL has failed to pay any holdover rent due from February 1, 2020 through the present. As of July 30, 2021, HBL owes \$20,342,629.10 in holdover rent, including late charges and interest required by the lease. Exhibit 12, Lease, §§ 20.13, 3.2 (c) (late charges) and 9.1(b) (overdue interest at the prime rate plus five percent)

**HBL is required to pay WPH Properties the present value of accelerated rent**

14. The notice of default gave HBL notice that WPH Properties exercised its right to terminate the lease effective January 13, 2020 and to accelerate the payment of all rent due and owing under the lease. Exhibit 26, Notice of Default.

15. The lease provides that upon the occurrence of a default by HBL, WPH Properties may accelerate the payment of all rent due for the balance of the term and declare the rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated rent. Exhibit 12, Lease, §16.1. In the notice of default, WPH Properties notified HBL that the lease was terminated and that all of the rent under the lease was accelerated and

immediately due and payable.

16. A chart showing the amount of the accelerated rent owed by HBL, consisting of the net present value of remaining monthly rent payments due under the lease discounted at a rate of six percent per year is attached as exhibit 27. As set forth in the chart, the present value of the accelerated lease payments that HBL is obligated to pay WPH Properties is \$82,369,770.

**HBL defaulted under the letter of intent**

17. As noted above, in November 2019, after HBL had defaulted under the lease, WPH Properties worked with HBL, to try to resolve its defaults by entering into a letter of intent under which WPH Properties would sell the property to an entity in which Jozefovic and his partners would have a 72.5 percent interest. The letter of intent modified the method of payment of the security deposit and reduced the amount due immediately to \$1,000,000 but required HBL to otherwise comply with the terms of the lease and to close on the transfer of title by April 1, 2020. A true and correct copy of the letter of intent is attached as exhibit 17.

18. Jozefovic and HBL defaulted under that agreement as well, within ten days of signing it, by failing to pay the initial payment of \$1,000,000 toward the security deposit, failing to pay rent, failing to pay municipal and utility payments, failing to pay real estate taxes, failing to enter into the required "Deposit Account Control Agreement," failing to enter into an agreement with JP Morgan Chase Bank and failing to close by April 1, 2020.

19. As a result of HBL's defaults under the lease and the letter of intent, WPH Properties was unable to refinance the construction loan that financed the project. As a result of its inability to refinance the loan, WPH Properties was forced to continue to pay the above-market interest rate under the construction loan, rather than the lower, market-rate interest it would have paid on a refinanced loan.

20. Accordingly, beginning on April 1, 2020, WPH Properties continued to pay interest

at a rate of at least 4.11 percent over the market rate and therefore incurred substantial additional interest rate costs that WPH Properties could have avoided had it been able to refinance the construction loan.

21. As a result of HBL's default, from April 1, 2020 through July 31, 2021 WPH Properties incurred \$3,181,612.88 in interest rate damages.

**HBL is required to pay professional fees incurred by WPH Properties**

22. The lease provides that if HBL defaults, it is obligated to pay the attorneys' fees and litigation expenses incurred by WPH Properties as a result of that default Exhibit 12, Lease, Article IX. The itemization sets forth the amount of those fees which HBL is obligated to pay WPH Properties, which includes certain estimates of ongoing work, totaling \$1,524,000. Exhibit 24.

23. True and correct copies of the bills, account records and records of payment demonstrating the professional fees set forth on the itemization which HBL is obligated to pay WPH Properties under the lease are attached as Exhibit 28.

**HBL is required to pay lender default and late charges**

24. HBL's defaults have caused WPH Properties to default under a Construction Loan Agreement, Note and Mortgage given to its construction lender, Security Benefit Life Insurance Company ("Security Benefit"), which financed the construction of the Facility See affidavit of William A. Nicholson, ¶¶ 59-65.

25. As a result of HBL's refusal to make timely rents payments and security deposits under the Lease, WPH Properties was unable to make certain monthly payments of debt service to the construction lender.

26. On April 16, 2020, the construction lender issued a notice of default to WPH

Properties, subjecting WPH Properties to increased interest rates, late charges and other penalties.

A copy of the April 16, 2020 notice of default is attached as exhibit 29.

27. On May 22, 2020, the construction lender issued another notice of default to WPH Properties. A copy of the May 22, 2020 notice of default is attached as exhibit 30.

28. On May 1, 2021, Security Benefit commenced an action entitled *Security Benefit Life Insurance Company v. White Plains Healthcare Properties I, LLC, et al* (Supreme Court, Westchester County, Index. No. 55883/2021) to foreclose the mortgage. A true and correct copy of the complaint in the foreclosure action is attached as exhibit 31.

29. As a result of HBL's default under the lease, WPH Properties incurred lender default charges, late charges and legal and professional fees charged by Security Benefit. Because HBL was in default, WPH Properties could not provide an estoppel certificate which would be required to refinance the construction loan therefore the loan matured. WPH Properties' agreement with the mezzanine lender, Bradford Allen Funding Company LLC ("Bradford Allen"), also provides for late charges and extension fees, for the same reasons.

30. Article IX of the lease entitles WPH Properties to indemnification from HBL for legal and professional fees, default interest, late charges and extension fees caused by HBL's default, in the amount of \$3,732,034.22. An itemization of the total amounts due for lender default and late charges with invoices from Security Benefit and Bradford Allen showing default interest due for July 2021 is attached as exhibit 32.

**HBL has failed to pay real estate taxes**

31. The lease also obligates HBL to timely pay, before penalties are incurred, all real estate taxes, assessments and other taxes. Exhibit 12, Lease, § 4.2. HBL has repeatedly paid the real estate taxes late. In particular, HBL failed to timely pay real estate taxes when due for the

period December 2019 through June 2020. That resulted in interest at the overdue rate totaling \$2,621.94. HBL currently owes WPH Properties \$2,621.94 in interest for defaulting on its obligation to pay real estate taxes when due. A copy of the City of White Plains Tax Bill payable by July 31, 2019 and receipt showing that HBL defaulted by not paying the bill until January 29, 2020 is attached as exhibit 33.

**HBL has failed to pay utility charges, utility deposits and municipal maintenance escrows**

32. The lease obligates HBL to pay all charges or deposits for electricity, steam, telephone, cable, gas, oil, water, sewer and all other services or utilities used on or related to the facility and required HBL to keep the facility in good condition and repair including, at HBL's sole cost and expense, payment of all utility service and maintenance deposits and expenses. Exhibit 12, Lease, §§ 4.1 and 5.2. HBL defaulted by failing to pay utility charges to Con Edison and failing to pay utility deposits and municipal maintenance escrows totaling \$71,472.69. WPH Properties has been reimbursed for a portion of the deposits in the amount of \$41,175.00. A chart itemizing the unreimbursed deposits and payments which HBL is obligated to pay to WPH Properties, in the amount of \$35,921.44 is attached as Exhibit 33.

**HBL failed to deliver required certificates of insurance**

33. The lease requires HBL to deliver certificates of insurance showing that each type of insurance required under Article VI of the lease is in full force and effect and not cancelable or modifiable without thirty (30) days prior written notice to WPH Properties. Exhibit 12, Lease, § 6.2.

34. HBL defaulted on this obligation. It did not submit certificates of insurance until January 2020 and July 2021 and the only certificates of insurance it has provided do not comply fully with the lease requirements. True and accurate copies of the certificates of insurance HBL

submitted are attached as Exhibit 39. The July 2021 submission establishes that the defendants did not maintain the insurance coverages required by the lease. The insurance analysis I have prepared, which itemizes the deficiencies, is attached as Exhibit 40

**HBL failed to deliver Medicare, Medicaid and other provider agreements, reimbursement rate sheets and updated rate sheets as required by the lease**

35. The lease requires HBL to deliver all Medicare, Medicaid and other provider agreements, reimbursement rate sheets and updated rate sheets. Exhibit 12, Lease, § 7.4(g) & (j).

36. HBL defaulted by not providing this documentation. HBL has never provided the required Medicare and Medicaid provider agreements. HBL did not provide the required Medicaid reimbursement rate sheets until July 2021 and it has never provided the required Medicare documentation or any revised or amended reimbursement rate sheets. A copy of the Medicaid reimbursement rate sheet which HBL provided in July, 2021, the only rate information HBL provided, is attached as Exhibit 41.

**HBL failed to provide the financial and operational reporting required by the lease**

37. The lease requires HBL to provide to WPH Properties the following financial reporting and operational reporting: (i) an annual budget; (ii) unaudited monthly financial statements; (iii) "a written report providing an operational overview of significant events and circumstances at the facility during the prior month, during the first six months of the Term and then quarterly thereafter, including, but not limited to, clinical events, employee relations and staffing matters;" and (iv) copies of all federal income tax returns within fifteen days after filing. Exhibit 12, Lease, §§7.4(a)(i), 7.4(a)(iii), 7.4(a)(vi).

38. HBL defaulted under the lease by failing to provide WPH Properties with the required financial and operational reporting. Only recently, in connection with this litigation, has HBL partially cured its default by providing some of the documentation. HBL has never provided

complete versions of the required unaudited quarterly financial statements, quarterly census revenue information, audited schedule reconciling HBL's net operating income to net cash flow, written report providing an operational overview and a copy of all HBL's federal tax returns.

39. HBL's default by failing to provide or timely provide the required financial and operating reporting has contributed, in addition to HBL's other defaults, to WPH Properties' damages for inability to obtain refinancing.

Amounts due

40. As a result of HBL's defaults, as of July 31, 2021, HBL is obligated to pay to WPH Properties the total sum of \$111,420,213.50, calculated as follows: (i) holdover rent and rent, \$20,574,253.03; (ii) real estate taxes, \$2,621.94; (iii) municipal and utility deposits, \$35,921.44; (iv) interest rate damages for failure to close by April 1, 2020 as required by the letter of intent, \$3,181,612.87; (v) costs and professional fees, \$1,524,000; (vi) lender default and late charges, \$3,732,034.22, and (vii) accelerated rent \$82,369,770.

41. HBL has failed or refused to pay these amounts.

*Edward O. Taher*  
Edward O. Taher

Sworn to before me this  
18<sup>th</sup> day of August 2021.

*Kimberly B. Jackson*  
Notary Public



**CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, EDWARD O. TABOR, certify that this document contains 2906 words, exclusive of the caption page, table of contents and table of authorities and signature block, as counted by the word count of the word-processing system used to prepare this document.

Dated: White Plains, New York  
August 18, 2021

/s/ Edward O. Tabor  
Edward O. Tabor

# Exhibit 24

WESTCHESTER COUNTY HEALTH CARE PROPERTIES I, LLC - HBL-SNF LLC					
Notice part2 Pg 89 of 103					
07/15/21					
<b>AMOUNTS DUE UNDER LEASE &amp; LOI</b>					
<i>Note: calculated through 7/31/2021</i>					
<i>Note: Excludes Present Value of Accelerated Lease</i>					
<u>AMOUNTS PAYABLE</u>	<u>Reference</u>	<u>Amount Due</u>	<u>Late Charges Per Lease Para 3.2 (c): 5.00%</u>	<u>Overdue Rate Per Lease Sect. 9.1 (b): Prime Rate + 5.00%</u>	<u>TOTALS</u>
<b>Rent:</b>					
Rent	Balance unpd at commencement	\$ 10,839.79	\$ 202,980.59	\$ 17,803.55	\$ 231,623.93
Holdover Rent	Feb 2020- July 2021	\$ 18,219,474.00	\$ 910,973.70	\$ 1,212,181.40	\$ 20,342,629.10
<b>Subtotal Rent</b>		<b>\$ 18,230,313.79</b>	<b>\$ 1,113,954.29</b>	<b>\$ 1,229,984.96</b>	<b>\$ 20,574,253.04</b>
<b>RE Taxes</b>					
RE Taxes for the period 1/1/20 - 6/30/20	Need proof of Payments	\$ -	\$ -	\$ 2,621.94	\$ 2,621.94
<b>Subtotal RE Taxes</b>		<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,621.94</b>	<b>\$ 2,621.94</b>
<b>Deposits, Other</b>					
Utility Deposits	Lease Section 4.1	\$ 19,181.10		\$ 3,560.33	\$ 22,741.43
Municipal Deposits	Lease Section 5.2	\$ 6,700.00		\$ 1,243.63	\$ 7,943.63
2020 Fire Inspection Fee	Lease Sect. 4.1	\$ 1,443.75			
ConEdison Electric Invoice	Lease Sect. 4.1	\$ 2,972.84		\$ 551.81	\$ 3,524.65
<b>Subtotal Deposits, Other</b>		<b>\$ 30,297.69</b>	<b>\$ -</b>	<b>\$ 5,623.75</b>	<b>\$ 35,921.44</b>
<b>Interest Rate Damages for Failure to Close by 04/30/20 per LOI</b>					
Interest Rate Damages First Mortgage Loan	Lease Article IX Indemnification	\$ 1,916,160.82	\$ -		\$ 1,916,160.82
Interest Rate Damages Mezz Loan	Lease Article IX Indemnification	\$ 1,265,452.05	\$ -	\$ -	\$ 1,265,452.05
<b>Subtotal Interest Rate Damages</b>		<b>\$ 3,181,612.87</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,181,612.87</b>
<b>Landlord Professional Fees &amp; Transaction Costs (Est)</b>					
Landlord Legal, Professional, Transactional	Lease Article IX Indemnification	\$ 1,524,000.00			\$ 1,524,000.00
<b>Subtotal Professional &amp; Transactional</b>		<b>\$ 1,524,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,524,000.00</b>
<b>Lender Default and Late Charges</b>					
Lender Legal and Professional	Lease Article IX Indemnification	\$ 26,727.58	\$ -	\$ -	\$ 26,727.58
Lender Default Intrerest - SBLI	Lease Article IX Indemnification	\$ 2,927,606.59	\$ -	\$ -	\$ 2,927,606.59
Lender Late Charges - SBLI	Lease Article IX Indemnification	\$ 231,124.71			\$ 231,124.71
Lender Late Charges - BA	Lease Article IX Indemnification	\$ 451,575.34			\$ 451,575.34
Lender Extension Fees - BA (2 Ext @ .050%)	Lease Article IX Indemnification	\$ 95,000.00			\$ 95,000.00
<b>Subtotal Lender Legal, Default and Late Charges</b>		<b>\$ 3,732,034.22</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,732,034.22</b>
<b>TOTALS</b>		<b>\$ 26,698,258.57</b>	<b>\$ 1,113,954.29</b>	<b>\$ 1,238,230.65</b>	<b>\$ 29,050,443.51</b>

Amount Due		Due Date	Amount Paid	Date Paid	Days Late	Days > 5 Late	5% Late Charge Per Lease 3.2 (c)	Prime Rate +	Overdue Charges	Indemnification Lease Article 9	TOTAL Charges	Amts Due
Rent												
\$	10,839.79	9/30/2019		7/31/2021	670	665	\$ 541.99	10.00%	\$ 1,989.77		\$ 2,531.76	
\$	506,096.50	10/1/2019	\$ 506,096.50	10/30/2019	29	24	\$ 25,304.83	10.00%	\$ 4,021.04		\$ 29,325.87	
\$	506,096.50	11/1/2019	\$ 506,096.50	11/18/2019	17	12	\$ 25,304.83	9.75%	\$ 2,298.23		\$ 27,603.06	
\$	506,096.50	12/1/2019	\$ 506,096.50	12/3/2019	2	-3	\$ -	9.75%	\$ -		\$ -	
\$	506,096.50	1/1/2020	\$ 506,096.50	1/2/2020	1	-4	\$ -	9.75%	\$ -		\$ -	
\$	506,096.50	2/1/2020	\$ 506,096.50	2/1/2020	0	-5	\$ -	9.75%	\$ -		\$ -	
\$	506,096.50	3/1/2020	\$ 506,096.50	3/2/2020	1	-4	\$ -	8.78%	\$ -		\$ -	
\$	506,096.50	4/1/2020	\$ 506,096.50	5/6/2020	35	30	\$ 25,304.83	8.25%	\$ 4,003.71		\$ 29,308.53	
\$	506,096.50	5/1/2020	\$ 506,096.50	5/26/2020	25	20	\$ 25,304.83	8.25%	\$ 2,859.79		\$ 28,164.62	
\$	506,096.50	6/1/2020	\$ 506,096.50	6/2/2020	1	-4	\$ -	8.25%	\$ -		\$ -	
\$	506,096.50	7/1/2020	\$ 506,096.50	7/1/2020	0	-5	\$ -	8.25%	\$ -		\$ -	
\$	506,096.50	8/1/2020	\$ 506,096.50	8/7/2020	6	1	\$ 25,304.83	8.25%	\$ 686.35		\$ 25,991.18	
\$	506,096.50	9/1/2020	\$ 506,096.50	9/4/2020	3	-2	\$ -	8.25%	\$ -		\$ -	
\$	506,096.50	10/1/2020	\$ 506,096.50	10/2/2020	1	-4	\$ -	8.25%	\$ -		\$ -	
\$	506,096.50	11/1/2020	\$ 506,096.50	11/2/2020	1	-4	\$ -	8.25%	\$ -		\$ -	
\$	506,096.50	12/1/2020	\$ 506,096.50	12/2/2020	1	-4	\$ -	8.25%	\$ -		\$ -	
\$	506,096.50	1/1/2021	\$ 506,096.50	1/4/2021	3	-2	\$ -	8.25%	\$ -		\$ -	
\$	506,096.50	2/1/2021	\$ 506,096.50	2/4/2021	3	-2	\$ -	8.25%	\$ -		\$ -	
\$	506,096.50	3/1/2021	\$ 506,096.50	3/2/2021	1	-4	\$ -	8.25%	\$ -		\$ -	
\$	506,096.50	4/1/2021	\$ 506,096.50	4/1/2021	0	-5	\$ -	8.25%	\$ -		\$ -	
\$	506,096.50	5/1/2021	\$ 506,096.50	5/6/2021	5	0	\$ 25,304.83	8.25%	\$ 571.96		\$ 25,876.78	
\$	506,096.50	6/1/2021	\$ 506,096.50	6/7/2021	6	1	\$ 25,304.83	8.25%	\$ 686.35		\$ 25,991.18	
\$	506,096.50	7/1/2021	\$ 506,096.50	7/7/2021	6	1	\$ 25,304.83	8.25%	\$ 686.35		\$ 25,991.18	
\$	10,839.79						\$ 202,980.59		\$ 17,803.55		\$ 220,784.14	\$ 10,839.79
<b>SUBTOTAL RENT</b>			\$ 11,134,123.00									
Holdover Rent (300%, less the base amount above, 200% calculated in this section) - "Paid" date is for calculation purposes only assuming amounts throug 07/01/21												
\$	-	9/30/2019	\$ -	9/30/2019	0	-5	\$ -	10.00%	\$ -		\$ -	
\$	-	10/1/2019	\$ -	10/1/2019	0	-5	\$ -	10.00%	\$ -		\$ -	
\$	-	11/1/2019	\$ -	11/1/2019	0	-5	\$ -	9.75%	\$ -		\$ -	
\$	-	12/1/2019	\$ -	12/1/2019	0	-5	\$ -	9.75%	\$ -		\$ -	
\$	-	1/1/2020	\$ -	6/1/2020	152	147	\$ -	9.75%	\$ -		\$ -	
\$	1,012,193.00	2/1/2020	\$ -	7/30/2021	545	540	\$ 50,609.65	9.75%	\$ 147,357.28		\$ 197,966.93	
\$	1,012,193.00	3/1/2020	\$ -	7/30/2021	516	511	\$ 50,609.65	8.78%	\$ 125,668.48		\$ 176,278.13	
\$	1,012,193.00	4/1/2020	\$ -	7/30/2021	485	480	\$ 50,609.65	8.25%	\$ 110,959.92		\$ 161,569.57	
\$	1,012,193.00	5/1/2020	\$ -	7/30/2021	455	450	\$ 50,609.65	8.25%	\$ 104,096.42		\$ 154,706.07	
\$	1,012,193.00	6/1/2020	\$ -	7/30/2021	424	419	\$ 50,609.65	8.25%	\$ 97,004.14		\$ 147,613.79	
\$	1,012,193.00	7/1/2020	\$ -	7/30/2021	394	389	\$ 50,609.65	8.25%	\$ 90,140.64		\$ 140,750.29	
\$	1,012,193.00	8/1/2020	\$ -	7/30/2021	363	358	\$ 50,609.65	8.25%	\$ 83,048.36		\$ 133,658.01	
\$	1,012,193.00	9/1/2020	\$ -	7/30/2021	332	327	\$ 50,609.65	8.25%	\$ 75,566.07		\$ 126,565.72	
\$	1,012,193.00	10/1/2020	\$ -	7/30/2021	302	297	\$ 50,609.65	8.25%	\$ 69,092.57		\$ 119,702.22	
\$	1,012,193.00	11/1/2020	\$ -	7/30/2021	271	266	\$ 50,609.65	8.25%	\$ 62,000.29		\$ 112,609.94	
\$	1,012,193.00	12/1/2020	\$ -	7/30/2021	241	236	\$ 50,609.65	8.25%	\$ 55,136.79		\$ 105,746.44	
\$	1,012,193.00	1/1/2021	\$ -	7/30/2021	210	205	\$ 50,609.65	8.25%	\$ 48,044.50		\$ 98,654.15	
\$	1,012,193.00	2/1/2021	\$ -	7/30/2021	179	174	\$ 50,609.65	8.25%	\$ 40,952.22		\$ 91,561.87	
\$	1,012,193.00	3/1/2021	\$ -	7/30/2021	151	146	\$ 50,609.65	8.25%	\$ 34,546.29		\$ 85,155.94	
\$	1,012,193.00	4/1/2021	\$ -	7/30/2021	120	115	\$ 50,609.65	8.25%	\$ 27,454.00		\$ 78,063.65	
\$	1,012,193.00	5/1/2021	\$ -	7/30/2021	90	85	\$ 50,609.65	8.25%	\$ 20,590.50		\$ 71,200.15	
\$	1,012,193.00	6/1/2021	\$ -	7/30/2021	59	54	\$ 50,609.65	8.25%	\$ 13,498.22		\$ 64,107.87	
\$	1,012,193.00	7/1/2021	\$ -	7/30/2021	29	24	\$ 50,609.65	8.25%	\$ 6,634.72		\$ 57,244.37	
\$	18,219,474.00						\$ 910,973.70		\$ 1,212,181.40		\$ 2,123,155.10	\$ 18,219,474.00
<b>SUBTOTAL ADDITIONAL RENT</b>												
RE Taxes												
\$	-	9/30/2019		9/30/2019	0	-5	\$ -	10.00%	\$ -		\$ -	

NYSCEF DOC. NO. 213																	
				LATE CHARGE PER LEASE		Notice part 2		Pg 91 of 103		Indemnification		TOTAL Charges		Amts Due			
				PARA 3.2 c		Lease 9.1 (b)		Lease Article 9									
\$	-	10/1/2019		10/1/2019	0	-5	\$	-	10.00%	\$	-		\$	-			
\$	-	11/1/2019		11/1/2019	0	-5	\$	-	9.75%	\$	-		\$	-			
\$	61,456.39	12/1/2019	\$	12/31/2019	30	25	\$	-	9.75%	\$	492.49		\$	492.49			
\$	61,456.39	1/1/2020	\$	1/31/2020	30	25	\$	-	9.75%	\$	492.49		\$	492.49			
\$	61,456.39	2/1/2020	\$	2/28/2020	27	22	\$	-	9.75%	\$	443.24		\$	443.24			
\$	61,456.39	3/1/2020	\$	3/31/2020	30	25	\$	-	8.78%	\$	443.61		\$	443.61			
\$	61,456.39	4/1/2020	\$	4/30/2020	29	24	\$	-	8.25%	\$	402.83		\$	402.83			
\$	61,456.39	5/1/2020	\$	5/26/2020	25	20	\$	-	8.25%	\$	347.27		\$	347.27			
\$	-	6/1/2020		6/30/2020	29	24	\$	-	8.25%	\$	-		\$	-			
\$	-	6/1/2020		7/1/2020	30	25	\$	-	8.25%	\$	-		\$	-			
\$	-					\$	-			\$	2,621.94		\$	2,621.94	\$		
<b>SUBTOTAL RE TAXES</b>																	
<b>Utility &amp; Mun. Dep</b>																	
\$	-	9/30/2019		9/30/2019	0	-5	\$	-	10.00%	\$	-		\$	-			
\$	-	10/1/2019		10/1/2019	0	-5	\$	-	10.00%	\$	-		\$	-			
\$	-	11/1/2019		11/1/2019	0	-5	\$	-	9.75%	\$	-		\$	-			
\$	71,472.69	12/17/2019	\$	41,175.00	90	85	\$	-	9.75%	\$	1,718.28		\$	1,718.28			
\$	30,297.69	1/1/2020	\$	-	30	25	\$	-	9.75%	\$	242.80		\$	242.80			
\$	30,297.69	2/1/2020	\$	-	27	22	\$	-	9.75%	\$	218.52		\$	218.52			
\$	30,297.69	3/1/2020	\$	-	30	25	\$	-	8.78%	\$	218.70		\$	218.70			
\$	30,297.69	4/1/2020	\$	-	29	24	\$	-	8.25%	\$	198.60		\$	198.60			
\$	30,297.69	5/1/2020	\$	-	30	25	\$	-	8.25%	\$	205.44		\$	205.44			
\$	30,297.69	6/1/2020	\$	-	29	24	\$	-	8.25%	\$	198.60		\$	198.60			
\$	30,297.69	7/1/2020	\$	-	30	25	\$	-	8.25%	\$	205.44		\$	205.44			
\$	30,297.69	8/1/2020	\$	-	30	25	\$	-	8.25%	\$	205.44		\$	205.44			
\$	30,297.69	9/1/2020	\$	-	29	24	\$	-	8.25%	\$	198.60		\$	198.60			
\$	30,297.69	10/1/2020	\$	-	30	25	\$	-	8.25%	\$	205.44		\$	205.44			
\$	30,297.69	11/1/2020	\$	-	29	24	\$	-	8.25%	\$	198.60		\$	198.60			
\$	30,297.69	12/1/2020	\$	-	30	25	\$	-	8.25%	\$	205.44		\$	205.44			
\$	30,297.69	1/1/2021	\$	-	30	25	\$	-	8.25%	\$	205.44		\$	205.44			
\$	30,297.69	2/1/2021	\$	-	27	22	\$	-	8.25%	\$	184.90		\$	184.90			
\$	30,297.69	3/1/2021	\$	-	30	25	\$	-	8.25%	\$	205.44		\$	205.44			
\$	30,297.69	4/1/2021	\$	-	29	24	\$	-	8.25%	\$	198.60		\$	198.60			
\$	30,297.69	5/1/2021	\$	-	30	25	\$	-	8.25%	\$	205.44		\$	205.44			
\$	30,297.69	6/1/2021	\$	-	29	24	\$	-	8.25%	\$	198.60		\$	198.60			
\$	30,297.69	7/1/2021	\$	-	30	25	\$	-	8.25%	\$	205.44		\$	205.44			
\$	<b>30,297.69</b>					\$	-			\$	<b>5,623.75</b>		\$	<b>5,623.75</b>	\$		
<b>SUBTOTAL MUN &amp; UTIL DEPOSITS</b>																	
<b>Interest Rate Damages First Mortgage Loan</b>																	
				<i>* Not Paid- for calculation purposes only</i>													
\$	38,500,000.00	9/30/2019	\$	-	9/30/2019	0	-5	\$	-	0.00%	\$	-		\$	-		
\$	38,500,000.00	10/1/2019	\$	-	10/31/2019	30	25	\$	-	0.00%	\$	-		\$	-		
\$	38,500,000.00	11/1/2019	\$	-	11/30/2019	29	24	\$	-	0.00%	\$	-		\$	-		
\$	38,500,000.00	12/1/2019	\$	-	12/31/2019	30	25	\$	-	0.00%	\$	-		\$	-		
\$	38,500,000.00	1/1/2020	\$	-	1/31/2020	30	25	\$	-	0.00%	\$	-		\$	-		
\$	38,500,000.00	2/1/2020	\$	-	2/28/2020	27	22	\$	-	0.00%	\$	-		\$	-		
\$	38,500,000.00	3/1/2020	\$	-	3/31/2020	30	25	\$	-	0.00%	\$	-		\$	-		
\$	38,500,000.00	4/1/2020	\$	-	4/30/2020	29	24	\$	-	0.00%	\$	-		\$	-		
\$	38,500,000.00	5/1/2020	\$	-	5/31/2020	30	25	\$	-	4.11%	\$	130,056.16		\$	130,056.16		
\$	38,500,000.00	6/1/2020	\$	-	6/30/2020	29	24	\$	-	4.11%	\$	125,720.96		\$	125,720.96		
\$	38,500,000.00	7/1/2020	\$	-	7/31/2020	30	25	\$	-	4.11%	\$	130,056.16		\$	130,056.16		
\$	38,500,000.00	8/1/2020	\$	-	8/31/2020	30	25	\$	-	4.11%	\$	130,056.16		\$	130,056.16		
\$	38,500,000.00	9/1/2020	\$	-	9/30/2020	29	24	\$	-	4.11%	\$	125,720.96		\$	125,720.96		
\$	38,500,000.00	10/1/2020	\$	-	10/31/2020	30	25	\$	-	4.11%	\$	130,056.16		\$	130,056.16		
\$	38,500,000.00	11/1/2020	\$	-	11/30/2020	29	24	\$	-	4.11%	\$	125,720.96		\$	125,720.96		
\$	38,500,000.00	12/1/2020	\$	-	12/31/2020	30	25	\$	-	4.11%	\$	130,056.16		\$	130,056.16		
\$	38,500,000.00	1/1/2021	\$	-	1/31/2021	30	25	\$	-	4.11%	\$	130,056.16		\$	130,056.16		
\$	38,500,000.00	2/1/2021	\$	-	2/28/2021	27	22	\$	-	4.11%	\$	117,050.55		\$	117,050.55		



NYSCEF DOC. NO. 213		LATE CHARGE PER PARA 3.2 c		Overdue Rate Section Per Lease 9.1 (b)		Indemnification Lease Article 9	TOTAL Charges	Amts Due
<b>Indemnification - Professional Fees Professional Fees</b>								
AFF	Through July 26, 2021					\$ 753,305.12		
	To Complete					\$ 105,000.00		
	Total					\$ 858,305.12		\$ 858,305.12
DelBello	Through June 20, 2021					\$ 280,048.61		
	To Complete					\$ 75,000.00		
	Total					\$ 355,048.61		\$ 355,048.61
Congress	Through May 2020 incl WIP					\$ 72,375.00		
	To Complete					\$ 225,000.00		
	Total					\$ 297,375.00		\$ 297,375.00
Abatte	Through May 2020					\$ 5,087.24		
	To Complete					\$ -		
	Total					\$ 5,087.24		\$ 5,087.24
Povol	Through May 2020					\$ 2,575.00		
	To Complete					\$ 5,000.00		
	Total					\$ 7,575.00		\$ 7,575.00
To Complete						\$ 150,000.00		\$ 609.03
<b>TOTAL TRANSACTIONAL (EST)</b>								<b>\$ 1,524,000.00</b>
<b>Lender Charges</b>								
<b>SBLI Legal</b>								
	James Wine, BA Counsel, DLA Piper					\$ 26,727.58		
	To Complete					\$ -		
	Total Lender Legal					\$ 26,727.58		\$ 26,727.58
<b>SBLI Default Interest</b>								
	Through 06/01/21					\$ 2,596,078.81		
	June 2021					\$ 160,416.67		
	July 2021					\$ 171,111.11		
	TOT					\$ 2,927,606.59		\$ 2,927,606.59
<b>SBLI Late Payments</b>								
	Through 06/01/21 Statement					\$ 192,947.81		
	June 2021 Est					\$ 18,779.11		
	July 2021 Est					\$ 19,397.79		
	TOT					\$ 231,124.71		\$ 231,124.71
<b>BA Default Interest</b>								
	SBLI Default Rate (Maturity)	8/17/2020	7/30/2021	347	\$ 9,500,000.00	5.00%	\$ 451,575.34	
	SBLI Extension Fees	8/17/2020			\$ 9,500,000.00	0.50%	\$ 47,500.00	
		8/17/2021			\$ 9,500,000.00	0.50%	\$ 47,500.00	
	TOT						\$ 546,575.34	\$ 546,575.34
<b>SUBTOTAL Lender</b>						<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,732,034.22</b>

**AMOUNTS DUE**

	<u>Per Affidavit</u>	<u>Per Schedules</u>	<b>Variance</b>
Holdover rent and rent		\$ 18,219,474.00	
		2,123,155.10	
		10,839.79	
		<u>220,784.14</u>	
	\$ 20,574,253.03	<u>20,574,253.03</u>	-
Real estate taxes	2,621.94	2,621.94	-
Deposits and Late Charges	35,921.44	35,921.44	-
Default interest	3,181,612.87	3,181,612.87	-
Professional fees	1,524,000.00	1,524,000.00	-
Lender defaulta and late charges	3,732,034.22	3,732,034.22	-
Accelerated rent	82,369,770.00	82,369,770.00	-
	<u>\$ 111,420,213.50</u>	<u>\$ 111,420,213.50</u>	<u>T</u>

# Exhibit 25



# Exhibit 26



THE CONGRESS COMPANIES

West Peabody Executive Center, 2 Bourbon Street, Suite 200, Peabody MA, 01960

Phone: 978.535.6700 Fax: 978.535.6701

### Transmittal Cover Sheet

<b>WHITE PLAINS HEALTHCARE</b>	Project # 415	<b>White Plains Healthcare Properties I, LLC</b>
120 Church Street White Plains, NY 10601	Tel: 978.535.6700 Fax: 978.535.6701	

<b>Date: 01/07/2020</b>	<b>Reference Number: 243</b>
-------------------------	------------------------------

<b>Transmitted To</b> Lizer Josefovic HBL SNF, LLC 1280 Albany Post Road Croton-on Hudson, NY 10520 Tel: Fax:	<b>Transmitted By</b> Kim Jackson White Plains Healthcare Properties I, LLC 2 Bourbon Street Peabody, MA 01960 Tel: 978.535.6700 ext. 125 Fax: 978.535.6701
---	---

<b>Package Transmitted For</b> Information	<b>Delivered Via</b> Email/FedEx Delivery
---	--

**Cc:**  
 Alfred Donnellan, Delbello Donnellan Weingarten Wise & Wiederkehr LLP  
 Mark Zafrin, Michelman & Robinson LLP  
 Joshua Roccapiore, White Plains Healthcare Properties I, LLC  
 Lizer Josefovic, Water's Edge Rehabilitation & Healthcare  
 Mark Neuman, Epic Health Care Management, LLC  
 Gerald Neuman, HBL SNF, LLC

#### Remarks

Enclosed for your use and information please find the following document:

\* Notice of Default and Landlord's Election to Terminate Lease and Accelerate All Rents Due for the Balance of the Lease Term dated 01-07-2020 for the Property Located at 116-120 Church Street, White Plains, NY

If you require further assistance please contact Joshua Roccapiore, Owner's Representative at (978) 535-6700 ext. 135 or via email: [jroccapiore@congressconstruction.com](mailto:jroccapiore@congressconstruction.com)

Thank you.

encl.

Alfred E. Donnellan  
Partner  
aed@ddw-law.com

DELBELL DONNELLAN WINGARTEN  
**WISE & WIEDERKEHR, LLP**  
COUNSELLORS AT LAW  
THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601  
(914) 681-0200  
FACSIMILE (914) 684-0288

Connecticut Office  
111 SUMMIT STREET  
STAMFORD, CT 06905  
(203) 299-0900

January 7, 2020

BY EMAIL lizerj@watersedgcusa.com  
BY FEDERAL EXPRESS

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**NOTICE OF DEFAULT  
AND LANDLORD'S ELECTION TO TERMINATE LEASE AND  
ACCELERATE ALL RENTS DUE FOR THE BALANCE OF THE LEASE TERM**

**PREMISES: 116-120 Church Street, White Plains, New York ("the Leased Premises")**

Mr. Josefovic:

We are attorneys for your Landlord, White Plains Health Care Properties I, LLC.

**PLEASE TAKE NOTICE**, that HBL SNF, LLC ("HBL") is in material violation of the provisions of its November 19, 2015 Lease, for the above referenced premises ("the Lease"), and the November 20, 2019 Letter of Intent (the "LOI"), the terms of which are in full force and effect (the "LOI"), and is in **DEFAULT** thereof, as follows:

1. Lease Section 3.2, and LOI Para 6) d) ii) – Payment of Rent: HBL has failed or refused to pay the following Rent:
  - a. Rent due for Sept. 30, 2019 – Dec. 31, 2019, totaling \$10,831.79.
  - b. Additional Rent due for Jan. 01 – 31, 2020, due Jan. 1, 2020, totaling \$40,000.00.
  
2. Lease Section 4.2, and LOI Para 6) b) - Payment of Real Estate Taxes: HBL has failed to pay the following Real Estate Tax payments:
  - a. Real Estate Taxes for the period 07/01/19 - 12/31/19, specifically the Tenant's prorated portion thereof, (exclusive of late fees, costs, penalties and interest per municipal regulations and per the Lease), totaling \$61,456.39.
  - b. Real Estate Taxes for the period Jan. 01, 2020 – June 30, 2020 totaling \$121,587.12

Attn: Lizer Josefovici

January 7, 2020

Page 2

3. LOI Para 6) b), and Lease Section 5.2 – Payment of Utility Deposits and Municipal Maintenance Escrows: HBL has failed to pay the following Utility Deposits and Municipal Maintenance Escrows:

- a. Utility Deposits totaling \$60,356.10
- b. Municipal Maintenance Escrows totaling \$5,500.00

4. Lease Section 4.1, LOI Section 6) ii) - Utility Charges: HBL has failed to pay the following Utility Charges:

- a. ConEdison invoice paid by the Landlord to avoid power shutoff, in the amount of \$2,972.84.

5. Lease Article VI including Section 6.2: LOI Para 6) b) – Delivery of Insurance Certificates.

- a. HBL has failed to deliver certificates of insurance to Landlord in accordance with Article VI and Section 6.2 of the Lease.

6. Lease Section 7.4 (g) and (j) – Reporting and other Obligations:

- a. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility.
- b. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider updated reimbursement rate sheets for the Facility.

7. Lease Section 7.4 (a) – Reporting and other Obligations:

- a. HBL has failed or refused to deliver to the Landlord the required financial reporting required under the Lease.

8. Lease Section 7.4 (B) (vi) – Reporting and other Obligations:

- a. HBL has failed or refused to deliver to the Landlord the required written reports providing an operational overview of significant events and circumstances at the Facility during each prior month of the Term of the Lease.

9. Lease Section 7.1(a)(ii), as amended by LOI Para 6) d) i) – Security Deposit.

- a. HBL has failed or refused to deliver to the Landlord by December 1, 2019 the security deposit of \$1,000,000.00, to secure full and timely payment and performance of Tenant's obligations under the Lease.

10. Lease Section 7.1(a)(iii), as amended by LOI Para 6) e) – Additional Security Deposit.

- a. HBL has failed to deliver the blocked account agreement prohibiting any liquidation of the of \$1,600,000.00 held by JPMorgan Chase Bank, N.A. in the controlled account number [REDACTED].

11. Lease Section 4.1, 3.2 (c), and 9.1 (b) – Payment of Late Fees and Costs

- a. HBL has failed to pay late fees and costs related to the above failures to pay its obligations under the Lease and the LOI in the timeframes required thereunder, as set forth in the attached accounting, totaling \$23,425.09

Att: Lizer Josefovic  
January 7, 2020  
Page 3

Notice part2 Pg 101 of 103

A true and accurate accounting of the amounts due and owing under the Lease and the LOI is attached herewith.

By reason of the aforementioned material Defaults under the Lease and the LOI, the Landlord, hereby exercises its right under Section 16.1 of the Lease to terminate the Lease as well as Tenant's right of possession of the Leased Premises, effective January 13, 2020 at 5.00 PM NYC time.

**PLEASE TAKE FURTHER NOTICE**, that, in accordance with Section 16.1 of the Lease, all rent for the balance of the term of the Lease is accelerated, and pursuant to said lease provision, HBL is obligated to pay the Landlord \$84,073,989.91, being the present value of such accelerated rent, discounted at the rate of 6% *per annum*.

Landlord reserves all other rights and remedies at law or in equity as against the Tenant, all guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.

Landlord further reserves all rights arising from the Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 ("the Pledge"), including but not limited to all rights to enforce the Pledge through a private or public sale of the assignor's interest in Waterview Acquisition I, LLC or through a judicial foreclosure of the assignee's security interest therein.

Very truly yours,

ALFRED E. DONNELIAN

**AUTHORIZED AND APPROVED:**

White Plains Health Care Properties I, LLC

  
Joshua Roccapriore  
Authorized Representative

cc: By Email (lizerj@watersedgeusa.com) & Federal Express  
Lizer Josefovic, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

Attn: Lizer Josefovic  
January 7, 2020  
Page 4

Notice part2 Pg 102 of 103

By Email (markn@cpicmg.com) & Federal Express  
Mark Neuman, Guarantor, Individually  
22 Lyncrest Drive  
Monsey, NY 10952

By Email (mzafrin@mrlp.com) & Federal Express  
Michelman & Robinson  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
*Attn: Mark Zafrin, Esq.*

By Federal Express  
Gerald Neuman, Individually  
c/o HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

c/o THE CONGRESS COMPANIES  
 General Contractors, Construction Managers, Property Managers, Development Services  
 11000  
 West Parkside Executive Center  
 100 North Street  
 Peabody, MA 01960  
 Phone: 978-532-6100  
 Fax: 978-532-6700

7-Jan-19

**NOTICE OF AMOUNTS AND DELIVERABLES DUE UNDER LEASE & LOI of 11/20/19**

Gentlemen, Pursuant to the Lease and the LOI dated November 20, 2019, the following are due:

	<u>AMOUNTS PAYABLE</u>	<u>Due Date</u>	<u>Amt Due</u>	<u>Amounts Paid</u>	<u>Amt Past Due</u>
1	Rent January, 2020 (See Note 1 Below)	01/01/20	\$ 545,096.50	\$ 506,096.50	\$ 40,000.00
2	Rent 8/30/19 - 11/30/19	12/31/19	\$ 10,831.79	\$ -	\$ 10,831.79
	<b>SUBTOTAL RENT AND ADDITIONAL RENT:</b>		<b>\$ 556,928.29</b>	<b>\$ 506,096.50</b>	<b>\$ 50,831.79</b>
3	RE Taxes 7/1/19-12/31/19, Tenant portion 09/30/19-12/31/19	12/01/19	\$ 61,456.39	\$ -	\$ 61,456.39
4	RE Taxes for the period 1/1/20 - 6/30/20	12/01/19	\$ 121,587.12	\$ -	\$ 121,587.12
	<b>SUBTOTAL REAL ESTATE TAXES</b>		<b>\$ 183,043.51</b>	<b>\$ -</b>	<b>\$ 183,043.51</b>
5	Utility Deposits	12/01/19	\$ 60,356.10	\$ -	\$ 60,356.10
6	Municipal Deposits	12/01/19	\$ 5,500.00	\$ -	\$ 5,500.00
7	Con Edison Electric Invoice	12/17/19	\$ 2,972.84	\$ -	\$ 2,972.84
	<b>Subtotal</b>		<b>\$ 68,828.94</b>	<b>\$ -</b>	<b>\$ 68,828.94</b>
	<b>TOTAL RENT, RE TAXES, &amp; OTHER</b>		<b>\$ 808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 302,704.24</b>
8	Security Deposit 1st payment	12/01/19	\$ 1,000,000.00	\$ -	\$ 1,000,000.00
	<b>TOTAL AMTS DUE EXCLUDING LATE FEES &amp; COSTS</b>		<b>\$ 1,808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 1,302,704.24</b>
9	Interest on past due real estate taxes on a per-diem basis:	12/15/19	\$ 3,039.68	\$ -	\$ 3,039.68
10	Late Fees of 5% on items 1,2,3,5,6,7	12/15/19	\$ 9,055.86	\$ -	\$ 9,055.86
11	Interest on Items 1,2,3,5 & 6 at the Overdue Rate (Prime+5%)	12/15/19	\$ 11,329.55	\$ -	\$ 11,329.55
	<b>TOTAL LATE FEES AND COSTS</b>		<b>\$ 23,425.09</b>	<b>\$ -</b>	<b>\$ 23,425.09</b>
	<b>TOTAL AMOUNTS DUE</b>		<b>\$ 1,832,225.83</b>	<b>\$ 506,096.50</b>	<b>\$ 1,326,129.33</b>

**ADDITIONAL NOTICE OF ITEMS DUE: As required per the Lease and LOI, please provide the following:**

- Notice is hereby made to that Jan. 2020 & all subsequent Rent shall be due in the amount of \$545,096.50, calculated as: \$506,096.50 rent plus \$40,000.00 additional rent 2nd Notice
- Notice is hereby made to provide all Medicare and Medicaid provider Agreements and rates. 2nd Notice
- Notice is hereby made to provide Annual Budget, Capital Expenditures, Operating Budget, Annual Financial Reporting, monthly financial reporting Financial Reporting, Variance Reporting, Unaudited Financial Reports
- Notice is hereby made to provide per a written report of significant events at the facility including Copies of all documents, reports, licenses and certificates from NY DOH pertaining to the Operations of the Facility 2nd Notice
- Notice is hereby made to provide Evidence of Insurance, including all required coverages under the lease, and all additional insureds. 2nd Notice

<< Return to [Search Results](#)

**60278/2020** - Westchester County Supreme Court

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
Case Type: **Commercial Division**  
Case Status: **Active**  
eFiling Status: **Full Participation Recorded**  
Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

**Narrow By Options**

Document Type:  Filed By:

Motion Info:  Filed Date:  thru

Document Number:

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Sort By:

#	Document	Filed By	Status
226	<a href="#">EXHIBIT(S)</a> - 41 (Motion #6) <i>HBL Medicaid Rates Dated 11-14-2019</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
227	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Howard Fensterman</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
228	<a href="#">EXHIBIT(S)</a> - 34 (Motion #6) <i>Fed Ex Receipt</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
229	<a href="#">STATEMENT OF MATERIAL FACTS</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
230	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
231	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Giardino, J.</a> Filed: 09/07/2021 Received: 09/07/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
232	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

Received: 09/08/2021

- 233 [LETTER / CORRESPONDENCE TO JUDGE](#) [Giardino, J.](#) **Processed**  
 Filed: 09/17/2021 [Confirmation Notice](#)  
 Received: 09/17/2021
- 234 [LETTER / CORRESPONDENCE TO JUDGE](#) (Motion #6) [Donnellan, A.](#) **Processed**  
 Filed: 09/24/2021 [Confirmation Notice](#)  
 Received: 09/24/2021
- 235 [LETTER / CORRESPONDENCE TO JUDGE](#) (Motion #6) [Giardino, J.](#) **Processed**  
 Filed: 09/24/2021 [Confirmation Notice](#)  
 Received: 09/24/2021
- 236 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION](#) (Motion #6) [Giardino, J.](#) **Processed**  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 237 [EXHIBIT\(S\)](#) - A (Motion #6) [Giardino, J.](#) **Processed**  
*Development Agreement*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 238 [EXHIBIT\(S\)](#) - B (Motion #6) [Giardino, J.](#) **Processed**  
*Term Sheet*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 239 [EXHIBIT\(S\)](#) - C (Motion #6) [Giardino, J.](#) **Processed**  
*Amended Lease*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 240 [EXHIBIT\(S\)](#) - D (Motion #6) [Giardino, J.](#) **Processed**  
*Collateral Assignment*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 241 [EXHIBIT\(S\)](#) - E (Motion #6) [Giardino, J.](#) **Processed**  
*August 2017 Emails*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 242 [EXHIBIT\(S\)](#) - F (Motion #6) [Giardino, J.](#) **Processed**  
*Loan Agreement*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 243 [EXHIBIT\(S\)](#) - G (Motion #6) [Giardino, J.](#) **Processed**  
*Letter of Intent*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 244 [EXHIBIT\(S\)](#) - H (Motion #6) [Giardino, J.](#) **Processed**  
*Notice of Default*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 245 [EXHIBIT\(S\)](#) - I (Motion #6) [Giardino, J.](#) **Processed**  
*Security Benefit Letters*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 246 [EXHIBIT\(S\)](#) - J (Motion #6) [Giardino, J.](#) **Processed**  
*Foreclosure Action*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 247 [EXHIBIT\(S\)](#) - K (Motion #6) [Giardino, J.](#) **Processed**

	FILED: 10/25/2021 Received: 10/25/2021	Processed <a href="#">Confirmation Notice</a>
<i>Kent Payments</i>		
248 <a href="#">EXHIBIT(S)</a> - L (Motion #6) <i>Tax Records</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
249 <a href="#">EXHIBIT(S)</a> - M (Motion #6) <i>Utility Records</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
250 <a href="#">EXHIBIT(S)</a> - N (Motion #6) <i>Certificates of Insurance</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
251 <a href="#">EXHIBIT(S)</a> - O (Motion #6) <i>Provider agreements and Rate Sheets</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
252 <a href="#">EXHIBIT(S)</a> - P (Motion #6) <i>First Amended Document Requests to Plaintiff</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
253 <a href="#">EXHIBIT(S)</a> - Q (Motion #6) <i>Amended Answer</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
254 <a href="#">RESPONSE TO STATEMENT OF MATERIAL FACTS</a> (Motion #6)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
255 <a href="#">MEMORANDUM IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION</a> (Motion #6)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
256 <a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #7)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a> <a href="#">Payment Receipt</a>
257 <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF PROPOSED OSC/EXPARTE APP</a> (Motion #7)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
258 <a href="#">EXHIBIT(S)</a> - A (Motion #7) <i>Notification of Disposition of Collateral</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
259 <a href="#">EXHIBIT(S)</a> - B (Motion #7) <i>Letter re auction</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
260 <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #7)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
261 <a href="#">ANSWER (AMENDED)</a>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
262 <a href="#">NOTICE OF MOTION</a> (Motion #8) *Corrected*	<a href="#">Giardino, J.</a>	<b>Processed</b>

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263 <a href="#">EXHIBIT(S)</a> - A (Motion #8) <i>Amended Lease</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
264 <a href="#">EXHIBIT(S)</a> - B (Motion #8) <i>Notice of Exercise of Option Letter</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
265 <a href="#">EXHIBIT(S)</a> - C (Motion #8) <i>Response Letter</i>	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
266 <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #8)	<a href="#">Giardino, J.</a> Filed: 10/25/2021 Received: 10/25/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
267 <a href="#">EXHIBIT(S)</a> - A (Motion #8) <i>PROPOSED Second Amended Verified Answer and Third-Party Complaint</i>	<a href="#">Giardino, J.</a> Filed: 10/26/2021 Received: 10/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
268 <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #8) <i>AFFIDAVIT OF LIZER JOZEFOVIC IN SUPPORT OF MOTION FOR LEAVE TO AMEND AND DECLARATORY JUDGMENT</i>	<a href="#">Giardino, J.</a> Filed: 10/26/2021 Received: 10/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
269 <a href="#">EXHIBIT(S)</a> - A (Motion #8) <i>Amended Lease</i>	<a href="#">Giardino, J.</a> Filed: 10/26/2021 Received: 10/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
270 <a href="#">EXHIBIT(S)</a> - B (Motion #8) <i>Notice of Exercise of Option Letter</i>	<a href="#">Giardino, J.</a> Filed: 10/26/2021 Received: 10/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
271 <a href="#">EXHIBIT(S)</a> - C (Motion #8) <i>Response Letter</i>	<a href="#">Giardino, J.</a> Filed: 10/26/2021 Received: 10/26/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
272 <a href="#">ORDER TO SHOW CAUSE</a> (Motion #7)	Court User Filed: 10/29/2021 Received: 10/29/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

# EXHIBIT Q

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and  
Third-Party Plaintiff,

**FIRST AMENDED  
VERIFIED ANSWER  
WITH AFFIRMATIVE  
DEFENSES, COUNTER-  
CLAIMS AND THIRD-  
PARTY COMPLAINT**

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

-----X

Defendants, HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and  
MARK NEUMAN (collectively, “Defendants”), by and through their counsel Michelman &  
Robinson, LLP, hereby assert the following verified answer with affirmative defenses,  
counterclaims, and third-party complaint and allege upon information and belief as follows:

**ANSWER TO COMPLAINT**

1. Defendants deny the allegations in paragraphs “1,” “2,” and “3.”
2. Defendants admit the allegations in paragraphs “4” through “11.”
3. Defendants deny the allegations in paragraphs “12” and “13.”
4. In response to the allegations in paragraphs “14” through “20,” Defendants assert

that the document speaks for itself.

5. Defendants admit the allegations in paragraphs “21” and “22.”
6. In response to the allegations in paragraph “23,” Defendants assert that the document speaks for itself.
7. Defendants deny the allegations in paragraphs “24,” “25,” and “26.”
8. In response to the allegations in paragraphs “27” through “32,” Defendants assert that the document speaks for itself.
9. Defendants deny the allegations in paragraph “33.”
10. In response to the allegations in paragraphs “34” through “37,” Defendants assert that the document speaks for itself.
11. In response to the allegations in paragraphs “38” through “40” Defendants assert that the document speaks for itself.
12. Defendants deny the allegations in paragraph “41.”
13. Defendants admit the allegations in paragraph “42.”
14. Defendants deny the allegations in paragraphs “43” through “49.”
15. In response to the allegations in paragraph “50” Defendants assert that the document speaks for itself.
16. Defendants deny the allegations in paragraphs “51” through “53.”
17. Defendants deny the allegations in paragraphs “54” through “69.”
18. In response to the allegations in paragraph “70,” Defendants assert that the document speaks for itself.
19. Defendants admit the allegations in paragraph “71.”
20. In response to the allegations in paragraphs “72” through “75,” Defendants assert that the document speaks for itself.

- 21. Defendants deny the allegations in paragraphs “76,” “77,” and “78.”
- 22. Defendants lack sufficient information to form a belief regarding the allegations and, on that basis, deny the allegations in paragraphs “79” and “80.”
- 23. Defendants deny the allegations in paragraph “81.”
- 24. In response to the allegations in paragraphs “82” and “83,” Defendants assert that the document speaks for itself.
- 25. Defendants deny the allegations in paragraphs “84” through “91.”

**FIRST CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

- 26. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “91” as if fully set forth herein.
- 27. Defendants deny the allegations in paragraphs “92” and “93.”

**SECOND CAUSE OF ACTION AGAINST HBL  
(BREACH OF CONTRACT)**

- 28. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “93” as if fully set forth herein.
- 29. Defendants deny the allegations in paragraphs “94” and “95.”

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC  
(ENFORCING GUARANTY)**

- 30. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “95” as if fully set forth herein.
- 31. Defendants deny the allegations in paragraphs “96” and “97.”

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

- 32. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “97” as if fully set forth herein.
- 33. Defendants deny the allegations in paragraphs “98” and “99.”

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

- 34. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “99” as if fully set forth herein.
- 35. Defendants deny the allegations in paragraphs “100” and “101.”

**AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses, without admitting that Defendants would bear the burden of proof on any of these or any other affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE  
(Plaintiff's Breach)**

1. Plaintiff's claims for relief are barred, in whole or in part, because plaintiff is in breach of its obligations under the Lease, the integrated development agreements, and its non-payment of mortgage debt.

**SECOND AFFIRMATIVE DEFENSE  
(Failure to Perform)**

2. Plaintiff failed to perform its obligations under the Lease and integrated Project documents and is not entitled to performance by the Defendants.

**THIRD AFFIRMATIVE DEFENSE  
(Terms Too Indefinite To Enforce)**

3. Certain terms within the Lease which plaintiff seeks to enforce are not clear and not definite and are therefore unenforceable.

**FOURTH AFFIRMATIVE DEFENSE  
(Payment)**

4. Defendants have made various substantial pre-payments of rent which have not been credited to their account, and Defendants have made monthly rental payments to plaintiff which plaintiff has failed to use for its mortgage debt.

**FIFTH AFFIRMATIVE DEFENSE  
(Not Entitled to Enforcement)**

5. Plaintiff's failure to deliver the Project in compliance with NYSDOH approvals renders the Lease unenforceable.

**SIXTH AFFIRMATIVE DEFENSE  
(Offsets)**

6. Defendants are entitled to substantial offsets against the rents due under the Lease.

**SEVENTH AFFIRMATIVE DEFENSE  
(Fraud In The Inducement)**

7. Plaintiff induced the Defendants to enter into the Lease and guarantee agreements by making fraudulent representations and failing to disclose material facts.

**EIGHTH AFFIRMATIVE DEFENSE  
(Waiver)**

8. Plaintiff has accepted performance by Defendants and waives any and all right to sue for breach of contract.

**NINTH AFFIRMATIVE DEFENSE  
(Bad Faith/Unclean Hands)**

9. The plaintiff is not entitled to the relief it seeks as it has acted in bad faith and with unclean hands.

**TENTH AFFIRMATIVE DEFENSE  
(Other Affirmative Defenses)**

10. Defendants reserve the right to supplement or amend this Verified Answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this litigation.

**COUNTERCLAIMS AGAINST WHITE PLAINS  
HEALTHCARE PROPERTIES I, LLC  
AND  
THIRD-PARTY CLAIMS AGAINST CCC EQUITIES, LLC,  
PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, AND WILLIAM NICHOLSON**

Now and for their counterclaims against plaintiff and third-party complaint against third-party defendants, Defendants, upon information and belief, allege the following:<sup>1</sup>

1. CCC Equities, LLC is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

2. Project Equity Consulting is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

3. The Congress Companies is a corporation duly organized and existing under the laws of the State of Massachusetts with an address and place of business at 2 Bourbon Street, West Peabody Executive Center, Peabody, Massachusetts 01960 and regularly conducts business within the State of New York.

4. Howard Fensterman is an individual residing at 4 Pond Lane, Sands Point, New York 11050 with a business address and place of business at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

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<sup>1</sup> Pursuant to the Court's instruction, Defendants incorporate all claims, allegations, and causes of action contained within the complaint filed on October 22, 2020, in the action captioned *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, Index No. 655549/2020. A copy of the complaint is attached as Exhibit A.

5. Through the period complained of herein, Fensterman acted as both a principal in the transaction and legal counsel to certain parties including the defendant Lizer Jozefovic.

6. William Nicholson is an individual residing at 12 Long Meadow Drive, Ipswich, Massachusetts 01938 with a business address and place of business at 2 Bourbon Street, West Peabody Executive Center, Suite 200, Peabody, Massachusetts 01960.

7. This case involves the development of a new state-of-the-art 160-bed skilled nursing facility on Church Street in White Plains, New York (the “Facility.”)

8. The Facility was proposed by the defendant, HBL SNF, LLC (“HBL”), and its principals Lizer Jozefovic and Mark Newman (the “Jozefovic Team”) to the New York State Department of Health (“NYSDOH”) in August 2009.

9. The Facility is dedicated to providing specialized services to “difficult to place patients,” including but not limited to, patients who exhibit psychiatric behaviors, patients who are undocumented, patients with developmental and physical disabilities, and patients who have no means of financial support and require charity care.

10. The Facility was intentionally located in White Plains to service high-density minority and high-density poverty populations as compared to surrounding regions.

11. In order to obtain a Certificate of Need from NYSDOH, the Jozefovic Team acquired skilled nursing bed licenses from other area nursing facilities including Hebrew Hospital Home of Westchester, Bethel Nursing Home, and Taylor Care Center.

12. After full review of the Jozefovic Team’s application, NYSDOH determined that the Jozefovic Team was a successful operator of nursing facilities that are authorized to care for the elderly and individuals with long-term physical care needs and has an established history of achieving high occupancy at the facilities it operated.

13. NYSDOH further determined that the Facility was unique and necessary as it provided care to patients not accepted by other facilities because of their special needs.

14. At the time the Jozefovic Team proposed the Facility, the Plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and the third-party defendants Howard Fensterman (“Fensterman”), William Nicholson (“Nicholson”), and their companies CCC Equities LLC (“CCCE”), Project Equity Construction (“PEC”), and The Congress Companies (“Congress”), approached the Jozefovic Team and proposed that they act as developers for the new Facility.

15. Led by third-party defendant Fensterman, these parties represented that they were capable of performing all aspects of development of the Facility including construction and financing (hereafter “the Project.”)

16. In fact, the Project costs for the Facility presented to NYSDOH by the Jozefovic Team were costs calculated and submitted by Fensterman and Nicholson.

17. Importantly, these costs established a total Project cost of \$56, 631,759.

18. The Project costs for the Facility were itemized by Fensterman and Nicholson as follows:

Land acquisition	\$ 4,528,333
New construction	\$37,282,722
Design Contingency	\$ 1,864,136
Construction Contingency	\$ 1,864,136
Architect/Engineering Fees	\$ 2,982,618
Construction Manager Fees	\$ 745,654
Other Fees (Consultant)	\$ 750,000
Movable Equipment	\$ 1,480,000
Financing Costs	\$ 2,112,000
Interim Interest Expense	\$ 2,710,400
CON Application Fee	\$ 2,000
CON Processing Fee	\$ 309,760
Total Project Cost	\$56,631,759

19. Many of these costs were to be paid to Fensterman and Nicholson directly, as well as Fensterman's law firm, and other costs to their entities as fees, interest costs, and other Project expenses.

20. In addition, Fensterman and Nicholson represented that they could arrange for 100% of the Project financing.

21. More specifically, Fensterman and Nicholson specifically represented and agreed in writing that they could secure a HUD insured mortgage in the amount of \$42,240,000 with an interest rate of 5.5% and a term of thirty (30) years.

22. A description of this mortgage was included in the projected Medicaid Reimbursement submitted to NYSDOH as part of the Project feasibility forecast.

23. Furthermore, Fensterman represented that he could provide the necessary project equity in the amount of \$9,863,246 through his company CCC Equities, LLC.

24. The Jozefovic Team presented this financing arrangement to NYSDOH in support of its request for approval of the Facility and these costs became part of NYSDOH's Project approval.

25. Given that Fensterman and Nicholson agreed to develop, finance, and own the Project, the Jozefovic Team agreed to enter into a Lease Agreement to occupy and operate the Facility.

26. To accomplish this, Fensterman and Nicholson proposed that their company White Plains Healthcare Properties I, LLC become the landlord for the operating company owned by the Jozefovic Team known as HBL.

27. The Lease was to be for a twenty (20) year term.

28. The rent was to be calculated as an amount equal to the debt service of the HUD insured mortgage to be obtained by Fensterman and Nicholson plus a return of cash equity to WPHP on the account of the equity contributions through CCCE.

29. The annual rent proposed by Fensterman and Nicholson and presented to NYSDOH equaled \$4,318,000 annually or \$360,000 per month.

30. The amount of annual rent as calculated above was eligible for reimbursement to HBL through the NYSDOH.

31. The Project as proposed to the NYSDOH was to be completed in approximately twenty (20) months.

32. The NYSDOH gave approval for the Project on the terms described above in October 2012.

33. Throughout the NYSDOH application process, the Jozefovic Team relied upon representations made by Fensterman and Nicholson.

34. However, shortly after receiving approval from NYSDOH, the Jozefovic Team learned that Fensterman and Nicholson did not have the capital necessary to commence or complete the Project as presented.

35. As a result of this lack of capital the Project was delayed for years.

36. In an attempt to overcome this lack of capital, on November 15, 2015, HBL entered into a Development Agreement with White Plains Healthcare Properties I, LLC (the "Development Agreement.")

37. On the same date, HBL entered into a Lease with White Plains Healthcare Properties I, LLC (the "Lease") for the Facility in order to enable WPHP to obtain its Project financing.

38. The Development Agreement and Lease are essential parts of the same transaction and are constitute integrated agreements.

39. Pursuant to the Development Agreement, the Project was to be “turn-key” meaning that the plaintiff and third-party defendants would deliver a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place in accordance with the approval granted by NYSDOH.

40. However, because Fensterman and Nicholson lacked sufficient capital to complete the Project on a turn-key basis, they induced the Jozefovic Team to withdraw its equity from another nursing facility which it owned and operated known as Waterview Nursing Home and to contribute that equity to the Project so that the Project could move forward in 2016.

41. In particular, the Jozefovic Team made the following capital contributions to the Project as memorialized in a Term Sheet dated November 20, 2015:

- a) \$2,200,000 paid to WPHP to be used by Congress for pre-development costs;
- b) \$197,072 to CCC Equities, LLC to be used in the discretion of Fensterman;
- c) \$1,595,368.32 into a control account in the name of HBL SNF.

42. These capital contributions were not made as part of a conventional business relationship or an arms-length transaction. Instead, the Jozefovic Team made these capital contributions in reasonable reliance on Fensterman, Nicholson, Congress, and CCCE’s representations that they were acting in a special capacity to protect and advance the Jozefovic Team’s interests. The relationship had developed into a joint venture and a special relationship.

43. The Jozefovic Team would not have made these capital contributions but for Fensterman, Nicholson, Congress, and CCCE’s representations.

44. Yet, despite repeated requests since 2015, Fensterman, Nicholson, Congress, and CCCE have failed or refused to provide an accounting of the use of the predevelopment and discretionary funds paid to them.

45. In consideration for the \$2,200,000 contribution to WPHP, WPHP agreed that these funds constituted a loan to WPHP to be repaid to HBL.

46. No provision was made for the payment of interest on the loan notwithstanding that WPHP had the use of such funds since 2015.

47. WPHP agreed to repay the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") in the amount of \$1,500,000 for the Project and by giving HBL a future credit against Lease payments.

48. When advancing these funds to Fensterman, Nicholson, CCC Equities and Congress, the Jozefovic Team anticipated that the Facility would be delivered in September 2017.

49. The Facility was not delivered until December 2019.

50. Despite repeated requests, WPHP has never provided an accounting for purchases of the required FF&E or any documentation evidencing repayment of \$1,500,000 of the loan amount to HBL.

51. In the absence of such an accounting, HBL cannot determine how much of its loan amount, if any, has been repaid and how much of the remaining loan balance should be credited to current Lease payments.

52. In addition, accrued interest on the \$2,200,000 loan must be calculated from November 2015 and either paid to HBL or credited to payments due under the Lease.

53. The Development Agreement required that the Project be substantially completed within twenty-two (22) months or before September 2017.

54. However, at the time the Development Agreement was executed, the plaintiff knew that it could not deliver the completed Project by the promised time of September 2017.

55. Subsequently, the plaintiff breached its obligations to HBL by failing to complete the Project until December 2019.

56.

57. The delay in completing the Project caused HBL to lose substantial revenue.

58. In addition, by delivering the Project in December 2019, HBL encountered market conditions during its start-up phase in 2020 caused by the COVID-19 pandemic which adversely affected HBL's operations as it has nursing homes throughout the region.

59. HBL would not have encountered these adverse financial conditions but not for the delay caused by plaintiff and third-party defendants.

60. In addition to the Project being completed more than two (2) years late, plaintiff and third-party defendants delivered the Project well over budget.

61. The Development Agreement required the plaintiff to enter into a construction contract with Congress and to secure a 100% performance bond to guarantee the performance of the construction contract.

62. However, unbeknownst to HBL, Congress could not secure a performance bond.

63. Fensterman and Nicholson never disclosed to HBL or any of its principals that Congress could not obtain a bond.

64. As a result, WPHP entered into a contract without approval or consent from HBL for a creation of a joint venture agreement with a third-party contractor.

65. The joint venture, among other reasons, added substantial costs to the Project.

66. These substantial additional costs exceeded the capital expenditures approved by NYSDOH and are not reimbursable through NYSDOH.

67. Upon information and belief, Congress's inability to secure the performance bond is related to certain judgments taken against its principal Nicholson arising from claims for diversion of project funds in a skilled nursing project located in Milwaukee, Wisconsin dating back to 2015, the time when the Jozefovic Team advanced monies to Nicholson and Congress.

68. Neither Fensterman nor Nicholson disclosed these adverse proceedings to the Jozefovic Team.

69. In fact, Nicholson was adjudged to have committed conversion and civil theft in the amount of \$1,903,452, and that judgement was affirmed on appeal to the Seventh Circuit Court of Appeals.

70. The Development Agreement required that plaintiff and third-party defendants deliver the Project at the costs approved by NYSDOH.

71. Only in the event that HBL authorized a change order would HBL have responsibility for any cost higher than the cost approved by the NYSDOH.

72. There were no approved change orders.

73. The approved Project cost is \$57,000,000.

74. The plaintiff and third-party defendants caused the Project to exceed the approved costs by more than \$5,000,000.

75. The plaintiff and third-party defendants breached their obligations to HBL under the Development Agreement by causing the Project to be over budget.

76. As a result, HBL is not eligible for reimbursement of its rent payments as originally intended - a loss of eligibility that will cause substantial harm to HBL.

77. Given these costs overruns and the loss of eligibility for reimbursement, the Lease is unenforceable.

78. As part of the “turn-key” delivery of the Project, plaintiff was obligated to provide permanent financing for the Project on the terms of the HUD insured loan submitted by plaintiff as part of the Project approved by NYSDOH.

79. The plaintiff and third-party defendants have failed to provide such permanent financing and are in breach of the Development Agreement and the Lease.

80. In connection with the permanent financing, the plaintiff and third-party defendants were required to demonstrate sufficient equity invested in the Project for HUD or any other lender of permanent financing to grant a thirty (30) year loan to the Project.

81. Plaintiff and third-party defendants have failed to demonstrate sufficient equity in the Project.

82. Upon information and belief, Fensterman procured financial contributions from individual third parties who contributed capital to CCCE to meet the equity requirement.

83. Although this capital is required to be and has, in fact, been represented by Fensterman to be in the nature of equity, upon information and belief, these contributions from individual third-parties are loans at high rates of interest which are overdue as a result of the Project delays.

84. Fensterman, CCCE, and plaintiff have caused additional financial burden to the Project and have attempted to pass along to HBL and the Jozefovic Team these higher interest costs.

85. The Project cost overruns and the higher finance costs due to the delay in delivering the Project, together with the lack of sufficient equity, have prevented the Project from securing permanent financing.

86. The plaintiff and third-party defendants have advised HBL that they have initiated this lawsuit because they are in default of their current loan agreements.

87. As of this date, plaintiff and third-party defendants have been unable to provide to the Jozefovic Team an accurate Project accounting of Project expenditures and have refused to provide information concerning the Project financing.

88. As of this date, plaintiff and third-party defendants have been unable to procure the HUD insured financing which they represented they could secure and is required by NYSDOH Project approval.

89. As of this date, the Project does not comply with the approval issued by the NYSDOH.

90. HBL and its principals reasonably relied upon WPHP, Fensterman, Nicholson, and Congress' representations that they would fulfill their obligations under the Development Agreement and Lease.

91. If HBL and its principals knew that WPHP, Fensterman, Nicholson, and Congress would substantially breach their obligations under the Development Agreement and Lease, HBL and its principals would not have entered into the Development Agreement and Lease.

92. As a result of the failure to deliver the Project on the terms approved by NYSDOH, HBL cannot be reimbursed for the cost of the Facility as intended by the Development Agreement and the Lease and HBL and its principals have suffered financial harm as a result.

93. Throughout the development process, WPHP, Fensterman, Nicholson and Congress' false representations and adverse actions to the Jozefovic Team have adversely affected the business of HBL.

94. WPHP, Fensterman, Nicholson and Congress knew that these representations were false when they were made.

95. At no point have HBL or the Jozefovic Team knowingly intended to agree, in whole or in part, to release or waive WPHP, Fensterman, Nicholson, and Congress for any of their breaches and violations of the Development Agreement and the Lease.

96. Since the Facility began operations, HBL has made regular rent payments to WPHP pursuant to the terms of the Lease.

97. As of this date, HBL has made over \$12 million in rental payments to WPHP.

98. HBL has made, and continues to make, these payments in compliance with its obligations under the Lease. HBL's payments do not constitute a waiver or release of HBL's claims against WPHP, CCCE, Congress, Fensterman, or Nicholson.

99. On information and belief, WPHP does not own the property for the Facility outright, but instead received entered into a mortgage agreement with Security Benefit Life Insurance Company and Security Benefit Corporation (collectively, "Security Benefit").

100. The primary purpose of HBL's rental payments to WPHP is for WPHP to satisfy its monthly mortgage payments to Security Benefit.

101. On information and belief, WPHP failed to make required mortgage payments to Security Benefit.

102. On information and belief, Security Benefit instructed WPHP to make certain payments otherwise it would institute foreclosure proceedings, potentially jeopardizing HBL's tenancy and continued operations.

103. On information and belief, although WPHP has received substantial rental payments from HBL, WPHP has refused or failed to make necessary mortgage payments to Security Benefit.

104. On information and belief, Security Benefit has declared WPHP to be in default of its mortgage, having failed to make necessary mortgage payments, charges, interest, and other required fees.

105. On information and belief, Security Benefit has demanded WPHP to send HBL a Tenant Direction Notice, instructing HBL to make all future rental payments directly to Security Benefit.

106. To date, WPHP has not instructed HBL to make future rental payments directly to Security Benefit, but instead continues to collect HBL's monthly rental payments itself.

107. On information and belief, Security Benefit has demanded that WPHP establish a Cash Management Account and instruct HBL to deposit all future rental payments into the Cash Management Account.

108. To date, WPHP has not instructed HBL to deposit future rental payments in a Cash Management Account, but instead continues to receive HBL's monthly rental payments in its own account.

109. On information and belief, Security Benefit has brought a foreclosure action against WPHP and is threatening to foreclose on the mortgage on the property for the Facility.

**AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST WPHP,  
CCCE, CONGRESS, AND FENSTERMAN  
(DEMAND FOR ACCOUNTING)**

110. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “87” with the same force and effect as if fully set forth herein.

111. HBL SNF, LLC, Lizer Jozefovic and Mark Neuman had a trust-based relationship with Fensterman, Nicholson, WPHP, Congress, and CCCE.

112. Fensterman, Nicholson, WPHP, Congress, and CCCE made repeated representations that they would maintain a special relationship with HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, and that they would advocate and protect their interests.

113. In reasonable reliance on these representations and on this special relationship, HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman advanced monies to WPHP and Fensterman prior to commencement of the Project in order to allow the Project to proceed.

114. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman would not have advanced these funds but for their reliance on this special, trust-based relationship.

115. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman are entitled to an accounting of the use of the funds advanced for the Project.

**AS AND FOR A SECOND CAUSE OF ACTION AS AGAINST WPHP  
(PAYMENT OF INTEREST)**

116. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “91” with the same force and effect as if fully set forth herein.

117. HBL SNF, LLC is entitled to imputed interest on the \$2,200,000 made to WPHP loan from November 2015 to present.

**AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST WPHP  
(BREACH OF CONTRACT)**

118. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “93” with the same force and effect as if fully set forth herein.

119. WPHP breached the Development Agreement and the Lease.

120. As a result of such breach, HBL SNF, LLC has been damaged by the loss of reimbursable capital expenditures and has incurred other costs due to the nonperformance of WPHP.

121. In addition, HBL SNF, LLC has lost funds and continues to lose revenues as a result of Project delays.

**AS AND FOR A FOURTH CAUSE OF ACTION  
AS AGAINST FENSTERMAN AND NICHOLSON  
(FRAUD IN THE INDUCEMENT)**

122. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “97” with the same force and effect as if fully set forth herein.

123. Third-party defendants Fensterman and Nicholson fraudulently induced HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman to enter into the Development Agreement, the Lease, and the Guaranty.

124. Fensterman and Nicholson misrepresented the Project costs.

125. Fensterman and Nicholson misrepresented their ability to secure permanent HUD financing.

126. Fensterman and Nicholson misrepresented their ability to complete the Project.

127. Fensterman misrepresented the capital contributions made to CCCE to satisfy the equity requirement for the Project.

128. Fensterman and Nicholson failed to disclose the claimant civil proceeding against Nicholson for civil theft.

129. By reason of such fraud in the inducement, Defendants Lizer Jozefovic and Mark Neuman have no obligations under the guarantees.

130. By reason of such fraud in the inducement, HBL SNF, LLC has suffered financial damages.

**AS AND FOR A FIFTH CAUSE OF ACTION  
AS AGAINST ALL THIRD-PARTY DEFENDANTS  
(BAD FAITH)**

131. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “106” with the same force and effect as if fully set forth herein.

132. As alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.

133. As a result of such bad faith dealings, HBL SNF, LLC has suffered damages in an amount not less than \$15,000,000.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(FRAUD)**

134. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “109” with the same force and effect as if fully set forth herein.

135. The misrepresentations and non-disclosures by Fensterman and Nicholson and third-party defendants constitute fraud.

136. WPHP, Fensterman and Nicholson new such statements were false.

137. WPHP, Fensterman and Nicholson made such statements to deceive HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman.

138. HBL SNF, LLC has been damaged by such fraudulent conduct.

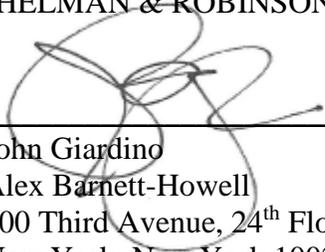
**WHEREFORE**, Defendants and Third-Party Plaintiffs deny generally and specifically that it committed any wrongdoing and demand:

- 1) A determination that the amount of rent payable under the Lease be modified by any sums not reimbursable by the NYSDOH and offset by prior payments and accrued interest;
- 2) The Guaranty Agreements be nullified;
- 3) Monetary damages in an amount to be determined;
- 4) Attorneys' fees, and
- 5) Such other relief as the Court deems appropriate.

Dated: New York, New York

May 21, 2021

MICHELMAN & ROBINSON, LLP

By: 

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*Attorneys for Defendants*

**VERIFICATION BY ATTORNEY**

JOHN GIARDINO, being an attorney duly admitted to practice in the courts of New York, affirms the following under penalties of perjury:

I am an attorney for Defendants HBL-SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARK NEUMAN, in the above entitled action and have read the foregoing Verified Answer and know the contents thereof; that the same is true upon information and belief, and that as to those matters I believe them to be true.

I further state that the grounds of my belief as to all matters in the Verified Answer are based upon the file maintained by my office and conference and telephone conferences with Defendants. This verification is made pursuant to the provisions of RPAPL 741 because Defendants was not available to sign the same at the time the Verified Answer was prepared.

Dated: New York, New York

May 21, 2021

  
\_\_\_\_\_  
JOHN GIARDINO, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 : Index No. 60278/2020  
 Plaintiff, :  
 :  
 -against- :  
 :  
 HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, WILLIAM :  
 NICHOLSON, and METROPOLITAN :  
 COMMERCIAL BANK :  
 :  
 Third-Party Defendants  
 -----X

**RESPONSE TO STATEMENT OF MATERIAL FACTS**

Pursuant to 22 NYCRR § 202.8-g(b), § 202.70(g), and the Rules of the Commercial Division of the Supreme Court, Rule 19-a, Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic (“Jozefovic”), and Mark Neuman (collectively, “HBL” or “Defendants”) respectfully submit the following Response to Plaintiff White Plains Healthcare Properties I, LLC and Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson’s (collectively “White Plains”) Statement of Material Facts, dated August 19, 2021 [Doc. No. 229] and in opposition to Plaintiff’s motion for summary judgment, dated August 19, 2021 [Motion #6].

**HBL’S RESPONSES TO PLAINTIFFS’ STATEMENT OF MATERIAL FACTS**

1. HBL does not contest paragraph 1 of White Plains’ Statement of Material Fact.

2. HBL does not contest paragraph 2 of White Plains’ Statement of Material Fact.

3. HBL does not contest paragraph 3 of White Plains’ Statement of Material Fact.

4. HBL disputes paragraph 4 of White Plains’ Statement of Material Fact. White Plains failed to complete the construction of the Facility on the agreed upon timeline. Pursuant to Section 3.1(a) of the Amended Lease, the Commencement Date did not occur until December 2, 2019, when NYSDOH notified White Plains that the Facility was in substantial compliance. Thus, the Project was not completed until December 2019. Jozefovic Aff., ¶ 48.

5. HBL disputes paragraph 5 of White Plains’ Statement of Material Fact. This is a legal conclusion rather than a statement of fact. HBL disputes the legal force and effect of this provision in the Lease. Despite representations made by White Plains to HBL, White Plains lacked the necessary capital to complete the construction project. In a Terms Sheet postdating the Lease, HBL agreed to loan White Plains \$2,200,000 to ensure the completion of the project. Term Sheet, § 1(b). HBL provided White Plains with the funds pursuant to the Term Sheet. Jozefovic Aff., ¶ 23. White Plains never repaid the loan and has only recently raised a complaint with HBL regarding the letter of credit provision.

6. HBL disputes paragraph 6 of White Plains’ Statement of Material Fact, specifically the legal force and effect of the letter of credit provision of the Lease. HBL’s \$2,200,000 payment satisfied HBL’s financial obligation to White Plains preceding the Commencement of the Lease. Jozefovic Aff., ¶ 23. White Plains never repaid this loan to HBL and has not until recently raised a complaint with HBL regarding the letter of credit provision.

7. HBL disputes paragraph 7 of White Plains’ Statement of Material Fact, specifically the legal force and effect of the letter of credit provision of the Lease. HBL’s \$2,200,000 payment

satisfied HBL's financial obligation to White Plains preceding the Commencement of the Lease. Jozefovic Aff., ¶ 23. White Plains never repaid this loan to HBL and has not until recently raised a complaint with HBL regarding the letter of credit provision.

8. HBL disputes paragraph 8 of White Plains' Statement of Material Fact, specifically the legal force and effect of the letter of credit provision of the Lease. HBL's \$2,200,000 payment satisfied HBL's financial obligation to White Plains preceding the Commencement of the Lease. Jozefovic aff., ¶ 23. White Plains never repaid this loan to HBL and has not until recently raised a complaint with HBL regarding the letter of credit provision.

9. HBL disputes paragraph 9 of White Plains' Statement of Material Fact, specifically the legal force and effect of the letter of credit provision of the Lease. HBL's \$2,200,000 payment satisfied HBL's financial obligation to White Plains preceding the Commencement of the Lease. Jozefovic Aff., ¶ 23. White Plains never repaid this loan to HBL and has not until recently raised a complaint with HBL regarding the letter of credit provision.

10. HBL disputes paragraph 10 of White Plains' Statement of Material Fact. This is a legal conclusion rather than a statement of fact. HBL disputes the legal force and effect of this provision in the Lease. In addition to the \$2,200,000 loan made by HBL to White Plains preceding the construction of the project, HBL was further required to supply another \$2,200,000 to White Plains pursuant to a Letter of Intent entered into by both parties on November 20, 2019. Jozefovic Aff., ¶ 63. White Plains has not delivered to HBL its agreed upon repayment of this loan, nor has it accounted for the additional \$2,200,000 payment. The significant payments made by HBL to White Plains to ensure the success of the project have satisfied all financial obligations to White Plains before the Commencement of the Lease. White Plains has not until now raised a complaint with HBL regarding the additional security deposit.

11. HBL disputes paragraph 11 of White Plains' Statement of Material Fact, specifically the legal force and effect of the additional security deposit. White Plains has not delivered to HBL its agreed upon repayment of the original loan, nor has it accounted for the additional \$2,200,000 payment made November 2019, and has not until now raised a complaint with HBL regarding the additional security deposit. Jozefovic Aff., ¶ 65.

12. HBL disputes paragraph 12 of White Plains' Statement of Material Fact, specifically the legal force and effect of the additional security deposit. White Plains has not delivered to HBL its agreed upon repayment of the original loan, nor has it accounted for the additional \$2,200,000 payment made November 2019, and has not until now raised a complaint with HBL regarding the additional security deposit. Jozefovic Aff., ¶ 65.

13. HBL does not dispute paragraph 13 of White Plains' Statement of Material Fact.

14. HBL disputes paragraph 14 of White Plains' Statement of Material Fact. Since entering into possession of the Facility, HBL has paid every monthly rental payment of \$506,096,50 on time, now totaling more than \$12,000,000. Jozefovic Aff., ¶ 88. White Plains continues to accept these rent payments and has not until now raised a complaint with HBL regarding rent payments.

15. HBL disputes paragraph 15 of White Plains' Statement of Material Fact. This is a legal conclusion rather than a statement of fact. HBL disputes the legal force and effect of this provision in the Lease. The Lease provides for the payment of Additional Rent in specific circumstances that have not been effected here. HBL has satisfied its financial obligation to White Plains by making rent payments for time in possession of the facility, which White Plains continues to accept. White Plains has not until now raised a complaint with HBL regarding rent payment. Jozefovic Aff., ¶ 88.

16. HBL disputes paragraph 16 of White Plains' Statement of Material Fact. HBL has satisfied its financial obligation to White Plains by making rent payments for months spent in possession of the facility, which White Plains continues to accept. Jozefovic Aff., ¶ 88. White Plains has not until now raised a complaint with HBL regarding rent payment. White Plains has also continually failed to credit HBL's \$2,200,000 loan and \$2,200,000 letter of credit towards any of the alleged obligations. Jozefovic Aff., ¶ 65.

17. HBL does not contest paragraph 17 of White Plains' Statement of Material Fact.

18. HBL disputes paragraph 18 of White Plains' Statement of Material Fact. White Plains cites to an affidavit which admits that HBL submitted certificates of insurance to White Plains in January 2020 and July 2021. Tabor aff., ¶ 32. White Plains has not raised any complaints regarding the delivery of certificates of insurance until now, and has instead continue to accept rent payments from HBL.

19. HBL does not contest paragraph 19 of White Plains' Statement of Material Fact.

20. HBL disputes paragraph 20 of White Plains' Statement of Material Fact. White Plains cites to an affidavit which admits that HBL reimbursed White Plains for utility charges in the amount of \$41,175. None of White Plains' submissions state with specificity the origin of any remaining charges still allegedly owed to White Plains. Tabor aff., ¶ 32. Regardless, White Plains has continued to accept rent payments from HBL, without raising any complaints regarding the delivery of certificates of insurance until now. Jozefovic Aff., ¶ 88.

21. HBL does not contest paragraph 21 of White Plains' Statement of Material Fact.

22. HBL disputes paragraph 22 of White Plains' Statement of Material Fact. White Plains cites to an affidavit which claims that HBL has indeed paid real estate taxes for the Facility, but owes \$2,621.94 in late fees. Tabor aff., ¶ 31. White Plains has continued to accept rent

payments from HBL, without raising any complaints regarding these fees until now. Jozefovic Aff., ¶ 88. White Plains has also continually failed to credit HBL's \$2,200,000 loan and \$2,200,000 letter of credit towards any of the alleged obligations. Jozefovic Aff., ¶ 65.

23. HBL does not contest paragraph 23 of White Plains' Statement of Material Fact.

24. HBL does not contest paragraph 24 of White Plains' Statement of Material Fact.

25. HBL disputes paragraph 25 of White Plains' Statement of Material Fact. White Plains cites to an affidavit which claims that HBL did deliver the required Medicaid reimbursement rate sheets in July 2021. Tabor aff., ¶ 36. White Plains has continued to accept rent payments from HBL, without raising any complaints regarding these rate sheets until now. Jozefovic Aff., ¶ 88

26. HBL disputes paragraph 26 of White Plains' Statement of Material Fact. White Plains cites to an affidavit which admits that HBL has provided some of the required documentation. Tabor aff., ¶ 38 . However, White Plains has continued to accept rent payments from HBL, without raising any complaints regarding this documentation until now. Jozefovic Aff., ¶ 88

27. HBL disputes paragraph 27 of White Plains' Statement of Material Fact. White Plains cites to an affidavit which admits that HBL has provided some of the required documentation. Tabor aff., ¶ 38 . However, White Plains has continued to accept rent payments from HBL, without raising any complaints regarding this documentation until now. Jozefovic Aff., ¶ 88

28. HBL disputes paragraph 28 of White Plains' Statement of Material Fact. White Plains cites to an affidavit which admits that HBL has provided some of the required documentation. Tabor aff., ¶ 38 . However, White Plains has continued to accept rent payments

from HBL, without raising any complaints regarding this documentation to HBL until now. Jozefovic Aff., ¶ 88

29. HBL disputes paragraph 29 of White Plains' Statement of Material Fact. White Plains has continued to accept rent payments from HBL, without raising any complaints regarding these provider agreements to HBL until now. Jozefovic Aff., ¶ 88.

30. HBL disputes paragraph 25 of White Plains' Statement of Material Fact. White Plains cites to an affidavit which claims that HBL did deliver the required Medicaid reimbursement rate sheets in July 2021. Tabor aff., ¶ 36. White Plains has continued to accept rent payments from HBL, without raising any complaints regarding these rate sheets until now. Jozefovic Aff., ¶ 88

31. HBL does not contest paragraph 31 of White Plains' Statement of Material Fact.

32. HBL does not contest paragraph 32 of White Plains' Statement of Material Fact.

33. HBL disputes paragraph 33 of White Plains' Statement of Material Fact. This is a legal conclusion rather than a statement of fact. Since the alleged notice on January 13, 2020, White Plains has continued to accept rent payments from HBL. Jozefovic Aff., ¶ 88. White Plains has also continually failed to credit HBL's \$2,200,000 loan and \$2,200,000 letter of credit towards any of the alleged obligations. Jozefovic Aff., ¶ 65.

34. HBL disputes paragraph 34 of White Plains' Statement of Material Fact. This is a legal conclusion rather than a statement of fact. Since the alleged notice on January 13, 2020, White Plains has continued to accept rent payments from HBL. Jozefovic Aff., ¶ 88. White Plains has also continually failed to credit HBL's \$2,200,000 loan and \$2,200,000 letter of credit towards any of the alleged obligations. Jozefovic Aff., ¶ 65.

35. HBL disputes paragraph 35 of White Plains' Statement of Material Fact. Since the alleged notice on January 13, 2020, White Plains has continued to accept rent payments from HBL

without raising a complaint with HBL regarding an increased rent. Jozefovic Aff., ¶ 88. White Plains has also continually failed to credit HBL's \$2,200,000 loan and \$2,200,000 letter of credit towards any of the alleged obligations. Jozefovic Aff., ¶ 65. HBL has satisfied its financial obligation to White Plains.

36. HBL disputes paragraph 35 of White Plains' Statement of Material Fact. Since the alleged notice on January 13, 2020, White Plains has continued to accept rent payments from HBL without raising a complaint with HBL regarding an increased rent. Jozefovic Aff., ¶ 88. White Plains has also continually failed to credit HBL's \$2,200,000 loan and \$2,200,000 letter of credit towards. Jozefovic Aff., ¶ 65.

37. HBL does not contest paragraph 37 of White Plains' Statement of Material Fact.

38. HBL disputes paragraph 35 of White Plains' Statement of Material Fact. Since the alleged notice on January 13, 2020, White Plains has continued to accept rent payments from HBL without raising a complaint with HBL regarding an increased rent. Jozefovic Aff., ¶ 88. White Plains has also continually failed to credit HBL's \$2,200,000 loan and \$2,200,000 letter of credit. Jozefovic Aff., ¶ 65.

39. HBL disputes paragraph 22 of White Plains' Statement of Material Fact. White Plains cites to an affidavit which claims that HBL has indeed paid real estate taxes for the Facility, but owes \$2,621.94 in late fees. Tabor aff., ¶ 31. White Plains has continued to accept rent payments from HBL, without raising any complaints regarding these fees until now. Jozefovic Aff., ¶ 88. White Plains has also continually failed to credit HBL's \$2,200,000 loan and \$2,200,000 letter of credit towards any of the alleged obligations. Jozefovic Aff., ¶ 65.

40. HBL disputes paragraph 40 of White Plains' Statement of Material Fact. Section 16.1(h) of the Lease provides that HBL shall pay White Plains all expenses, including reasonable

attorney fees if “breach shall be established.” Lease. White Plains is not entitled to attorneys fees in the absence of a finding of breach.

41. HBL does not contest paragraph 41 of White Plains’ Statement of Material Fact.

42. HBL states that the referenced document speaks for itself. However, HBL has raised valid defenses regarding the enforcement of the document.

43. HBL states that the referenced document speaks for itself. However, HBL has raised valid defenses regarding the enforcement of the document.

44. HBL states that the referenced document speaks for itself.

45. HBL states that the referenced document speaks for itself.

46. HBL states that the referenced document speaks for itself.

**HBL’S STATEMENT OF ADDITIONAL  
UNDISPUTED MATERIAL FACTS PURSUANT TO RULE 19-A**

47. White Plains and HBL entered into the Development Agreement, which required White Plains to complete the Facility in 20 months or less, with rent sent at \$360,000 per month, and with a construction loan that would convert to permanent mortgage financing. White Plains failed to meet any of these obligations. Jozefovic Aff., ¶ 49.

48. White Plains induced HBL to withdraw its equity from Waterview, an entirely separate nursing facility, and contribute that equity to the Facility. HBL provided White Plains with \$2,200,000 for pre-development costs pursuant to the Term Sheet, for which it has received no consideration. Jozefovic Aff., ¶ 23.

49. White Plains was required to obtain a construction loan which would convert to permanent mortgage financing, pursuant to Article VII(B) of the Development Agreement. White Plains failed to do so. Jozefovic Aff., ¶ 32-34.

50. White Plains agreed to repay HBL by purchasing the furniture, fixtures, and equipment (“FF&E”) in the amount of \$1,500,000 and by giving a future credit against rent payments in the amount of \$700,000. Jozefovic Aff., ¶ 26.

51. White Plains has refused to convey titled to the FF&E, to provide an accounting of the use of these predevelopment and discretionary funds, to provide evidence of purchases of the required FF&E, or to credit \$700,000 against HBL’s Lease Payments. Jozefovic Aff., ¶ 59.

52. In August 2017, HBL funded and delivered the executed certification statements for White Plains to assume signatory authority over a \$1.6 million rent security account (“RSA”). Jozefovic Aff., ¶ 43.

53. The RSA satisfied all obligations under the Amended Lease and the Collateral Assignment to provide security deposits. Jozefovic Aff., ¶ 43.

54. On August 18, 2017, White Plains and Security Benefit entered into a Loan Agreement. Section 11.2 of the Amended Lease and Sections 3.5 and 4.1 of the Loan Agreement assign Security Benefit the sole right to declare a default under the Amended Lease. Jozefovic Aff., ¶ 46.

55. White Plains has never obtained prior consent from Security Benefit to declare a default under the Amended Lease. Jozefovic Aff., ¶ 78.

56. White Plains was required to secure a construction loan for a five (5) year term that would convert into permanent financing. Instead, White Plains was only able to secure a \$38,500,000 construction loan from Security Benefit Life Insurance Company (“Security Benefit”) with a three (3) year term and a \$9,800,000 mezzanine loan from Bradford Allan. Jozefovic Aff., ¶ 34.

57. If, as required by Article VII(B) of the Development Agreement, White Plains had successfully obtained a construction loan which converted to permanent mortgage financing, this would have prevented further disputes. Jozefovic Aff., ¶ 33.

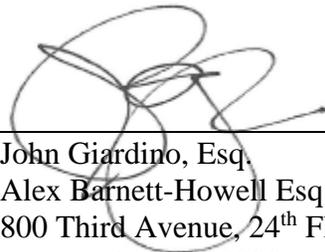
58. HBL provided White Plains with \$2,200,000 pursuant to the Letter of Intent, for which it received no consideration. Jozefovic Aff., ¶ 63.

59. HBL made rent payments of \$506,096.50 every month with the understanding that the payments were to go to White Plains' own mortgage payments to Security Benefit. Jozefovic Aff., ¶ 80.

60. Beginning on October 16, 2019, Security Benefit has placed White Plains on notice that White Plains has breached the Loan Agreement. These defaults preceded and occurred independently of any issues or alleged defaults between White Plains and HBL. On May 1, 2021, and September 1, 2021, Security Benefit brought foreclosure actions against White Plains for nonpayment of rent and breach of the loan agreement. Jozefovic Aff., ¶ 82.

Dated: New York, New York  
October 25, 2021

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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WHITE PLAINS HEALTHCARE PROPERTIES I, :  
LLC, :

Plaintiff, :

Index No. 60278/2020

-against- :

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
JOZOFOVIC, and MARK NEUMAN, :

Defendants and Third-Party Plaintiffs, :

-against- :

CCC EQUITIES, LLC, PROJECT EQUITY :  
CONSULTING, THE CONGRESS COMPANIES, :  
HOWARD FENSTERMAN, WILLIAM :  
NICHOLSON, and METROPOLITAN :  
COMMERCIAL BANK :

Third-Party Defendants

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**MEMORANDUM OF LAW  
IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT  
AND IN SUPPORT OF CROSS-MOTION TO STRIKE**

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**I. PRELIMINARY STATEMENT**

Defendants and Third-Party Plaintiffs HBL SNF, LLC (“HBL SNF”) Lizer Jozefovic (“Jozefovic”), and Mark Neuman (“Neuman”) (collectively, “HBL” or “Defendants”) respectfully submit this Memorandum of Law and accompanying Affidavit in opposition to Plaintiff White Plains Healthcare Properties I, LLC and Third-Party Defendants CCC Equities, LLC (“CCCE”), Project Equity Consulting, The Congress Companies (“Congress”), Howard Fensterman (“Fensterman”), and William Nicholson’s (collectively “White Plains”) motion for summary judgment, dated August 19, 2021 (the “Motion”), and request that the Court grant HBL’s cross-motion for an Order striking White Plains’ Notice to Admit, dated June 2, 2021 (the “NTA”), as improper, or in the alternative, granting HBL additional time to respond.

Jozefovic and Neuman spent countless hours of labor and millions of dollars to build and operate a cutting-edge nursing home in downtown White Plains, New York. White Plains approached Jozefovic and Neuman, offering to serve as the developer and future landlord, but White Plains’ failures and breaches multiplied throughout the process: White Plains ran out of funding and demanded HBL provide millions in unaccounted payments; White Plains finished construction on the nursing home two years late, overbudget, and with inadequate financing; and White Plains failed to obtain necessary operational licenses for HBL until just before the COVID-19 pandemic devastated New York’s nursing homes.

The relationship between White Plains and HBL is complex. Over the span of several years, the parties entered into a web of contracts based upon an evolving situation. It is unknown why White Plains accepted millions in rent payments before and after claiming that HBL had breached its obligations (the “Alleged Breaches”), or why White Plains independently breached its own obligations to its own lender, because White Plains has refused to produce any documents

or allow for the deposition of key witnesses. Instead, the facts are that HBL has paid over \$10.5 million in rent payments to White Plains and that White Plains has received \$5,418,000 from HBL which are currently unaccounted for.

Given HBL's substantial compliance with its contractual obligations and the numerous factual disputes at the heart of White Plains' claims, HBL respectfully requests that the Motion be denied in its entirety and that HBL's cross-motion striking the NTA, or in the alternative, providing additional time to respond, be granted.

## **II. STATEMENT OF FACTS**

### **1. HBL Plans and Funds the Facility**

For over 20 years, Jozefovic and Neuman have owned and operated skilled nursing and rehabilitation facilities which consistently provide the highest levels of care for their patients. In August 2009, Jozefovic and Neuman proposed the development of a new, state-of-the-art 160-bed skilled nursing facility in White Plains, New York (the "Facility") to the New York State Department of Health ("NYSDOH"). Jozefovic aff., ¶ 13.

Around this time, White Plains approached Jozefovic and Neuman, claiming they could obtain the necessary NYSDOH approval, financing, and construction management for the Facility, after which they would serve as HBL's landlord. On November 15, 2015, in reliance on White Plains' representations, HBL accepted White Plains' offer and entered into a development agreement (the "Development Agreement") and lease with White Plains. Based upon the Development Agreement, White Plains submitted a development proposal to NYSDOH with the following terms: (1) a total cost of \$56,631,759; (2) a thirty-year, \$42,240,000 HUD-insured mortgage with an interest rate of 5.5%; and (3) \$9,863,246 in project equity contributed by CCCE. Critically, White Plains represented that the Facility would be completed in 20 months or less,

after which HBL would pay \$360,000 per month in rent. Development Agreement, VII(B). Jozefovic aff., ¶ 15-16.

Pursuant to the Development Agreement, White Plains was required to deliver the facility: (1) fully constructed; (2) authorized to operate as a skilled nursing facility; (3) with HUD permanent financing; and (4) in accordance with the approval granted by NYSDOH. Jozefovic aff., ¶ 20.

Yet, White Plains failed to deliver. White Plains first demanded that HBL enter into a term sheet dated November 20, 2015 (the “Term Sheet”) to raise additional capital. Pursuant to the Term Sheet, Jozefovic and Neuman provided White Plains with (1) \$2,200,000 for pre-development costs; (2) \$197,072 for CCCE; and (3) \$1,595,368.32 into a control account as rent security. Jozefovic aff., ¶ 22-23.

The Term Sheet was a loan, not an investment, as HBL did not receive equity in the Facility. White Plains agreed to repay this loan by: (1) purchasing the furniture, fixtures, and equipment (the “FF&E”) in the amount of \$1,500,000 for the Facility, and (2) giving HBL a future credit against Lease payments in the amount of \$700,000. Jozefovic aff., ¶ 25-27.

Despite HBL’s infusion of capital, on April 18, 2016, NYSDOH notified White Plains that the Facility was an abandoned project. Finally, after multiple delays, White Plains issued the Contract for General Construction, and on July 26, 2017, NYSDOH notified White Plains that (1) White Plains was authorized to start construction by or before September 15, 2017; and (2) the total project cost should not exceed \$56.6 million. Jozefovic aff., ¶ 29-30.

**2. HBL, White Plains, and Security Benefit Enter Into the Amended Lease, the Collateral Assignment, and the Loan Agreement**

On or about July 2017, White Plains and HBL entered into an amended lease (the “Amended Lease”). The terms of the Amended Lease were substantially different, as HBL was

required to pay \$506,096.50 per month in rent (“Fixed Rent”) instead of the original \$360,000 per month in rent under the original lease, a difference of \$1,750,000 per year. Over the term of the Amended Lease, this increase provided White Plains with an additional \$44,000,000. Jozefovic aff., ¶ 36-38.

Furthermore, on August 11, 2017, White Plains demanded that HBL enter into a collateral assignment (the “Collateral Assignment”) to satisfy Section 7.1(a)(iii) of the Amended Lease. Specifically, Section 2 of the Collateral Assignment required HBL to deposit \$1,600,000 into a rent security account (the “RSA”) and provide Fensterman with signatory authority, after which the Collateral Assignment “shall automatically terminate and be void and of no further effect” (emphasis added). HBL did exactly that. Jozefovic aff., ¶ 41.

On August 10, 2017, Fensterman agreed to assume signatory authority over the RSA, representing the security deposit referenced in Section 7.1(a)(iii) of the Amended Lease and Section 2 of the Collateral Assignment. On August 17, 2017, HBL provided the executed certification statements to Fensterman, but White Plains never transacted them or raised any subsequent issues about HBL’s security deposit obligations. Jozefovic aff., ¶ 43-45.

On August 18, 2017, White Plains and Security Benefit Life Insurance Company (“Security Benefit”) entered into a construction loan agreement (the “Loan Agreement”). Pursuant to Section 11.2 of the Amended Lease and Section 4.1 of the Loan Agreement, White Plains’ rights were subrogated to Security Benefit. As a result, both White Plains and HBL were bound to the terms of the Loan Agreement. Jozefovic aff., ¶ 46.

Finally, pursuant to Section 3.5 of the Loan Agreement, White Plains is prohibited from taking any action to declare a default or terminate the Amended Lease, “without the prior written consent of [Security Benefit].”

**3. White Plains Completes the Facility Late and Over Budget**

The Development Agreement required White Plains to complete the Facility no later than September 2017. However, White Plains did not receive approval from NYSDOH to begin operations until December 2, 2019. Pursuant to Section 3.1(a) of the Amended Lease, this approval triggered the Commencement Date. Jozefovic aff., ¶ 48.

Not only was the Facility completed late, but White Plains incurred substantial cost overruns and White Plains failed to provide permanent financing for the Facility in the form of the HUD-insured loan. White Plains' shortcomings have caused substantial damages, as HBL is unable to obtain full reimbursement of its monthly rent payments as originally intended, resulting in losses of \$68,000 per month, for an annualized loss of \$816,000. Additionally, White Plains has refused to convey title to the FF&E, to provide an accounting of the use of the predevelopment and discretionary funds HBL provided, or to credit \$700,000 against HBL's rent payments. Jozefovic aff., ¶ 57-59.

Despite White Plains' breaches and failures, HBL has performed under the Amended Lease. Since the Commencement Date on December 2, 2019:

- HBL substantially satisfied the requirements for a security deposit under both the Amended Lease and the Collateral Assignment by funding and maintaining the RSA. By August 17, 2017, HBL provided Fensterman with the necessary forms to become a signatory on the RSA. However, Fensterman never transacted these documents and White Plains never made any subsequent demands on HBL to provide additional security deposits. Jozefovic aff., ¶ 43-45.
- HBL has made consecutive Fixed Rent Payments to White Plains every month, now totaling \$12.5 million, which White Plains has accepted without dispute. Moreover, HBL

pre-paid an additional two months of rent prior to the Commencement Date. Jozefovic aff., ¶ 88.

- HBL has paid all applicable real estate taxes for the Facility. To date, there are no outstanding charges for real estate or other taxes. Jozefovic aff., ¶ 92.
- HBL has paid all applicable utility charges, utility deposits and municipal maintenance escrows. To date, there are no outstanding charges for Con Edison, or any other utility. Jozefovic aff., ¶ 94.
- HBL has obtained the necessary types and amounts of insurance for the Facility. Jozefovic aff., ¶ 96.
- HBL has delivered necessary provider agreements, rate sheets, and financial and operational reporting to White Plains. Jozefovic aff., ¶ 98.
- As HBL is in substantial compliance with the Amended Lease and the Amended Lease has not been terminated, HBL has no obligation to pay holdover or accelerated rent. Jozefovic aff., ¶ 100.

#### **4. White Plains and HBL Enter Into the LOI**

Given the substantial increase in rent and White Plains’ breaches of the Development Agreement and Amended Lease, HBL sought to purchase the Facility from White Plains. On November 20, 2019, HBL and White Plains entered into a letter of intent with White Plains (the “LOI”). Jozefovic aff., ¶ 60-61.

In reliance on White Plains’ representations, HBL made an initial \$2.2 million payment to White Plains pursuant to the LOI. Despite HBL’s efforts, White Plains failed to take any steps to complete the transaction, although White Plains retained and has refused to account for HBL’s \$2.2 million payment. Jozefovic aff., ¶ 63-65.

**5. White Plains Breaches the Loan Agreement**

Although HBL continues to make each and every Fixed Rent Payment to White Plains, White Plains defaulted on its mortgage with Security Benefit. On October 16, 2019, Security Benefit issued a notice of default to White Plains for failing to establish a cash management account, as required by the Loan Agreement. Security Benefit issued a second notice of default to White Plains on November 5, 2019 for failing to direct HBL to pay rent into a cash management account. Jozefovic aff., ¶ 66-68.

In a third notice dated April 16, 2020, Security Benefit stated that White Plains was solely at fault for breaching the terms of the Loan Agreement by failing to (1) provide monthly payments of interest; and (2) establish a cash management account. Jozefovic aff., ¶ 77.

In a fourth letter dated May 22, 2020, Security Benefit issued a notice of default to White Plains for the failure to (1) provide monthly payments of interest; (2) establish a cash management account; (3) send a tenant direction notice; (4) forward the \$2.2 million payment to Security Benefit, which had been received from HBL; (5) provide financial statements for White Plains; and (6) provide financial statements for each guarantor. Security Benefit makes no reference to HBL's obligations in these letters and notices. Jozefovic aff., ¶ 78.

On August 1, 2020, the Loan Agreement matured. Jozefovic aff., ¶ 81.

**6. White Plains Commences Litigation Against HBL, and Security Benefit Commence Litigation Against White Plains**

On May 7, 2021, HBL served White Plains with the first amended document requests. White Plains has not provided any documents in response. No depositions have occurred to date. Jozefovic aff., ¶ 102-106.

On September 1, 2021, Security Benefit brought an independent foreclosure action against White Plains captioned *Security Benefit Life Insurance Company, et al. v. White Plains Healthcare*

*Properties I, LLC et al.*, No. 62109/2021. In Paragraph 42 of the complaint, Security Benefit alleges that White Plains breached Section 3.5 of the Loan Agreement, “which prohibits Borrower from terminating the Operating Lease without the consent of the Lender.” Jozefovic aff., ¶ 82.

### III. LEGAL ARGUMENT

#### 1. White Plains Is Not Entitled To Summary Judgment

When considering a motion for summary judgment, if the moving party fails to “make a prima facie showing of entitlement to judgment as a matter of law,” the court must deny “the motion, regardless of the sufficiency of the opposing papers.” *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]. If this threshold is met, the “burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof...sufficient to establish the existence of material issues of fact which require a trial of the action.” *Id.*

The court must view all evidence in the light most favorable to the nonmoving party, as well as give the nonmoving party the benefit of all reasonable inferences. *Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]. If there are any doubts concerning the existence of a triable fact, the court must deny the motion. *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978] (“[S]ummary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue.”).

#### A. White Plains Brought A Premature Motion for Summary Judgment, Depriving HBL of Necessary Discovery

Under CPLR 3212(f), courts must “deny a motion for summary judgment...where the opposing party has not had a reasonable opportunity for disclosure prior to the making of the motion.” *Brielmeier v Leal*, 145 AD3d 753, 754 [2d Dept 2016]. Courts are especially quick to deny motions for summary judgment which occur before document production and depositions

given the potential that relevant information could be discovered. “[A] motion for summary judgment should be denied as premature where the movant has yet to be deposed.” *Barreto v City of New York*, 194 AD3d 563 [1st Dep 2021]; *see also Guo Ping Gu v Malaxos*, 192 AD3d 1087 [2d Dept 2021].

There are substantial factual issues which require discovery to resolve. By way of example, White Plains took \$5,418,000 from HBL, but has never returned or accounted for these funds. *Jozefovic aff.*, ¶ 59, 65. White Plains accepted the documents necessary to become a signatory on the RSA, but never completed the transaction and never demanded that HBL post additional security deposits. ¶ 43-45. White Plains entered into exhaustive negotiations with HBL concerning an intercreditor agreement pursuant to the Amended Lease and the purchase of the Facility pursuant to the LOI, but both transactions were never completed. *Jozefovic aff.*, ¶ 63-65. White Plains accepted four months of Fixed Rent Payments without protest, served a delayed and inadequate Notice of Default, and then accepted eight more months of Fixed Rent Payments before commencing this action. *Jozefovic aff.*, ¶ 88.

These issues, among others, cannot be resolved via summary judgment as they directly contradict White Plans’ claims that HBL has breached the Amended Lease. On May 7, 2021, HBL submitted document requests to White Plains, with the intention of deposing White Plains’ key witnesses afterwards. However, White Plains has failed to produce a single document in response, and no depositions have been conducted. *Jozefovic aff.*, ¶ 102-106. As a result, White Plains has prevented HBL from contesting White Plains’ claims or proving HBL’s affirmative defenses and counterclaims. Finally, document discovery and depositions would demonstrate that White Plains waived certain sections of the Amended Lease and accepted HBL’s substantial performance, White Plains wrongfully appropriated HBL’s funds, White Plains accepted monthly rent payments

in lieu of demanding specific performance of the Amended Lease, and White Plains' dispute with Security Benefit is due to White Plains' own breach of the Loan Agreement.

**B. White Plains Is Prohibited From Declaring a Default Under the Lease**

Section 11.2 of the Amended Lease explicitly subrogates the Amended Lease to the Loan Agreement, stating:

“All provisions contained in the loan documents between [White Plains] and [Security Benefit] . . . shall take precedence over and be in lieu of any contrary provision provided for in this Lease, and in all respects are binding upon Tenant who agrees to and acknowledges the same.”

This provision is complimented by Section 4.1 of the Loan Agreement, which “assigns to [Security Benefit] . . . all of [White Plains'] rights in and under all Leases.” The Amended Lease and Loan Agreement constitute an integrated agreement, with both White Plains and HBL bound to the terms of the Loan Agreement. *See Rudman v Cowles Comms.*, 30 NY2d 1, 12 [1972] (agreements are integrated according to “the intent manifested, viewed in the surrounding circumstances.”).

Section 3.5(vi) of the Loan Agreement states that White Plains “will not, without prior written consent of [Security Benefit], terminate or consent to the cancellation or surrender of any Lease.” Yet, this is exactly what occurred. By serving the Notice of Default and bringing this action, White Plains has breached the Loan Agreement and Amended Lease.

As stated in the plain terms of Section 11.2 of the Amended Lease and Sections 3.5 and 4.1 of the Loan Agreement, White Plains cannot terminate the Lease without Security Benefit's prior, written consent. Given the restrictions which the Amended Lease and Loan Agreement place on White Plains, White Plains could not issue the Notice of Default, file this complaint, or bring the Motion against HBL without Security Benefit's prior, written consent. As White Plains has

never obtained Security Benefit’s consent, the Motion is improper under the Amended Lease and represents a continued breach of the Loan Agreement.

**C. White Plains Waived Any Alleged Defaults**

White Plains has waived the right to enforce the provisions of the Amended Lease regarding the alleged defaults committed by HBL (“Alleged Defaults”). *Fundamental Portfolio Advisors, Inc. v Tocqueville Asset Mgt., L.P.*, 7 NY3d 96, 104 [2006]. White Plains’ decision not to enforce the Amended Lease, followed by delayed, selective, and inadequate notices constitute a “failure to act as to evince an intent not to claim the purported advantage.” *Hadden v Consol. Edison Co. of New York, Inc.*, 45 NY2d 466, 469 [1978].

1. White Plains Chose Not to Enforce the Amended Lease

Once a landlord knows that a tenant is in breach of the lease, the landlord must assert their rights, or the breach will be waived. Courts have long held that:

“[T]he option rests with the landlord to recognize the violation and terminate the tenancy. . . . As one old English case put it, the landlord should not be permitted ‘to treat a man as a tenant, and then treat him as a trespasser.’”

*Jeppaul Garage Corp. v Presbyt. Hosp. in City of New York*, 61 NY2d 442, 447-48 [1984]. This knowledge of defaults combined with a lack of immediate action is strong evidence of waiver, in contrast with landlords who act “promptly” and immediately serve “a notice to cure defaults as the lease provided it should.” *Id.* (citing *Atkin’s Waste Materials, Inc. v May*, 34 NY2d 422 [1974]).

White Plains is well-aware of HBL’s requirements and obligations under the Amended Lease. By August 17, 2017, White Plains knew that HBL had funded the RSA and provided Fensterman with signatory authority. *Jozefovic aff.*, ¶ 43. By July 2019, White Plains knew that HBL had not provided the \$3.6 million letter of credit. *Jozefovic aff.*, ¶ 87. On November 20, 2019, White Plains did not contest the status of the RSA when it agreed to the modifications in the LOI. *Jozefovic aff.*, ¶ 60-63.

White Plains eventually served another Notice of Default on January 7, 2020, more than six months after the first Alleged Default. However, the Notice of Default was focused on the LOI and stated that the Amended Lease would be terminated on January 13, 2020, White Plains did not terminate the Amended Lease on January 13, and took no further steps until nine months later when it filed this action on September 18, 2021 (“the Complaint”). *Jozefovic aff.*, ¶ 69.

In short, White Plains had full knowledge of the Alleged Defaults, but waited over six months before notifying HBL. White Plains then waited nine more months to file the Complaint, despite the fact that the Notice of Default no longer applied. Many of the Alleged Defaults were only just raised in the Motion, years after the fact.

2. White Plains Decided to Accept—And Continues To Accept—Rent From HBL In Lieu of Enforcing the Amended Lease

Not only did White Plains waive these Alleged Defaults by choosing not to act, but White Plains continued this waiver by accepting rent from HBL. This violates the:

“[S]ettled principle that acceptance of rent by a landlord from a tenant with knowledge of the tenant's violation of the terms of the lease normally results in a waiver of the violation.”

*Jefpaul Garage Corp.*, 61 NY2d at 447-48.

Landlords must either (1) accept rent from the tenant; or (2) decline rent and enforce the lease. As the Court of Appeals held:

“When rent is accepted with knowledge of particular conduct which is claimed to be a default, the acceptance of such rent constitutes a waiver by the landlord of the default.”

*Atkin's Waste Materials, Inc. v May*, 34 NY2d 422, 427 [1974]; *see also TSS-Seedman's, Inc. v Elota Realty Co.*, 72 NY2d 1024, 1027 [1988] (“[Landlord’s] acceptance of the rent resulted in the leases remaining in effect.”)

White Plains accepted an initial four months of Fixed Rent Payments, despite having knowledge of the Alleged Breaches. Then, after serving the Notice of Default and claiming that

the Amended Lease would be terminated on January 13, 2020, White Plains has accepted—and continues to accept—over 18 additional Fixed Rent Payments. Jozefovic aff., ¶ 88.

White Plains has waived its rights by having actual knowledge of the Alleged Breaches and choosing to accept HBL’s rent payments. To date, White Plains has accepted over 22 Fixed Rent Payments for \$12.5 million.

3. White Plains’ Actions Override The “No Waiver” Clauses In the Amended Lease

The Amended Lease’s standard “no waiver” clause does not prevent White Plains from waiving the Alleged Defaults, as the “existence of a nonwaiver clause does not in itself preclude waiver of a contract clause.” *Dice v Inwood Hills Condominium*, 237 AD2d 403, 404 [2d Dept 1997]; *see also TSS-Seedman's, Inc.*, 72 NY2d at 1027 (landlords may waive their rights under the lease, despite “the leases contained ‘nonwaiver’ clauses.”).

Sections 20.2 and 20.3 of the Amended Lease contain two boilerplate “no waiver” clauses. Neither clause permit White Plains to ignore known breaches of the Amended Lease and continue to accept Fixed Rent Payments from HBL. Furthermore, any issues concerning Sections 20.2 and 20.3 of the Amended Lease cannot be decided as a matter of law, given that the application of a “no waiver” clause is a question of fact. *Sunoce Properties, Inc. v Bally Total Fitness of Greater New York, Inc.*, 148 AD3d 751, 752-53 [2d Dept 2017].

4. HBL Detrimentially Relied Upon White Plains’ By Continuing To Build Up and Operate the Facility and White Plains will be Unjustly Enriched

White Plains continues to profit from HBL’s development and usage of the Facility. If the Motion is granted, White Plains will be unjustly enriched through the value that HBL has added to the Facility, on top of the Fixed Rent Payments and the unaccounted funds. *See Alan B. Greenfield, M.D., P.C. v. Long Beach Imaging Holdings, LLC* 114 AD3d 888, 981 N.Y.S.2d 135.

5. Waiver Is a Question of Fact That Cannot Be Resolved On Summary Judgment

White Plains will undoubtedly argue that there was no waiver and the intention was to hold HBL to the letter of the Amended Lease. By doing so, White Plains would ask the Court to decide an issue of fact. *Fundamental Portfolio Advisors, Inc. v Tocqueville Asset Mgt., L.P.*, 7 NY3d 96, 104 [2006] (“[T]he existence of an intent to forgo such a right is a question of fact.”). Discovery would provide some avenues for resolving the issue of waiver, but White Plains has refused to produce any documents or conduct depositions. Given that the issue of waiver cannot be resolved as a matter of fact, the Motion must be denied.

**D. White Plains’ Claims Are False**

1. HBL Paid Rent Every Month Without Fail

White Plains claims that HBL took possession of the Facility on September 30, 2019, and failed to pay \$10,831.79 in rent for that single day. Motion, 4. White Plains also claims that HBL has failed to pay rent on time. Motion, 4.

This is false. Pursuant to Section 3.1 of the Amended Lease, the Commencement Date did not occur until December 2, 2019, when NYSDOH found the Facility to be capable of receiving patients.<sup>1</sup> *Jozefovic aff.*, ¶ 48. Therefore, HBL had no obligation to make Fixed Rent Payments before December 2, 2019. While HBL opted to pre-pay Fixed Rent Payments in October and November 2019, any claim for rent prior to December 2, 2019, must fail. *Jozefovic aff.*, ¶ 91

Additionally, HBL has promptly made Fixed Rent Payments at the beginning of each month, every month. HBL’s Fixed Rent Payments were made directly via wire transfer, and White Plains has never previously disputed the timing. *Jozefovic aff.*, ¶ 88.

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<sup>1</sup> While the letter states that approval is granted retroactive to November 14, 2019, neither HBL nor White Plains could have anticipated this date.

2. HBL Paid All Real Estate Taxes

White Plains claims that HBL has failed to pay real estate taxes. Motion, 4.

This is false. HBL has assumed responsibility for the Facility's taxes, which have been fully paid. Tax records prove that HBL is current on all payments. Jozefovic aff., ¶ 92. Exhibit L.

3. HBL Paid Utility Charges, Utility Deposits, and Municipal Maintenance Escrows

White Plains claims that HBL failed to pay utility deposits in the total amount of \$68,828.94, while admitting that they have already been reimbursed \$41,175.00. Motion, 5.

This is false. HBL has assumed responsibility for the Facility's utilities, which have been fully paid. Utility records prove that HBL is current on all payments. Jozefovic aff., ¶ 94. Exhibit M. Moreover, White Plains has never notified HBL of the alleged remaining \$27,653.94 in Con Edison utility charges, and HBL is not responsible for Con Edison failing to return certain deposits. Motion, Exhibit 33.

4. HBL Delivered Certificates of Insurance

White Plains admits that HBL delivered the necessary certificates of insurance, but now claims that the insurance policies are inadequate. Motion, 5-6.

This is false. HBL delivered the certificates of insurance to White Plains, which substantially comply with the Amended Lease. Jozefovic aff., ¶ 96. Exhibit N. Moreover, White Plains has never demanded that HBL obtain additional insurance coverage.

5. HBL Delivered Medicare, Medicaid, and Other Provider Agreements, Reimbursement Rate Sheets, Updated Rate Sheets, and Financial and Operational Reporting

White Plains admits that HBL has delivered substantial Medicare, Medicaid and other provider agreements, reimbursement and updated rate sheets, and financial and operational reporting, but now claims that the documents are inadequate. Motion, 6.

This is false. HBL delivered substantial documentation concerning provider agreements, rate sheets, and financial operational reports to White Plains, which substantially comply with the Amended Lease. Jozefovic aff., ¶ 98. Exhibit O. Moreover, White Plains has never demanded HBL provide additional documentation.

6. HBL Complied With Its Security Deposit Obligations

White Plains claims that HBL has failed to pay certain security deposits. Motion, 3.

This is a misrepresentation. HBL substantially complied with its obligation to provide security deposits by funding the RSA and tendering signatory authority to White Plains, which White Plains failed to complete. The RSA remains in place today. Jozefovic aff., ¶ 43-45.

Moreover, White Plains has never previously demanded that HBL provide a \$3.7 million letter of credit or additional security deposits. As discussed *supra*, White Plains waived any issues regarding security deposits by choosing to accept HBL’s Fixed Rent Payments. This issue is irrelevant, as security deposits provide landlords with “adequate protection should the finances of a tenant falter.” *Glass v Janbach Properties, Inc.*, 73 AD2d 106, 108-09 [2d Dept 1980]. As HBL has made Fixed Rent Payments each and every month, additional security deposits would serve no purpose. Jozefovic aff., ¶ 88.

7. HBL Is Not Required to Pay Holdover or Accelerated Rent

White Plains claims that HBL is required to pay holdover and accelerated rent. Motion, 7.

This is false. Pursuant to the Amended Lease, holdover and accelerated rent apply only if the Amended Lease has been terminated. For all the reasons discussed herein, White Plains does not have the right to terminate the Amended Lease because it failed to obtain Security Benefit’s

prior consent, and White Plains waived its right to enforce the Amended Lease by choosing to accept HBL's Fixed Rent Payments each month without protest. Jozefovic aff., ¶ 88.

8. The Notice of Default Was Improper

White Plains claims rest upon the Notice of Default, which is fatally flawed. Pursuant to Sections 16.1(a)(ii) and 16.1(g) of the Amended Lease, White Plains is required to give HBL written notice of an alleged default, after which HBL is provided with up to 90 days to cure the alleged default.

This did not occur, as the Notice of Default does not contain the same claims that White Plains currently alleges. White Plains never served a subsequent Notice of Default on HBL, nor provided adequate notice for these entirely new claims and damages.

Moreover, the Notice of Default is facially improper. Pursuant to Section 16.1 of the Amended Lease, "Landlord, may...upon five (5) days written notice," move to terminate the Amended Lease. The terms are clear: "Landlord," which is defined in the Amended Lease as "White Plains Healthcare Properties I, LLC," has the sole right to initiate termination proceedings. However, the Notice of Default was served by Alfred Donnellan of Delbello Donnellan Weingarten Wise & Wiederkehr LLP and signed by Joshua Roccapriore as an "Authorized Representative." Jozefovic aff., ¶ 69.

White Plains' decision to serve the Notice of Default via an unauthorized and unknown attorney and representative makes the Notice of Default a nullity. When:

"the lease provides that certain of the rights and immunities arising thereunder may be exercised and enjoyed by either the "Landlord *or Landlord's agents*", and where it elsewhere designates a named third party . . . as the landlord's attorney, it appears only reasonable that a forfeiture provision calling for cancellation of the lease upon only three days' written notice emanating specifically from the 'Landlord' should be strictly construed against its drawer."

*Siegel v Kentucky Fried Chicken of Long Is., Inc.*, 108 AD2d 218, 221 [2d Dept 1985], *affd*, *Matter of*, 67 NY2d 792 [1986] (emphasis in original). Here, Section 13.1 of the Amended Lease states that notices must be provided by (1) White Plains Healthcare Properties I, LLC; (2) Gerald J. Billow, Esq., of Postemak Blankstein & Lund LLP; and (3) Fensterman of Abrams Fensterman. As none of the signatories are included in the Amended Lease, the Notice of Default is defective, given that “the mere assertion of authority on the face of the notice by a total stranger to the transaction that he is the landlord's attorney and that he is authorized to act on the latter's behalf cannot be deemed to provide the tenant with the surety of notice to which he is contractually entitled.” *Id.*

**E. White Plains Is Not Entitled to A Money Judgment Against HBL, Jozefovic, or Neuman**

White Plains claims they are entitled to the incredible sum of \$111,420,213.50 as a result of the Alleged Defaults. As discussed throughout, White Plains has failed to prove any of its claims or disprove any of HBL’s affirmative defenses and counterclaims. Therefore, it would be premature to award White Plains anything at this time. *Harris v Thompson*, 117 AD3d 791, 794 [2d Dept 2014].

**F. The LOI Is Unenforceable**

Pursuant to the LOI, HBL made an initial \$2.2 million payment. The next steps required White Plains to “obtain a release of the lien of [Security Benefit] on the FF&E” and deliver “free and clear title to the FF&E.” *Jozefovic aff.*, ¶ 23. However, White Plains breached the LOI by failing to deliver the FF&E, and this, among other issues, caused the automatic self-termination of the LOI. As Section 1(h) of the LOI states:

If the closing does not occur by [April 1, 2020]...this LOI and the Formal Contracts shall be terminated and no party shall have any rights with respect thereto.

Additionally, Section 10 of the LOI states:

No past, present, or future action, course of conduct, or failure to act relating to the transactions referenced in this LOI or relating to the negotiation of the terms of such transactions will give rise to or serve as the basis for any obligation or other liability on the part of Contributor or Buyer or any of their respective affiliates.

Together, Sections 1(h) and 10 of the LOI prevent White Plains from using the LOI as the basis for any claim.

**G. HBL’s Affirmative Defenses Are Valid**

In the Answer, HBL asserted nine affirmative defenses. For the first, second, fifth and sixth affirmative defenses, HBL has asserted that White Plains’ prior breach of and failure to perform under the Development Agreement, Amended Lease, and Loan Agreement bar White Plains’ claims. Answer, 5. As HBL has already demonstrated, White Plains delivered the Facility two years late and \$5 million overbudget, White Plains failed to obtain proper financing for the Facility, and White Plains breached the Loan Agreement with Security Benefit. These prevent White Plains from bringing claims or attempting to terminate the Amended Lease. *Cayuga Harvester, Inc. v Allis-Chalmers Corp.*, 95 AD2d 5, 465 N.Y.S.2d 606. Jozefovic aff., ¶ 49.

For the third and fourth affirmative defense, HBL has asserted that the Amended Lease contains indefinite and unclear terms and that White Plains is in possession of sufficient payments which satisfy any alleged defaults or claims. Answer, 5. Moreover, White Plains should have provided HBL’s Fixed Rent Payments to Security Benefit pursuant to the terms of the Loan Agreement. Answer, 5. In total, HBL has made significant payments to White Plains, including, but not limited to, (1) \$2.2 million pursuant to the Term Sheet; (2) \$1.2 million in pre-paid Fixed Rent Payments for October and November 2019; (3) \$2.2 million pursuant to the LOI; and (4) over \$10.5 million in Fixed Rent Payments. None of these payments have been properly applied or

accounted for. *Triple Diamond Café, Inc. v Those Certain Underwriters at Lloyd's London*, 124 AD3d 763, 3 N.Y.S.3d 46. Jozefovic aff., ¶ 23, 63, 88.

For the seventh and eight affirmative defenses, HBL has asserted that factual issues concerning White Plains' representations and actions constitute fraud and waiver. White Plains misrepresented several material facts about their ability to fund and construct the Facility. As a sophisticated party, White Plains' material misrepresentation suggests an intention to injure HBL for their own profit, effecting fraud. *RBE Northern Funding, Inc. v Stone Mountain Holdings, LLC*, 78 AD3d 807, 911 N.Y.S.2d 115 [2d Dep. 2010]. Jozefovic aff., ¶ 49.

For the ninth affirmative defense, HBL has asserted that White Plains' bad faith and unclean hands prevent enforcement of the Amended Lease. White Plains is using litigation to hold not only HBL hostage, but the wellbeing of HBL's patients. This conduct is unconscionable. *Moo Wei Wong v Wong*, 293 AD2d 387, 740 N.Y.S.2d 614 [2002].

In response, White Plains claims that HBL's affirmative defenses are baseless. Motion, 9. White Plains does not cite a single legal authority for this proposition, but instead relies solely on an affidavit from William Nicholson. Nicholson Aff., 9. Nicholson, who is not counsel, bases his argument that the affirmative defenses are "without merit" on unspecified "reasons stated below," and a separate affidavit from Edward O. Tabor. *Id.* This argument carries no weight, and is patently insufficient to serve as the basis for summary judgment.

**2. HBL's Counterclaims and Third-Party Claims Are Valid**

**A. HBL Has Not Waived or Released Any Claims**

HBL has consistently sought to address White Plains' breaches and failures under the Development Agreement and Amended Lease. In response, White Plains argues that HBL has

waived any and all claims based upon a boilerplate clause in Section 5.6(b) of the Amended Lease. Motion, 9-10.

Section 5.6(b) does not reference HBL's specific claims. Courts are quick to reject similarly broad and baseless waiver clauses because a waiver is ineffective unless it shows "that the release was intended to cover the subject action or claim." *Mazzurco v. PII Sam, LLC*, 153 A.D.3d 1341, 63 N.Y.S.3d 59 (2017). Generalized waiver clauses cannot form the basis for escaping liability, especially when such waivers do not refer to any "particular claim, obligation, or controversy." *See Morales v. Solomon Mgt. Co., LLC*, 38 AD3d 381, 382, 832 N.Y.S.2d 195, 196 (1st Dept. 2007).

**B. HBL's Counterclaims and Third-Party Claims Must Be Heard**

**1. HBL Is Entitled to An Accounting**

HBL's decision to enter into the Development Agreement, lease, Amended Lease, and LOI was not the result of an arms-length transaction. Instead, HBL was directed by Fensterman, who served as HBL's counsel, and HBL provided White Plains with funds to manage and utilize. *Jozefovic aff.*, ¶ 4, 43. Although never formalized, HBL and White Plains had a quintessential fiduciary relationship. *See Faith Assembly v Titledge of N.Y. Abstract, LLC*, 106 AD3d 47, 961 N.Y.S.2d 542, 553 ("The core of a fiduciary relationship is a higher level of trust than normally present in the marketplace."); *see also Mandelblatt v Devon Stores, Inc.*, 132 AD2d 162, 521 N.Y.S.2d 672, 676 (holding that fiduciary liability "is not dependent solely upon an agreement...but results from the relation.").

White Plains has claimed that there was no fiduciary relationship. Motion, 13. However, "ascertaining the existence of a fiduciary relationship inevitably requires a fact-specific inquiry." *Mosdos Chofetz Chaim, Inc. v RBS Citizens, N.A.*, 14 F.Supp.3d 191 (quoting *Roni LLC*, 939

N.Y.S.2d 746); *EBC I, Inc. v Goldman, Sachs & Co.*, 799 N.Y.S.2d 170. As White Plains has stymied all discovery efforts, White Plains cannot demonstrate that a fiduciary relationship does not exist.

## **2. White Plains Owes HBL Imputed Interest**

When HBL provided White Plains with capital via the Term Sheet, it created a short-term loan to be repaid via the purchase and delivery of FF&E and rent credits. As White Plains has never delivered the FF&E or provided the necessary rent credits, HBL is entitled to imputed interest. *Gregorio v Gregorio*, 234 AD2d 512, 651 N.Y.S.2d 599. *Jozefovic aff.*, ¶ 26.

## **3. White Plains Breached the Development Agreement and Amended Lease**

As discussed *supra*, White Plains was obligated to deliver the Facility on time, on budget, and with the proper financing in place. White Plains did none of these things, and has continued to breach the terms of the Amended Lease by refusing to return or account for millions in payments. White Plains' reliance on assumptions and boilerplate waiver clauses do not prevent HBL from bringing a cause of action for breach of contract. *See Mazzurco v PII Sam, LLC*, 153 AD3d 1341, 63 N.Y.S.3d 59. *Jozefovic aff.*, ¶ 49-50.

## **4. White Plains Fraudulently Misrepresented Material Facts**

The root cause is that White Plains materially misrepresented its ability to complete the Facility in order to obtain millions in payments from HBL. *Channel Master Corp. v Aluminum Ltd. Sales*, 176 N.Y.S.2d 259. (“[I]t is sufficient to show that the defendant knowingly uttered a falsehood intending to deprive the plaintiff of a benefit and that the plaintiff was thereby deceived and damaged.”). HBL has alleged that White Plains made multiple misrepresentations to induce HBL to enter into the Development Agreement, Term Sheet, Amended Lease, and LOI, all with the intent of extracting additional payments. *Jozefovic aff.*, ¶ 49-50.

**5. Bad Faith**

The doctrine of unclean hands applies when the complaining party shows that the offending party is guilty of immoral, unconscionable conduct. White Plains has demonstrated unclean hands by appropriating and misusing HBL’s funds. *See Moo Wei Wong*, 293 AD2d 387.

**3. HBL Was Not Required To Respond to the NTA**

**A. The NTA Was Improper**

HBL has no obligation to respond to the NTA because it contained improper admissions. Admissions are improper if they are (1) used to compel fundamental or disputed facts; (2) used in place of other discovery devices; or (3) already answered in other responsive pleadings. *32nd Ave. LLC v Angelo Holding Corp.*, 134 AD3d 696, 698-99 [2d Dept 2015]; *see also DeSilva by DeSilva v Rosenberg*, 236 AD2d 508 [2d Dept 1997] (“A notice to admit which goes to the heart of the matters at issue is improper.”); *see also Meadowbrook-Richman, Inc. v Cicchiello*, 273 AD2d 6, 6 [1st Dept 2000].

Here, the NTA runs afoul of all three concerns. White Plains is using the NTA in an attempt to compel admissions concerning the fundamental facts at issue, *i.e.*, whether HBL substantially complied with the terms of the Amended Lease, and why. White Plains has served the NTA, while refusing to participate in document discovery or depositions. Finally, HBL has already filed an Answer responding to the exact same issues and claims in the NTA.

**B. In the Alternative, HBL Requests Additional Time to Respond to the NTA**

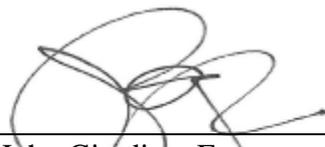
To the extent the Court finds the NTA proper, HBL requests an additional two weeks to respond, as the delay is immaterial and there is no prejudice to White Plains. *See Meadowbrook-Richman, Inc. v Cicchiello*, 273 AD2d 6, 6-7 [1st Dept 2000].

**CONCLUSION**

For the foregoing reasons, Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman respectfully request that the Court (1) deny the Motion in its entirety; (2) strike the NTA as improper, or in the alternative, grant HBL additional time to respond; together with such other and further relief as this Court deems just, proper, and equitable.

Dated: New York, New York  
October 25, 2021

MICHELMAN & ROBINSON, LLP

By:  \_\_\_\_\_

John Giardino, Esq.  
Alex Barnett-Howell Esq.  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
(212) 730-7700  
jgiardino@mrlp.com  
abarnett-howell@mrlp.com  
*Attorneys for Defendants and Third-Party Plaintiffs*

**CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17**

I, JOHN GIARDINO, ESQ., an attorney at law licensed to practice in the State of New York, and counsel of record herein, certify that this document contains 6,998 words, exclusive of the caption page, table of contents and table of authorities and signature block, as counted by the word count of the word-processing system used to prepare this document.

Dated: New York, New York  
October 25, 2021

/s/ John Giardino  
JOHN GIARDINO

At I.A.S. Part \_\_\_\_, of the Supreme Court of the State of New York, held in and for the County of Westchester, at the Courthouse located at 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the \_\_\_\_ day of August, 2021.

PRESENT:

Hon. Gretchen Walsh  
Justice Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,	:	
	:	
Plaintiff,	:	Index No. 60278/2020
	:	
-against-	:	
	:	
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC, and MARK NEUMAN,	:	
	:	
Defendants and Third-Party Plaintiffs,	:	
	:	
-against-	:	
	:	
CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK	:	
	:	
Third-Party Defendants	:	
-----X		

**ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION  
AND TEMPORARY RESTRAINING ORDER**

UPON the annexed First Amended Verified Amended Answer with Affirmative Defenses, Counterclaims, and Third-Party Complaint dated May 21, 2021, the Complaint dated October 22, 2020 from the consolidated action *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et*

*al.*, No. 655549/2020, the Affirmation of Lizer Jozefovic dated October 25, 2021, the Memorandum of Law dated October 25, 2021, and upon each of the exhibits and all of the papers and proceedings heretofore had herein, and sufficient cause being alleged therefore:

LET THE PLAINTIFF WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, and THIRD-PARTY DEFENDANTS CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK, show cause before this Court located at IAS Part \_\_\_\_\_, Room \_\_\_\_\_, 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the \_\_\_\_\_ day of October, 2021 \_\_\_\_\_ a.m./p.m., or as soon thereafter as counsel may be heard;

WHY a preliminary order pursuant to Article 63 of the Civil Practice Law and Rules should not be entered, pending determination of this action, (1) Invalidating and nullifying the auction held by Plaintiff and Third-Party Defendants on July 1, 2021, of Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC; (2) Enjoining Plaintiff and Third-Party Defendants from taking any further actions to complete the sale of Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC during the pendency of this action; and (3) Granting such other relief as the Court deems just and proper.

IT BEING alleged in the Amended Answer and Third-Party Complaint, the Complaint, and the Affirmations that temporary relief is necessary to prevent irreparable harm to Defendants and Third-Party Plaintiffs pending the hearing and determination of the motion for a preliminary injunction, and it appearing that Defendants and Third-Party Plaintiffs are entitled to a preliminary injunction pursuant to CPLR § 6301 to enjoin Plaintiff and Third-Party Defendants as stated above; it is

ORDERED, that pending the hearing and determination of Defendants and Third-Party Plaintiffs' motion for a preliminary injunction, (1) The auction held by Plaintiff and Third-Party Defendants on July 1, 2021, was commercially unreasonable and is therefore invalidated; and (2) Plaintiff and Third-Party Defendants are temporarily enjoined and restrained from taking any further actions to transfer, assign, convey or sell Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC.

AND IT IS FURTHER ORDERED that Plaintiff and Third-Party Defendants' response to this motion, if any, shall be hand delivered or emailed to Defendants and Third-Party Plaintiffs' counsel and filed with the Court on or before \_\_\_\_\_, 2021;

AND IT IS FURTHER ORDERED that Defendants and Third-Party Plaintiffs reply, if any, should be delivered or emailed to Plaintiff and Third-Party Defendants' counsel and filed with the Court on or before \_\_\_\_\_, 2021;

SUFFICIENT CAUSE BEING ALLEGED THEREFORE, IT IS ORDERED THAT service of this order and the papers upon which it is granted be deemed due, timely and sufficient if made as follows:

- a) By overnight mail service upon Plaintiff White Plains Healthcare Properties I, LLC, on or before the \_\_\_\_ day of \_\_\_\_\_, 2021, or by electronic service of said papers;
- b) By overnight mail service upon Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson on or before the \_\_\_\_ day of \_\_\_\_\_, 2021, or by electronic service of said papers; and

- c) By overnight mail service upon Third-Party Defendant Metropolitan Commercial Bank, on or before the \_\_\_\_\_ day of \_\_\_\_\_, 2021, or by electronic service of said papers.

E N T E R:

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Hon. Gretchen Walsh  
JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 : Index No. 60278/2020  
 Plaintiff, :  
 :  
 -against- :  
 :  
 HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, WILLIAM :  
 NICHOLSON, and METROPOLITAN :  
 COMMERCIAL BANK :  
 :  
 Third-Party Defendants  
 -----X

**AFFIDAVIT OF LIZER JOZEFOVIC  
 IN SUPPORT OF ORDER TO SHOW CAUSE**

LIZER JOZEFOVIC, being duly sworn, deposes and says:

1. I respectfully submit this affidavit, based upon my personal knowledge, in support of the Order to Show Cause to nullify and invalidate the purported and commercially unreasonable auction of my Membership Interest in Waterview Acquisition I, LLC (“Waterview”) which Plaintiff White Plains Healthcare Properties I, LLC and Third-Party Defendant Howard Fensterman conducted on July 1, 2021 (the “Auction”), and to prevent any further actions to complete the sale.

2. I am seeking a preliminary order (1) invalidating and nullifying the auction held by Plaintiff and Third-Party Defendants on July 1, 2021, of my membership interest in Waterview Acquisition I, LLC; and (2) enjoining Plaintiff and Third-Party Defendants from taking any further actions to complete the sale of my membership interest in Waterview Acquisition I, LLC during the pendency of this action.

3. If the Auction is allowed to stand it will cause irreparable harm to me.

4. I am the managing member and 70.1% owner of Waterview, a 130-bed skilled nursing facility licensed by the State of New York which I have continuously operated since 2005 (the “Membership Interest”).

5. I, personally, am the holder of the nursing home license issued by the New York State Department of Health (“NYSDOH”).

6. There are currently over 100 residents in the facility.

7. I personally manage the daily operations of Waterview. I am in the facility every week and supervise the care and welfare of the residents.

8. My son, Joseph Jozefovic, has been the administrator of the facility since 2015.

9. In 2015, I refinanced Waterview with the U.S. Department of Housing and Urban Development (“HUD”).

10. There is currently a \$25,000,000 HUD loan in place for the Waterview operations.

11. In addition, I borrowed \$3,000,000 from Metropolitan Commercial Bank (“MCB”) to fund operations, a loan I personally guaranteed.

12. I also have a line of credit extended by Gemino in the amount of \$1,400,000, which I have also personally guaranteed.

13. If my Membership Interest is auctioned off in the manner indicated by White Plains, it will cause a default on all of these loans.

14. In December 2019, I assigned the Membership Interest to MCB as part of a \$3 million loan and financing arrangement to provide working capital to benefit the Project, most of which was paid in the form of rent to White Plains.

15. On December 23, 2019, I granted MCB a security interest in the Membership Interest, and MCB perfected its security interest by taking possession of the related certifications and filing a Uniform Commercial Code Financing Statement.

16. Currently, MCB has perfected its security interest in Membership Interest and has physical possession of the membership certificates. White Plains knew and approved of the loan from MCB, since the proceeds have been used to pay rent on the Facility.

17. On or about June 10, 2021, I received a purported Notification of Disposition of Collateral, dated June 9, 2020 (the “Notification”), which announced the intention to sell at “public auction” the Membership Interest.

18. A true and correct copy of the Notification is attached as Exhibit A.

19. On July 1, 2021, Plaintiff White Plains Healthcare Properties I, LLC and Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson’s (collectively “White Plains” or “Plaintiffs”) conducted a purported auction of my 70.1% membership interest in Waterview.

20. I was represented at the Auction by my counsel.

21. Despite representations White Plains made to counsel and to the Court about many interested parties participating in the Auction, not one single bidder attended.

22. In addition, White Plains' representation that the Auction would generate millions in proceeds was false.

23. Instead, as reported by my counsel, White Plains made the one and only bid for the amount of \$100.00.

24. As the record before the Court reveals, the Auction was commercially unreasonable for the following reasons:

a. The single bid of \$100.00 does not represent 1% of the value of the Membership Interest, which is estimated to be worth at least \$6 million;

b. The Auction was a sham, as no bidders attended, and no external bids were made;

c. White Plains engaged in naked self-dealing, as White Plains set the terms, conducted the Auction, and made the one and only bid of \$100.00; and

d. The Auction was compromised because (i) any bidder would be taking the Membership Interest pursuant to MCB's senior interest; (ii) any bidder would need to receive approval from NYSDOH, a process which can take months or years; and (iii) the Auction occurred during active litigation, wherein Petitioners maintain counterclaims against White Plains in excess of \$1.6 million.

25. As a result, not one third-party bid was made at the Auction.

26. I have spent years of my life successfully building and operating nursing homes. Although it is difficult to estimate, the Membership Interest is worth approximately \$6 million.

27. I will be irrevocably harmed if the Auction is permitted to proceed, and I am divested of my managing member interest.

28. New York State and NYSDOH impose strict laws and regulations concerning the sale or transfer of nursing homes. If there is a change in ownership of a nursing home, the new owner must submit an application and provide a comprehensive Certificate of Need in order to receive written approval from NYSDOH to receive an operating license.

29. The failure to receive pre-approval from NYSDOH bars the sale of a nursing home.

30. White Plains was not in possession of my Membership Interest and cannot conduct a commercially reasonable auction.

31. Moreover, any purported auction and sale of the Membership Interest is improper as MCB maintains a prior secured interest of \$3 million.

32. Although White Plains represented to the Court that the sale would generate proceeds sufficient to pay off MCB, the sale generated only \$100.00.

33. Moreover, any purported auction and sale of the Membership Interest would be complicated by the fact that NYSDOH would have to first approve the licensing and authorization necessary to manage and operate Waterview, a process that can months, or even years, to complete.

34. If the results of the Auction are allowed to stand, White Plains will have seized the Membership Interest for \$100.00.

35. On July 7, 2021, I sent a letter to White Plains' counsel requesting that White Plains voluntarily cancel the Auction and abandon any further attempts to sell the Membership Interest (the "July 7 Letter").

36. However, to the extent White Plains believed that the Auction was commercially reasonable and that White Plains' sole \$100.00 bid accurately represented the fair market value, I provided White Plains with a check for \$100.00 to redeem the Membership Interest.

37. A true and correct copy of the July 7 Letter is attached as Exhibit B.

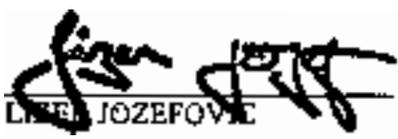
38. If the results of the Auction are allowed to stand, White Plains will jeopardize the continued operations of Waterview and my other nursing homes.

39. I will be irreparably harmed if the relief requested is not granted.

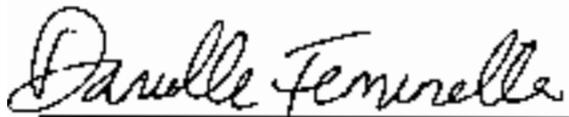
40. I seek an Order to Show Cause for a temporary restraining order and a preliminary injunction to (1) invalidate and nullify the Auction held by Plaintiff and Third-Party Defendants on July 1, 2021, of my membership interest in Waterview Acquisition I, LLC; (2) enjoin Plaintiff and Third-Party Defendants from taking any further actions to complete the sale of my membership interest in Waterview Acquisition I, LLC during the pendency of this action.

Dated: New York, New York

October 25, 2021

By:   
LJILJANA JOZEFOVIC

Sworn to before me this  
25 day of October, 2021

  
\_\_\_\_\_  
Notary Public

Danielle Feminella  
Notary Public, State of New York  
No. 01CH5084689  
Qualified in Westchester County  
Commission Expires 9/8/2023

# EXHIBIT A

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

June 9, 2021

To:

Lizer Josefovic  
53 Mariner Way  
Monsey, New York 10952-1248

Metropolitan Commercial Bank  
99 Park Avenue, 4th floor  
New York, New York 10016

Windels Marx Lane & Mittendorf, LLP  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Attn: Michele Arbecny, Esq.  
Robert Malatak, Esq.

Michelman & Robinson, LLP  
800 Third Ave., 24<sup>th</sup> Fl  
New York, NY 10022  
Attn: John Giardino, Esq.  
Alex Barnett-Howell, Esq.

**From:** Howard Fensterman as nominee for White Plains Healthcare Properties, LLC,  
2 Bourbon Street, Peabody, Massachusetts 01960 (Secured Party)

**Re:** Collateral Assignment and Pledge of Membership Interest and Security Agreement (the "Pledge"), dated August 11, 2017, made by and between Lizer Josefovic ("Assignor") and Howard Fensterman, as nominee for White Plains Health Care Properties, LLC ("Assignee") as such agreement may have been further amended or modified from time to time.

We will sell the Collateral described in Exhibit A hereto and made a part hereof to the highest qualified bidder in public as follows:

**Day and Date:** Thursday, July 1, 2021  
**Time:** 10:00 a.m.  
**Place:** DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601, phone: 914-681-0200.

You are entitled to, at no charge, an accounting of the unpaid indebtedness secured by the collateral that we intend to sell. You may request an accounting by contacting Alfred E. Donnellan DelBello Donnellan Weingarten Wise & Wiederkehr, LLP One North Lexington Ave. White Plains, NY 10601, Phone: 914-681-0200.

Very truly yours,

isi Howard Fensterman

Howard Fensterman as nominee for  
White Plains Health Care Properties, LLC

**EXHIBIT A**

The Collateral to be sold consists of:

All rights, title and interest of Lizer Josefovic as a member in Waterview Acquisition 1, LLC.

# EXHIBIT B



**JOHN GIARDINO**  
jgiardino@mrlp.com

**New York Office**  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
P 212.730.7700 F 212.730.7725 www.mrlp.com

July 7, 2021

**VIA EMAIL AND FEDEX**

Alfred E. Donnellan, Esq.  
Delbello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Ave.  
White Plains, New York 10601  
aed@ddw-law.com

**Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.**  
**Index No. 60278/2020**

Dear Al:

The auction that occurred on July 1, 2021, which was allegedly conducted pursuant to 2017 Collateral Assignment and Pledge of Membership Interest, produced no bona fide bidders. Contrary to your clients' representations to both the trial and appellate courts, "multiple bidders" did not attend and the auction generated no real proceeds, only a token, insider bid of \$100.00 from your clients. To state the obvious, the "auction" was commercially unreasonable.

Consequently, we consider the "auction" to be a nullity and intend to take appropriate action to set it aside. As we have already set forth in our papers, the attempted auction constitutes improper self-dealing and will only give rise to new claims for damages suffered by Mr. Jozefovic.

We request that you voluntarily cancel the "auction" and abandon any further attempt to transfer or sell Mr. Jozefovic's Membership Interest. We remain willing to continue our discussions to resolve the rent security account. I am available to discuss the same with you at your convenience.

Without prejudice to our position, we are forwarding Mr. Jozefovic's check in the amount of \$100.00 issued to White Plains, which represents the market value your client has now established for the Membership Interest through the auction process. This sum should be applied to our client's rent security obligation. Although we do not believe any action by your client has dispossessed Mr. Jozefovic of his interest in Waterview, this payment is intended to redeem that interest as to your clients' recent actions.

July 7, 2021  
Page 2

As stated above, let me know if you would like to discuss a resolution of these issues without further motion practice and litigation.

Very truly yours,

**MICHELMAN & ROBINSON, LLP**



John Giardino

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I, :  
LLC, :

Plaintiff, :

Index No. 60278/2020

-against- :

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
JOZOFOVIC, and MARK NEUMAN, :

Defendants and Third-Party Plaintiffs, :

-against- :

CCC EQUITIES, LLC, PROJECT EQUITY :  
CONSULTING, THE CONGRESS COMPANIES, :  
HOWARD FENSTERMAN, WILLIAM :  
NICHOLSON, and METROPOLITAN :  
COMMERCIAL BANK :

Third-Party Defendants

-----X

**MEMORANDUM OF LAW  
IN SUPPORT OF ORDER TO SHOW CAUSE**

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**I. PRELIMINARY STATEMENT**

Defendants and Third-Party Plaintiffs bring an application for a temporary restraining order and a preliminary injunction to invalidate and nullify a commercially unreasonable auction and to prevent the completion of a sale conducted by Plaintiff White Plains Healthcare Properties I, LLC and Third-Party Defendant Howard Fensterman (collectively, “White Plains”) of a membership interest in a nursing home worth over \$6 million for \$100.00.

As the Court is aware, Defendants and Third-Party Plaintiffs Lizer Jozefovic (“Jozefovic”) and Mark Neuman own and operate a successful skilled nurse management company known as Epic Healthcare Management (collectively with Defendant and Third-Party Plaintiff HBL SNF, LLC, “Epic”). Established more than 20 years ago, Epic successfully manages six high quality skilled nursing and rehabilitation facilities including the two facilities which are the subject of this litigation: Waterview Hills Rehabilitation and Healthcare, located in Purdys, New York (“Waterview”), and Epic Rehabilitation and Nursing of White Plains.

White Plains is the developer and landlord of a single-purpose building in which Epic, as tenants, operate a separate nursing home. On August 11, 2017, White Plains and Epic entered into a collateral assignment which provided certain terms and conditions under which Epic would establish a rent security account. Epic complied with its obligations, placing \$1.6 million in an account and tendering the necessary paperwork to White Plains, thereby terminating the collateral assignment. However, White Plains and Epic remain actively engaged in a dispute involving claims arising from the development of this nursing home, the leasing of the property, and the misappropriation of funds by White Plains.

On June 9, 2021, during ongoing litigation, White Plains issued a Notification of Disposition of Collateral, asserting that the collateral assignment gave it the right to sell at auction

Jozefovic’s majority ownership interest in Waterview. As Epic had performed all of its obligations pursuant to the collateral assignment and any attempted auction would cause irreparable harm, Epic sought injunctive relief from the Court.

Epic requested that the Court stay the auction because White Plains had no right to sell the membership interest. Moreover, Epic contested White Plains’ attempts to conduct an auction because the means and methods were inequitable, would inevitably fail, and/or require reversal due to the ongoing litigation between the parties. In response, White Plains claimed that the auction had to continue as scheduled because there were multiple confirmed bidders, the auction would generate millions of dollars sufficient to fund another \$1.6 million rent security account and to repay a \$3 million secured interest to Defendant Metropolitan Commercial Bank (“MCB”), and any delay would drastically reduce the price of Jozefovic’s membership interest.

The Court declined to issue a temporary restraining order, and on July 1, 2021, Epic’s counsel and representatives attended the auction. No bidders attended, and White Plains placed the only bid of \$100.00 for the membership interest, which is worth well over \$6 million.

As addressed herein, the auction must be invalidated because it was commercially unreasonable and White Plains must be prevented from taking further steps to complete the sale of Jozefovic’s membership interest.

## **II. STATEMENT OF FACTS**

### **A. White Plains Attempts To Auction The Membership Interest**

On June 9, 2021, White Plains issued a purported Notification of Disposition of Collateral which announced the intention to sell the “Collateral,” defined as “[a]ll rights, title and interest of Lizer Jozefovic as a member of Waterview Acquisition 1, LLC,” to the “highest qualified bidder in public” on Thursday, July 1, 2021, at 10:00 AM (the “Notification”). Jozefovic Aff., ¶ 17.

On June 22, 2021, Epic filed an order to show cause with the Court, seeking injunctive relief. At the subsequent hearing on June 30, 2021, White Plains informed the Court that the auction needed to proceed as scheduled because there were multiple confirmed bidders and the auction would generate sufficient bids to both fund the \$1.6 million rent security and to repay MCB's \$3 million loan. White Plains also claimed that the auction could not be postponed because any delay would result in a lower price at auction. As a result, the Court declined to enter a temporary restraining order.

On July 1, 2021, Epic sent counsel and representatives to attend the auction, which was held at the offices of White Plains' counsel (the "Auction"). Jozefovic Aff., ¶ 20. Epic confirmed that no bidders attended the Auction, and no bids were entered. Jozefovic Aff., ¶ 21. Instead, White Plains made the sole, nominal bid of \$100.00. Jozefovic Aff., ¶ 23.

On July 7, 2021, Epic requested that White Plains voluntarily cancel the Auction and abandon any further attempts to sell the Membership Interest. However, to the extent White Plains believed that the Auction was commercially reasonable and that White Plains' sole \$100.00 bid accurately represented the fair market value, Epic provided White Plains with a check for \$100.00 to redeem the Membership Interest. Jozefovic Aff., ¶ 36.

### **III. LEGAL ARGUMENT**

#### **A. The Preliminary Injunction Maintains the Status Quo Pending Resolution of the Litigation**

The purpose of a preliminary injunction is to preserve the status quo until a matter can be fully briefed and resolved. *See, e.g., Koob v. IDS Fin. Serv., Inc.*, 629 N.Y.S.2d 426 (1st Dep't 1995); *Residential Bd. of Managers of the Columbia Condo. v. Alden*, 576 N.Y.S.2d 859 (1st Dep't 1991).

To obtain a preliminary judgment, Epic must satisfy three requirements:

- (1) A likelihood of success on the merits of the action;
- (2) The danger of irreparable injury in the absence of a preliminary injunction; and
- (3) A balance of the equities in favor of the party seeking the injunction.

*See, e.g., Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 N.Y.3d 839, 840 (2005); *W. T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981). These factors must be weighed together and in context when determining whether to grant a preliminary injunction. *See Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *see also Chernoff Diamond & Co. v. Fitzmaurice, Inc.*, 651 N.Y.S.2d 504, 506 (1996).

As set forth below, Epic satisfies each of these three requirements and is entitled to an injunction negating the Auction as commercially unreasonable and preventing White Plains from engaging in any further efforts to sell the Membership Interest.

**B. Epic Is Likely To Succeed On The Merits**

In order to obtain a preliminary injunction, the moving party is not required to demonstrate “a certainty of success,” but need only provide a prima facie showing of their right to relief. *Bingham v. Struve*, 591 N.Y.S.2d 156, 158 (1st Dep’t 1992); *Parkmed Co. v. Pro-Life Counselling, Inc.*, 457 N.Y.S.2d 27, 29 (1st Dep’t 1982). The moving party establishes a likelihood of success through credible claims and arguments, regardless of whether the opposing party disputes the facts. *Four Times Square Assocs., LLC v. Cigna Invs., Inc.*, 764 N.Y.S.2d 1, 2 (1st Dep’t 2003).

As evidenced by the fact that the Auction produced no bidders and no bids, and that White Plains made the one and only nominal bid of \$100.00, Epic is likely to succeed on the merits of its claims. *See also Promenade Condo. v. J.J. & P. Corp.*, 662 N.Y.S.2d 509, 510 (1997) (holding that an affidavit and basic documentary evidence are sufficient to grant a preliminary injunction).

1. The Auction Was Commercially Unreasonable

Epic has disputed—and continues to dispute—White Plains’ claim that Jozefovic breached the Collateral Assignment and that the Membership Interest can be sold at auction. Regardless, on July 1, 2021, White Plains proceeded with the Auction.

Pursuant to UCC § 9–610(b), an attempted sale of collateral is null and void if it was not performed in a commercially reasonable manner. Whether a specific event is commercially reasonable presents “a fact-intensive inquiry; no magic set of procedures will immunize the sale from scrutiny.” *Matter of Excello Press, Inc.*, 890 F.2d 896, 905 (7th Cir.1989) (applying N.Y. law); *see also Federal Deposit Ins. Corp. v. Forte*, 144 A.D.2d 627, 629, 535 N.Y.S.2d 75 (2d Dept. 1988).

Auctions and sales are commercially unreasonable and must be invalidated if either (1) the process was "tainted by overreaching, fraud, collusion or mistake;" or (2) if “an unconscionably low sale price was obtained.” *Chase Home Fin. LLC v. Diaz*, 16 Misc. 3d 415 (N.Y. Sup. Ct. Suffolk County 2007). Additionally, pursuant to UCC § 9-504’s, the secured party must act “in good faith and to the parties' mutual best advantage,” or the sale will be invalidated. *See, e.g., 108th Street Owners Corp. v. Overseas Commodities Ltd.*, 238 A.D.2d 324 (2d Dept. 1997); *MTI Systems Corp. v. Hatzimanuel*, 151 A.D.2d 649 (2d Dept. 1989); *Federal Deposit Ins. Corp. v. Herald Square Fabrics Corp.*, 81 A.D.2d 168 (2d Dept. 1981). In short, the secured party must make a “good faith” effort to secure “the best obtainable price” in a “fair sale,” *i.e.*, by attempting to obtain the “highest price” in the “best available market.” *Obrecht v. Crawford*, 175 Md. 385 (Md. Ct. App. 1938); *see also Atlantic City Tire & Rubber Corp. v. Southwark F. & M. Co.*, 289 Pa. 569 (PA 1927).

The Auction was commercially unreasonable and must be nullified because (1) the final bid of \$100 was unconscionably low; (2) there were no other bids or bidders; (3) White Plains engaged in blatant self-dealing; and (4) the terms and circumstances of the Auction prevented a commercially reasonable auction from occurring.

i. The Auction Price Was Unconscionably Low

UCC § 9-610(b) requires that sales of collateral be commercially reasonable and UCC § 9-627(a), Official Comment 2 specifically advises that an auction or sale which results in “a low price suggests that a court should scrutinize carefully all aspects of a disposition.”

Accordingly, courts routinely invalidate auctions or attempted sales which generate inadequate “low price” results. A “wide or marked discrepancy in disposal and sale prices is an independently adequate reason to question the commercial reasonableness of a disposition of collateral.” *Federal Deposit Ins. Corp. v. Herald Square Fabrics Corp.*, 81 A.D.2d 168, 185 (N.Y. App. Div. 1981).

It is a “definitive rule” that sale prices of less than 10% of the collateral’s value are found to be “unconscionably low” and consistently held to be commercially unreasonable. *Polish Natl. Alliance of Brooklyn v. White Eagle Hall Co.*, 98 A.D.2d 400 (N.Y. App. Div. 1983). Such sales that produce nominal or token bids are described as “so grossly inadequate as to shock the conscience of the court.” *See Central Trust Co. Rochester v. Alcon Developers*, 93 Misc. 2d 686 (N.Y. Sup. Ct. Wayne County 1978) (invalidating a \$1.00 property sale); *see also Chemical Bank & Trust Co. v. Adam Schumann Associates, Inc.*, 150 Misc. 221 (N.Y. Sup. Ct. Kings County 1934) (invalidating a foreclosure sale of \$500.00 for property worth \$17,100.00); *see also Alben Affiliates v. Astoria Terminal, Inc.*, 34 Misc. 2d 246 (N.Y. Sup. Ct. Queens County 1962).

Sales that rise above the 10% threshold are still vacated if the sale price is insufficient. *See Wright v. Caprarella*, 205 App. Div. 559 (2d Dept. 1923) (invalidating an auction when the top bid price was 38% of market value); *see also Purdy v. Wilkins*, 95 Misc. 706 (N.Y. Sup. Ct. Albany County 1916) (invalidating sale for 26% of the appraised price).

Moreover, courts across the country have regularly found that auction prices up to 60% of the collateral's value may still be unconscionably low if they provide inadequate consideration or otherwise shock the conscience. *See, e.g., Pleasant Hollow Homeowners Ass'n v. Sun Ye Webster*, 285 S.W.3d 421 (Mo. Ct. App. 2009) (sale price of 59% of the market value was "grossly inadequate"); *see also Home Beneficial Life Ins. Co. v. Blue Rock Shopping Center, Inc.*, 379 A.2d 1147 (New Castle County Superior Court 1977) (the standard for determining if a price is grossly inadequate is whether the "sale price represented 50% of the fair market value of the property"); *Krohn v. Sweetheart Props, LTD (In re Krohn)*, 203 Ariz. 205 (Ariz. 2002) ("the price paid is not merely inadequate but under applicable case law 'grossly' inadequate because the price was less than 20% of fair market value").

The Membership Interest is highly valuable collateral worth over \$6 million. Therefore, the Auction is null and void because White Plains' unconscionably low bid of \$100.00 does not represent even 1% of the Membership Interests' value.

ii. The Auction Had No Bids and No Bidders

The absence of competitive bidding proves that an auction was not commercially reasonable. *See, e.g., Cole v. Manufacturers Trust Co.*, 164 Misc. 741 (N.Y. Sup. Ct. Kings County 1937) (sale was commercially unreasonable because defendant sold collateral to itself without entertaining other bids); *Paco Corp. v Vigliarola*, 611 F. Supp. 923, 926 (EDNY 1985), *affd*, 835 F.2d 1429 (2d Cir 1987) ("The presence at the sale of only defendant Rosselli (who admits he has

no use for the equipment) and two secured creditors creates an impression that this was not a public sale.”).

The combination of a low sale price and lack of competitive bidding is universally fatal to any claims of commercial reasonableness. By way of example, a similar auction was rejected because the secured party purchased the collateral “at highly inadequate prices because it was the only bidder present,” which further demonstrated that “the mortgagee engaged in self-dealing.” *Martin Realty Co. v. Bay View Heights Land Co.*, 107 Misc. 140 (N.Y. Sup. Ct. Kings County 1919).

White Plains made multiple representations to Epic and the Court that the Auction could not be postponed because multiple, bona fide bidders would be in attendance. Epic’s representatives attended the Auction and confirmed that there were no bidders, and that White Plains made the one and only bid. Given the complete absence of other bidders and the fact that a competitive bidding process did not occur, the Auction was commercially unreasonable.

iii. White Plains Engaged in Naked Self-Dealing

Self-dealing is the final telltale sign that an auction or sale was commercially unreasonable, especially when coupled with a low sale price. “Marked discrepancies between the disposal and sale prices signal a need for closer scrutiny, especially where the possibilities for self-dealing are substantial.” *Central Budget Corp. v. Garrett*, 48 A.D.2d 825 (1975).

Courts regularly negate auctions and sales based upon concerns of self-dealing when the winning bid comes from the creditor. *See Nat’l Hous. P’ship v. Mun. Capital Appreciation Partners. I, L.P.*, 935 A.2d 300 (D.C. 2005) (“A large discrepancy between sales price and fair market value signals a need for close scrutiny of the sales procedures, particularly where the secured creditor is also the purchaser. Disposition of the collateral at fire sale prices, when the

evidence shows that the creditor made little or no effort to find a buyer, is not commercially reasonable”) (internal citations omitted).

White Plains claimed that it needed to auction the Membership Interest in order to generate the necessary funds for the \$1.6 million rent security and to repay MCB’s \$3 million loan. However, White Plains simply desired the Membership Interest for itself and has used the Collateral Assignment and the Auction as pretext for seizing the Membership Interest for \$100.00. White Plains’ shameless self-dealing is commercially unreasonable and presents another basis for invalidating the Auction.

iv. The Terms and Circumstances of the Auction Were Commercially Unreasonable

Pursuant to UCC 9-504(3), “[e]very aspect of the disposition [of collateral] ... including the method, manner, time, place and terms must be commercially reasonable.” Courts must examine the particular method and conditions under which the sale of collateral is held to determine if it was commercially reasonable. *National Bank of Delaware County, Walton v. Gregory* 85 A.D.2d 839 (N.Y.S.3d 1981).

Here, every aspect of the Auction was controlled by White Plains. In the Terms of Sale for Public Auction of 71% of the Membership Interests in Waterview Acquisition I, LLC (the “Terms of Sale”) which was provided to prospective bidders, White Plains admitted that the Membership Interest could not actually be sold at the auction, but instead was first “subject to the security interest of [MCB] ... which filed a UCC-1 financing statement on December 23, 2019 with respect to the [Membership Interest],” and was also “subject to all licensing and approval requirements of the New York State Department of Health.” This admission, although accurate, prevents a

commercially reasonable auction from occurring, as any prospective bidder would know that their “purchase” would be secondary to MCB’s \$3 million loan.

Moreover, the process of obtaining “licensing and approval” from NYSDOH is no simple feat. NYSDOH imposes strict regulations concerning the sale and transfer of nursing homes. *See* N.Y. Pub. Health Law, § 2803-X. In order to obtain a change in ownership of a nursing facility, the new owner must first get written approval from NYSDOH to receive an operating license. *See* New York Consol. Laws Article 36, § 3611(A). The application process involves submitting a Certificate of Need and undergoing a lengthy approval process. Failure to procure approval via this process bars the sale of a nursing home. *Putnam Acquisition I, LLC, v. KNH Partners*, 21 Misc. 3d 1103(A) (Nassau County Supreme Court 2008) (failure to receive NYSDOH approval of their Certificate of Need application prevented a nursing home purchase from being completed). Additionally, before a nursing home can be sold, the owner must provide notification about the sale and the proposed management and operations plan to NYSDOH. *See* 10 NYCRR § 1001.4(o)(1).

The sale or transfer of nursing homes is further complicated by the COVID-19 pandemic, as NYSDOH continues the freeze on processing nursing applications. *See* <https://www.health.ny.gov/facilities/cons/>. Once this freeze is lifted and NYSDOH resumes processing new license applications, prospective purchasers will face more extensive requirements, such as the need to: (1) undergo a character and competence review; (2) provide proof of financial resources and feasibility to operate the entity; and (3) “such other matters as [the DOH] shall deem pertinent.” New York Consol. Laws Article 36, § 3605.

In short, any bona fide party interested in purchasing the Membership Interest would be well aware that White Plains’ attempts to hold a forced, private auction was commercially

unreasonable and entirely improper. Any bidder who tried to win the Auction and claim the Membership Interest would be delayed, potentially for years, during which the bidder, White Plains, and Epic would need to:

1. Get written approval from NYSDOH to obtain an operating license;
2. Get special approval to operate as a Managed Long Term Care program;
3. Submit a Certificate of Need;
4. Undergo a character and competence and programmatic review;
5. Undergo an architectural and engineering review;
6. Undergo legal review;
7. Provide proof of financial resources and feasibility to operate the entity;
8. Receive a recommendation from NYSDOH staff;
9. Receive a recommendation from the Public Health and Health Planning Council Establishment and Project Review Committee; and
10. Complete any additional requirements NYSDOH “deems pertinent.”

This lengthy process is complicated, expensive, and would likely take years to complete.

Additionally, White Plains held the Auction right before the July 4<sup>th</sup> holiday weekend at the offices of their counsel. White Plains seemingly had little interest in attracting external bidders, as the Terms of Sale restricted bidding to “Qualified Bidders,” requiring “evidence satisfactory to [White Plains] in its sole and absolute discretion of the proposed bidder’s ability to make payment of the balance of the purchase price,” and requiring such “Qualified Bidders” to “deposit at least ten (10%) percent of the amount of the bid in escrow” prior to the sale. Given the aforementioned issues with actually completing the sale, these highly restrictive bidding terms would likely preclude any interested parties from attending.

**C. Epic Will Suffer Irreparable Harm**

Courts have long held that membership in, or ownership of, a corporation constitutes a specific asset that cannot be replaced or compensated through money alone. *See, e.g., Walker & Zanger v Zanger*, 245 AD2d 144, 145 (1st Dept 1997); *Vanderminden v Vanderminden*, 226 AD2d 1037, 1041 (3d Dept 1996); *Matter of Brenner v Hart Sys., Inc.*, 114 AD2d 363, 366 (2d Dept 1985); *Cooperstown Capital, LLC v Patton*, 60 AD3d 1251, 1253 (3d Dept 2009). This principle is well settled: irreparable harm will occur and injunctive relief is necessary when the control or management of a closely held corporation is threatened. *See, e.g., Casita, LP v Maplewood Equity Partners (Offshore) Ltd.*, 17 Misc 3d 1137(A) (Sup Ct 2007) (“[The] loss of some or all of its investment...by reason of a forced sale...would constitute irreparable injury.”); *Yemini v Goldberg*, 60 AD3d 935, 937 (2d Dept 2009) (“[B]ecause control and management...were at stake, money damages were not sufficient.”); *Matter of Madelone v Whitten*, 18 Misc 3d 1131(A) (Sup Ct 2008) (“The Court concludes that this contemplated shift in the governance and control...constitutes irreparable harm, particularly where the provisional relief sought by petitioner is to maintain the status quo”); *Louis Foodservice Corp. v Konstantinos Vouyiouklis*, 2002 NY Slip Op 50448(U), 10 (Sup Ct Aug. 26, 2002) (“[A]n opportunity for Epic to shift the balance of power and assume management and control of the corporation, may properly be viewed as irreparable injury”).

Jozefovic is the majority shareholder of Waterview, a closely held corporation, through his ownership of the Membership Interest. Jozefovic has spent years of his life building and operating Waterview, which represents the accumulation of Jozefovic’s efforts, labor, and business acumen. As Waterview is a closely held corporation, the Membership Interest cannot be replaced nor can Jozefovic be compensated for the loss. Therefore, if the Auction is allowed to stand and White

Plains is permitted to continue with the sale of the Membership Interest, Epic will be irreparably harmed. *See Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862 (1990); *see also Grand Manor Health Related Facility, Inc. v Hamilton Equities, Inc.*, 85 AD3d 695 (1st Dept 2011) (“Without the injunction, plaintiff, which operates a residential health care facility, would be at risk of losing its valuable leasehold and incurring significant permanent damage to more than 30 years of hard-earned goodwill.”).

**D. The Balance Of Equities Favors Epic**

The final requirement involves a balancing of equities. Courts must grant a preliminary injunction if the damage from denying the preliminary injunction would cause substantially greater harm to the moving party if they were ultimately proved right in the action than the harm that would be caused to the nonmoving party by the granting of the preliminary injunction. *Kurtz v Zion*, 61 AD2d 778, 778 (1st Dept 1978). Courts must give greater deference to actual, concrete harm, whereas theoretical concerns are weighted less. *See, e.g., Louis Foodservice Corp.*, 2002 NY Slip Op at 10.

The known, immediate harm that Epic will suffer far outweighs the minor inconvenience to White Plains. Epic spent years growing and nurturing a closely-held business, whereas White Plains rushed into a sham auction that failed to attract any bidders. Epic is in danger of losing the Membership Interest, worth well over \$6 million, whereas the nullification White Plains’ nominal bid of \$100.00 is entirely inconsequential and harmless. Given the complete failure of the Auction due to obtain any bidders or bids, White Plains cannot demonstrate any conceivable harm.

Moreover, as the Auction was commercially unreasonable, White Plains has placed itself in substantial jeopardy. Pursuant to UCC § 9–625(b), “a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may

include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.” See *Forthill Constr. Corp. v Blue Acquisition, LLC*, 17CV5367, 2020 WL 1878192, at \*4 [SDNY Jan. 28, 2020], *report and recommendation adopted*, 17CV5367, 2020 WL 949256 [SDNY Feb. 27, 2020]. Additionally, pursuant to UCC §§ 9–615(d) and 626(a), the failure to conduct a commercially reasonable sale prevents the secured party from pursuing a deficiency judgment. See *Assoc. Commercial Corp. v Liberty Truck Sales & Leasing, Inc.*, 286 AD2d 311, 312 [2d Dept 2001] (“[A] secured party seeking a deficiency judgment from the debtor after sale of the collateral bears the burden of showing that the sale was made in a ‘commercially reasonable’ manner.”); see also *Coxall v Clover Commercial Corp.*, 4 Misc 3d 654, 663-66 [Civ Ct 2004] (holding that the failure “to comply with ... [the] commercially reasonable disposition requirements of Article 9 ... precludes it from recovering a deficiency.”). Any attempt to uphold the Auction and proceed with the sale of the \$6 million Membership Interest for \$100.00 will allow Epic to bring claims against White Plains for all resulting damages, and will also prevent White Plains from collecting any subsequent funds for the Rent Security, which was the purported reason for the Auction.

**E. The Court Should Grant Epic A Temporary Restraining Order Pending The Determination Of The Preliminary Injunction**

CPLR § 6301 states, in relevant part, that

“[a] temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.”

Irreparable injury is defined as an injury for which monetary damages are insufficient. *James v. Gottlieb*, 445 N.Y.S.2d 719, 719 (1981). Additionally, the moving party must demonstrate that the harm is specific and imminent. In short, the moving party is required to provide a showing that the

requested temporary relief is needed to protect the status quo, as the threatened action will complicate, diminish, or moot the desired final outcome.

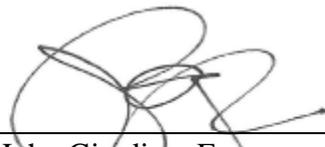
As discussed above, the Auction was a sham, attracting no bids or bidders. Instead, White Plains made the sole bid of \$100.00 for collateral worth over \$6 million. This farcical bid is commercially unreasonable and, for the reasons discussed *supra*, poses significant risks of irreparable injuries, losses, and damages, unless it is immediately nullified and White Plains is prevented from taking further steps to complete the sale. Therefore, the Court should grant a temporary restraining order pending a hearing and determination of the preliminary injunction motion.

**IV. CONCLUSION**

For the foregoing reasons, Epic and Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman respectfully request that the Court grant the Order to Show Cause for a preliminary injunction and a temporary restraining order to (1) Invalidate and nullify the commercially unreasonable auction held by White Plains Healthcare Properties I, LLC and Howard Fensterman on July 1, 2021; and (2) Enjoin White Plains Healthcare Properties I, LLC and Howard Fensterman from taking any further actions to complete the auction and sell Jozefovic’s \$6 million membership interest in Waterview Acquisition I, LLC to White Plains Healthcare Properties I, LLC for \$100.00; together with such other and further relief as this Court deems just, proper and equitable.

Dated: New York, New York  
October 25, 2021

MICHELMAN & ROBINSON, LLP

By:   
\_\_\_\_\_  
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*Attorneys for Defendants and Third-Party Plaintiffs*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

**SECOND AMENDED  
VERIFIED ANSWER  
WITH AFFIRMATIVE  
DEFENSES, COUNTER-  
CLAIMS AND THIRD-  
PARTY COMPLAINT**

Defendants and  
Third-Party Plaintiff,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

-----X

Defendants, HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and  
MARK NEUMAN (collectively, “Defendants”), by and through their counsel Michelman &  
Robinson, LLP, hereby assert the following verified answer with affirmative defenses,  
counterclaims, and third-party complaint and allege upon information and belief as follows:

**ANSWER TO COMPLAINT**

1. Defendants deny the allegations in paragraphs “1,” “2,” and “3.”
2. Defendants admit the allegations in paragraphs “4” through “11.”
3. Defendants deny the allegations in paragraphs “12” and “13.”
4. In response to the allegations in paragraphs “14” through “20,” Defendants assert

that the document speaks for itself.

5. Defendants admit the allegations in paragraphs “21” and “22.”
6. In response to the allegations in paragraph “23,” Defendants assert that the document speaks for itself.
7. Defendants deny the allegations in paragraphs “24,” “25,” and “26.”
8. In response to the allegations in paragraphs “27” through “32,” Defendants assert that the document speaks for itself.
9. Defendants deny the allegations in paragraph “33.”
10. In response to the allegations in paragraphs “34” through “37,” Defendants assert that the document speaks for itself.
11. In response to the allegations in paragraphs “38” through “40” Defendants assert that the document speaks for itself.
12. Defendants deny the allegations in paragraph “41.”
13. Defendants admit the allegations in paragraph “42.”
14. Defendants deny the allegations in paragraphs “43” through “49.”
15. In response to the allegations in paragraph “50” Defendants assert that the document speaks for itself.
16. Defendants deny the allegations in paragraphs “51” through “53.”
17. Defendants deny the allegations in paragraphs “54” through “69.”
18. In response to the allegations in paragraph “70,” Defendants assert that the document speaks for itself.
19. Defendants admit the allegations in paragraph “71.”
20. In response to the allegations in paragraphs “72” through “75,” Defendants assert that the document speaks for itself.

- 21. Defendants deny the allegations in paragraphs “76,” “77,” and “78.”
- 22. Defendants lack sufficient information to form a belief regarding the allegations and, on that basis, deny the allegations in paragraphs “79” and “80.”
- 23. Defendants deny the allegations in paragraph “81.”
- 24. In response to the allegations in paragraphs “82” and “83,” Defendants assert that the document speaks for itself.
- 25. Defendants deny the allegations in paragraphs “84” through “91.”

**FIRST CAUSE OF ACTION AGAINST HBL**  
**(BREACH OF CONTRACT)**

- 26. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “91” as if fully set forth herein.
- 27. Defendants deny the allegations in paragraphs “92” and “93.”

**SECOND CAUSE OF ACTION AGAINST HBL**  
**(BREACH OF CONTRACT)**

- 28. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “93” as if fully set forth herein.
- 29. Defendants deny the allegations in paragraphs “94” and “95.”

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC**  
**(ENFORCING GUARANTY)**

- 30. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “95” as if fully set forth herein.
- 31. Defendants deny the allegations in paragraphs “96” and “97.”

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

- 32. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “97” as if fully set forth herein.
- 33. Defendants deny the allegations in paragraphs “98” and “99.”

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

- 34. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “99” as if fully set forth herein.
- 35. Defendants deny the allegations in paragraphs “100” and “101.”

**AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses, without admitting that Defendants would bear the burden of proof on any of these or any other affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE  
(Plaintiff’s Breach)**

- 1. Plaintiff’s claims for relief are barred, in whole or in part, because plaintiff is in breach of its obligations under the Lease, the integrated development agreements, and its non-payment of mortgage debt

**SECOND AFFIRMATIVE DEFENSE  
(Failure to Perform)**

- 2. Plaintiff failed to perform its obligations under the Lease and integrated Project documents and is not entitled to performance by the Defendants.

**THIRD AFFIRMATIVE DEFENSE**  
**(Terms Too Indefinite To Enforce)**

3. Certain terms within the Lease which plaintiff seeks to enforce are not clear and not definite and are therefore unenforceable.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Payment)**

4. Defendants have made various substantial pre-payments of rent which have not been credited to their account, and Defendants have made monthly rental payments to plaintiff which plaintiff has failed to use for its mortgage debt.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Not Entitled to Enforcement)**

5. Plaintiff's failure to deliver the Project in compliance with NYSDOH approvals renders the Lease unenforceable.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Offsets)**

6. Defendants are entitled to substantial offsets against the rents due under the Lease.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(Fraud In The Inducement)**

7. Plaintiff induced the Defendants to enter into the Lease and guarantee agreements by making fraudulent representations and failing to disclose material facts.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Waiver)**

8. Plaintiff has accepted performance by Defendants and waives any and all right to sue for breach of contract.

**NINTH AFFIRMATIVE DEFENSE**  
**(Bad Faith/Unclean Hands)**

9. The plaintiff is not entitled to the relief it seeks as it has acted in bad faith and with unclean hands.

**TENTH AFFIRMATIVE DEFENSE**  
**(Other Affirmative Defenses)**

10. Defendants reserve the right to supplement or amend this Verified Answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this litigation.

**COUNTERCLAIMS AGAINST WHITE PLAINS**  
**HEALTHCARE PROPERTIES I, LLC**  
**AND**  
**THIRD-PARTY CLAIMS AGAINST CCC EQUITIES, LLC,**  
**PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD**  
**FENSTERMAN, AND WILLIAM NICHOLSON**

Now and for their counterclaims against plaintiff and third-party complaint against third-party defendants, Defendants, upon information and belief, allege the following: <sup>1</sup>

1. CCC Equities, LLC is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

2. Project Equity Consulting is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

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<sup>1</sup> Pursuant to the Court's instruction, Defendants incorporate all claims, allegations, and causes of action contained within the complaint filed on October 22, 2020, in the action captioned *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, Index No. 655549/2020. A copy of the complaint is attached as Exhibit A.

3. The Congress Companies is a corporation duly organized and existing under the laws of the State of Massachusetts with an address and place of business at 2 Bourbon Street, West Peabody Executive Center, Peabody, Massachusetts 01960 and regularly conducts business within the State of New York.

4. Howard Fensterman is an individual residing at 4 Pond Lane, Sands Point, New York 11050 with a business address and place of business at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

5. Through the period complained of herein, Fensterman acted as both a principal in the transaction and legal counsel to certain parties including the defendant Lizer Jozefovic.

6. William Nicholson is an individual residing at 12 Long Meadow Drive, Ipswich, Massachusetts 01938 with a business address and place of business at 2 Bourbon Street, West Peabody Executive Center, Suite 200, Peabody, Massachusetts 01960.

7. This case involves the development of a new state-of-the-art 160-bed skilled nursing facility on Church Street in White Plains, New York (the “Facility.”)

8. The Facility was proposed by the defendant, HBL SNF, LLC (“HBL”), and its principals Lizer Jozefovic and Mark Newman (the “Jozefovic Team”) to the New York State Department of Health (“NYSDOH”) in August 2009.

9. The Facility is dedicated to providing specialized services to “difficult to place patients,” including but not limited to, patients who exhibit psychiatric behaviors, patients who are undocumented, patients with developmental and physical disabilities, and patients who have no means of financial support and require charity care.

10. The Facility was intentionally located in White Plains to service high-density minority and high-density poverty populations as compared to surrounding regions.

11. In order to obtain a Certificate of Need from NYSDOH, the Jozefovic Team acquired skilled nursing bed licenses from other area nursing facilities including Hebrew Hospital Home of Westchester, Bethel Nursing Home, and Taylor Care Center.

12. After full review of the Jozefovic Team’s application, NYSDOH determined that the Jozefovic Team was a successful operator of nursing facilities that are authorized to care for the elderly and individuals with long-term physical care needs and has an established history of achieving high occupancy at the facilities it operated.

13. NYSDOH further determined that the Facility was unique and necessary as it provided care to patients not accepted by other facilities because of their special needs.

14. At the time the Jozefovic Team proposed the Facility, the Plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and the third-party defendants Howard Fensterman (“Fensterman”), William Nicholson (“Nicholson”), and their companies CCC Equities LLC (“CCCE”), Project Equity Construction (“PEC”), and The Congress Companies (“Congress”), approached the Jozefovic Team and proposed that they act as developers for the new Facility.

15. Led by third-party defendant Fensterman, these parties represented that they were capable of performing all aspects of development of the Facility including construction and financing (hereafter “the Project.”)

16. In fact, the Project costs for the Facility presented to NYSDOH by the Jozefovic Team were costs calculated and submitted by Fensterman and Nicholson.

17. Importantly, these costs established a total Project cost of \$56, 631,759.

18. The Project costs for the Facility were itemized by Fensterman and Nicholson as follows:

Land acquisition	\$ 4,528,333
New construction	\$37,282,722
Design Contingency	\$ 1,864,136
Construction Contingency	\$ 1,864,136
Architect/Engineering Fees	\$ 2,982,618
Construction Manager Fees	\$ 745,654
Other Fees (Consultant)	\$ 750,000
Movable Equipment	\$ 1,480,000
Financing Costs	\$ 2,112,000
Interim Interest Expense	\$ 2,710,400
CON Application Fee	\$ 2,000
CON Processing Fee	<u>\$ 309,760</u>
Total Project Cost	\$56,631,759

19. Many of these costs were to be paid to Fensterman and Nicholson directly, as well as Fensterman’s law firm, and other costs to their entities as fees, interest costs, and other Project expenses.

20. In addition, Fensterman and Nicholson represented that they could arrange for 100% of the Project financing.

21. More specifically, Fensterman and Nicholson specifically represented and agreed in writing that they could secure a HUD insured mortgage in the amount of \$42,240,000 with an interest rate of 5.5% and a term of thirty (30) years.

22. A description of this mortgage was included in the projected Medicaid Reimbursement submitted to NYSDOH as part of the Project feasibility forecast.

23. Furthermore, Fensterman represented that he could provide the necessary project equity in the amount of \$9,863,246 through his company CCC Equities, LLC.

24. The Jozefovic Team presented this financing arrangement to NYSDOH in support of its request for approval of the Facility and these costs became part of NYSDOH's Project approval.

25. Given that Fensterman and Nicholson agreed to develop, finance, and own the Project, the Jozefovic Team agreed to enter into a Lease Agreement to occupy and operate the Facility.

26. To accomplish this, Fensterman and Nicholson proposed that their company White Plains Healthcare Properties I, LLC become the landlord for the operating company owned by the Jozefovic Team known as HBL.

27. The Lease was to be for a twenty (20) year term.

28. The rent was to be calculated as an amount equal to the debt service of the HUD insured mortgage to be obtained by Fensterman and Nicholson plus a return of cash equity to WPHP on the account of the equity contributions through CCCE.

29. The annual rent proposed by Fensterman and Nicholson and presented to NYSDOH equaled \$4,318,000 annually or \$360,000 per month.

30. The amount of annual rent as calculated above was eligible for reimbursement to HBL through the NYSDOH.

31. The Project as proposed to the NYSDOH was to be completed in approximately twenty (20) months.

32. The NYSDOH gave approval for the Project on the terms described above in October 2012.

33. Throughout the NYSDOH application process, the Jozefovic Team relied upon representations made by Fensterman and Nicholson.

34. However, shortly after receiving approval from NYSDOH, the Jozefovic Team learned that Fensterman and Nicholson did not have the capital necessary to commence or complete the Project as presented.

35. As a result of this lack of capital the Project was delayed for years.

36. In an attempt to overcome this lack of capital, on November 15, 2015, HBL entered into a Development Agreement with White Plains Healthcare Properties I, LLC (the “Development Agreement.”)

37. On the same date, HBL entered into a Lease with White Plains Healthcare Properties I, LLC (the “Lease”) for the Facility in order to enable WPHP to obtain its Project financing.

38. The Development Agreement and Lease are essential parts of the same transaction and are constitute integrated agreements.

39. Pursuant to the Development Agreement, the Project was to be “turn-key” meaning that the plaintiff and third-party defendants would deliver a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place in accordance with the approval granted by NYSDOH.

40. However, because Fensterman and Nicholson lacked sufficient capital to complete the Project on a turn-key basis, they induced the Jozefovic Team to withdraw its equity from another nursing facility which it owned and operated known as Waterview Nursing Home and to contribute that equity to the Project so that the Project could move forward in 2016.

41. In particular, the Jozefovic Team made the following capital contributions to the Project as memorialized in a Term Sheet dated November 20, 2015:

- a) \$2,200,000 paid to WPHP to be used by Congress for pre-development costs;
- b) \$197,072 to CCC Equities, LLC to be used in the discretion of Fensterman;

c) \$1,595,368.32 into a control account in the name of HBL SNF.

42. These capital contributions were not made as part of a conventional business relationship or an arms-length transaction. Instead, the Jozefovic Team made these capital contributions in reasonable reliance on Fensterman, Nicholson, Congress, and CCCE's representations that they were acting in a special capacity to protect and advance the Jozefovic Team's interests. The relationship had developed into a joint venture and a special relationship.

43. The Jozefovic Team would not have made these capital contributions but for Fensterman, Nicholson, Congress, and CCCE's representations.

44. Yet, despite repeated requests since 2015, Fensterman, Nicholson, Congress, and CCCE have failed or refused to provide an accounting of the use of the predevelopment and discretionary funds paid to them.

45. In consideration for the \$2,200,000 contribution to WPHP, WPHP agreed that these funds constituted a loan to WPHP to be repaid to HBL.

46. No provision was made for the payment of interest on the loan notwithstanding that WPHP had the use of such funds since 2015.

47. WPHP agreed to repay the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") in the amount of \$1,500,000 for the Project and by giving HBL a future credit against Lease payments.

48. When advancing these funds to Fensterman, Nicholson, CCC Equities and Congress, the Jozefovic Team anticipated that the Facility would be delivered in September 2017.

49. The Facility was not delivered until December 2019.

50. Despite repeated requests, WPHP has never provided an accounting for purchases of the required FF&E or any documentation evidencing repayment of \$1,500,000 of the loan amount to HBL.

51. In the absence of such an accounting, HBL cannot determine how much of its loan amount, if any, has been repaid and how much of the remaining loan balance should be credited to current Lease payments.

52. In addition, accrued interest on the \$2,200,000 loan must be calculated from November 2015 and either paid to HBL or credited to payments due under the Lease.

53. The Development Agreement required that the Project be substantially completed within twenty-two (22) months or before September 2017.

54. However, at the time the Development Agreement was executed, the plaintiff knew that it could not deliver the completed Project by the promised time of September 2017

55. Subsequently, the plaintiff breached its obligations to HBL by failing to complete the Project until December 2019.

56. The delay in completing the Project caused HBL to lose substantial revenue.

57. In addition, by delivering the Project in December 2019, HBL encountered market conditions during its start-up phase in 2020 caused by the COVID-19 pandemic which adversely affected HBL's operations as it has nursing homes throughout the region.

58. HBL would not have encountered these adverse financial conditions but not for the delay caused by plaintiff and third-party defendants.

59. In addition to the Project being completed more than two (2) years late, plaintiff and third-party defendants delivered the Project well over budget.

60. The Development Agreement required the plaintiff to enter into a construction contract with Congress and to secure a 100% performance bond to guarantee the performance of the construction contract.

61. However, unbeknownst to HBL, Congress could not secure a performance bond.

62. Fensterman and Nicholson never disclosed to HBL or any of its principals that Congress could not obtain a bond.

63. As a result, WPHP entered into a contract without approval or consent from HBL for a creation of a joint venture agreement with a third-party contractor.

64. The joint venture, among other reasons, added substantial costs to the Project.

65. These substantial additional costs exceeded the capital expenditures approved by NYSDOH and are not reimbursable through NYSDOH.

66. Upon information and belief, Congress's inability to secure the performance bond is related to certain judgments taken against its principal Nicholson arising from claims for diversion of project funds in a skilled nursing project located in Milwaukee, Wisconsin dating back to 2015, the time when the Jozefovic Team advanced monies to Nicholson and Congress.

67. Neither Fensterman nor Nicholson disclosed these adverse proceedings to the Jozefovic Team.

68. In fact, Nicholson was adjudged to have committed conversion and civil theft in the amount of \$1,903,452, and that judgement was affirmed on appeal to the Seventh Circuit Court of Appeals.

69. The Development Agreement required that plaintiff and third-party defendants deliver the Project at the costs approved by NYSDOH.

70. Only in the event that HBL authorized a change order would HBL have responsibility for any cost higher than the cost approved by the NYSDOH.

71. There were no approved change orders.

72. The approved Project cost is \$57,000,000.

73. The plaintiff and third-party defendants caused the Project to exceed the approved costs by more than \$5,000,000.

74. The plaintiff and third-party defendants breached their obligations to HBL under the Development Agreement by causing the Project to be over budget.

75. As a result, HBL is not eligible for reimbursement of its rent payments as originally intended - a loss of eligibility that will cause substantial harm to HBL.

76. Given these costs overruns and the loss of eligibility for reimbursement, the Lease is unenforceable.

77. As part of the “turn-key” delivery of the Project, plaintiff was obligated to provide permanent financing for the Project on the terms of the HUD insured loan submitted by plaintiff as part of the Project approved by NYSDOH.

78. The plaintiff and third-party defendants have failed to provide such permanent financing and are in breach of the Development Agreement and the Lease.

79. In connection with the permanent financing, the plaintiff and third-party defendants were required to demonstrate sufficient equity invested in the Project for HUD or any other lender of permanent financing to grant a thirty (30) year loan to the Project.

80. Plaintiff and third-party defendants have failed to demonstrate sufficient equity in the Project.

81. Upon information and belief, Fensterman procured financial contributions from individual third parties who contributed capital to CCCE to meet the equity requirement.

82. Although this capital is required to be and has, in fact, been represented by Fensterman to be in the nature of equity, upon information and belief, these contributions from individual third-parties are loans at high rates of interest which are overdue as a result of the Project delays.

83. Fensterman, CCCE, and plaintiff have caused additional financial burden to the Project and have attempted to pass along to HBL and the Jozefovic Team these higher interest costs.

84. The Project cost overruns and the higher finance costs due to the delay in delivering the Project, together with the lack of sufficient equity, have prevented the Project from securing permanent financing.

85. The plaintiff and third-party defendants have advised HBL that they have initiated this lawsuit because they are in default of their current loan agreements.

86. As of this date, plaintiff and third-party defendants have been unable to provide to the Jozefovic Team an accurate Project accounting of Project expenditures and have refused to provide information concerning the Project financing.

87. As of this date, plaintiff and third-party defendants have been unable to procure the HUD insured financing which they represented they could secure and is required by NYSDOH Project approval.

88. As of this date, the Project does not comply with the approval issued by the NYSDOH.

89. HBL and its principals reasonably relied upon WPHP, Fensterman, Nicholson, and Congress' representations that they would fulfill their obligations under the Development Agreement and Lease.

90. If HBL and its principals knew that WPHP, Fensterman, Nicholson, and Congress would substantially breach their obligations under the Development Agreement and Lease, HBL and its principals would not have entered into the Development Agreement and Lease.

91. As a result of the failure to deliver the Project on the terms approved by NYSDOH, HBL cannot be reimbursed for the cost of the Facility as intended by the Development Agreement and the Lease and HBL and its principals have suffered financial harm as a result.

92. Throughout the development process, WPHP, Fensterman, Nicholson and Congress' false representations and adverse actions to the Jozefovic Team have adversely affected the business of HBL

93. WPHP, Fensterman, Nicholson and Congress knew that these representations were false when they were made.

94. At no point have HBL or the Jozefovic Team knowingly intended to agree, in whole or in part, to release or waive WPHP, Fensterman, Nicholson, and Congress for any of their breaches and violations of the Development Agreement and the Lease.

95. Since the Facility began operations, HBL has made regular rent payments to WPHP pursuant to the terms of the Lease.

96. As of this date, HBL has made over \$12 million in rental payments to WPHP.

97. HBL has made, and continues to make, these payments in compliance with its obligations under the Lease. HBL's payments do not constitute a waiver or release of HBL's claims against WPHP, CCCE, Congress, Fensterman, or Nicholson. On information and belief, WPHP

does not own the property for the Facility outright, but instead received entered into a mortgage agreement with Security Benefit Life Insurance Company and Security Benefit Corporation (collectively, "Security Benefit").

98. The primary purpose of HBL's rental payments to WPHP is for WPHP to satisfy its monthly mortgage payments to Security Benefit.

99. On information and belief, WPHP failed to make required mortgage payments to Security Benefit.

100. On information and belief, Security Benefit instructed WPHP to make certain payments otherwise it would institute foreclosure proceedings, potentially jeopardizing HBL's tenancy and continued operations.

101. On information and belief, although WPHP has received substantial rental payments from HBL, WPHP has refused or failed to make necessary mortgage payments to Security Benefit.

102. On information and belief, Security Benefit has declared WPHP to be in default of its mortgage, having failed to make necessary mortgage payments, charges, interest, and other required fees.

103. On information and belief, Security Benefit has demanded WPHP to send HBL a Tenant Direction Notice, instructing HBL to make all future rental payments directly to Security Benefit.

104. To date, WPHP has not instructed HBL to make future rental payments directly to Security Benefit, but instead continues to collect HBL's monthly rental payments itself.

105. On information and belief, Security Benefit has demanded that WPHP establish a Cash Management Account and instruct HBL to deposit all future rental payments into the Cash Management Account.

106. To date, WPHP has not instructed HBL to deposit future rental payments in a Cash Management Account, but instead continues to receive HBL's monthly rental payments in its own account.

107. On information and belief, Security Benefit has brought a foreclosure action against WPHP and is threatening to foreclose on the mortgage on the property for the Facility.

108. Following months of litigation, HBL attempted to exercise its right to purchase the Facility pursuant to Section 3.8 of the Lease on September 17, 2021.

109. The Lease provides in Section 3.8 that HBL has the option to purchase the Leased Premises from WPHP for \$65 million.

110. In Section 3.8, the Lease states that HBL's option begins on the latter of either the first day after the Commencement Date or 24 months from the closing of the Original Mortgage between WPHP and Security Benefit. The Lease states that this option runs until the last day of the fifteenth Lease Year of the Lease.

111. The Lease defines the Commencement Date as either the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility or the date that the NYSDOH determines that the WPHP's work is sufficiently constructed to accept patients.

112. The date of issuance of certification from NYSDOH and the City of White Plains for the Facility was in October 2019. The date that NYSDOH determined that WPHP's work was sufficiently constructed to accept patients was December 2, 2019, retroactive to November 14,

2019. Both of these events took place two years before HBL gave notice of its intent to exercise its right to purchase.

113. The Original Mortgage between WPHP and Security Benefit closed on August 18, 2017. The date that marks 24 months after this date, August 18, 2019, took place two years before HBL gave notice of its intent to exercise its right to purchase.

114. The only requirement for HBL to exercise its option to purchase the Facility was to give written notice to WPHP of its intent to exercise the option and to include a proposed closing date.

115. On September 17, 2021, HBL gave WPHP written notice of its intent to exercise its option to purchase the Facility and included a proposed closing date of March 31, 2022.

116. On September 24, 2021, WPHP responded to HBL's notice, denying the validity of HBL's option and refusing to perform the provision, directly challenging rights asserted by HBL.

117. HBL will be unable to exercise its right to purchase the Facility unless WPHP recognizes the validity of the purchase option provision in the Lease.

**AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST WPHP,  
CCCE, CONGRESS, AND FENSTERMAN  
(DEMAND FOR ACCOUNTING)**

118. Defendants repeat and reallege each and every allegation set forth in paragraphs "1" through "117" with the same force and effect as if fully set forth herein.

119. HBL SNF, LLC, Lizer Jozefovic and Mark Neuman had a trust-based relationship with Fensterman, Nicholson, WPHP, Congress, and CCCE.

120. Fensterman, Nicholson, WPHP, Congress, and CCCE made repeated representations that they would maintain a special relationship with HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, and that they would advocate and protect their interests.

121. In reasonable reliance on these representations and on this special relationship, HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman advanced monies to WPHP and Fensterman prior to commencement of the Project in order to allow the Project to proceed.

122. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman would not have advanced these funds but for their reliance on this special, trust-based relationship.

123. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman are entitled to an accounting of the use of the funds advanced for the Project.

**AS AND FOR A SECOND CAUSE OF ACTION AS AGAINST WPHP  
(PAYMENT OF INTEREST)**

124. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “123” with the same force and effect as if fully set forth herein.

125. HBL SNF, LLC is entitled to imputed interest on the \$2,200,000 made to WPHP loan from November 2015 to present.

**AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST WPHP  
(BREACH OF CONTRACT)**

126. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “125” with the same force and effect as if fully set forth herein.

127. WPHP breached the Development Agreement and the Lease.

128. As a result of such breach, HBL SNF, LLC has been damaged by the loss of reimbursable capital expenditures and has incurred other costs due to the nonperformance of WPHP.

129. In addition, HBL SNF, LLC has lost funds and continues to lose revenues as a result of Project delays.

**AS AND FOR A FOURTH CAUSE OF ACTION  
AS AGAINST FENSTERMAN AND NICHOLSON  
(FRAUD IN THE INDUCEMENT)**

130. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “129” with the same force and effect as if fully set forth herein.

131. Third-party defendants Fensterman and Nicholson fraudulently induced HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman to enter into the Development Agreement, the Lease, and the Guaranty.

132. Fensterman and Nicholson misrepresented the Project costs.

133. Fensterman and Nicholson misrepresented their ability to secure permanent HUD financing.

134. Fensterman and Nicholson misrepresented their ability to complete the Project.

135. Fensterman misrepresented the capital contributions made to CCCE to satisfy the equity requirement for the Project.

136. Fensterman and Nicholson failed to disclose the claimant civil proceeding against Nicholson for civil theft.

137. By reason of such fraud in the inducement, Defendants Lizer Jozefovic and Mark Neuman have no obligations under the guarantees.

138. By reason of such fraud in the inducement, HBL SNF, LLC has suffered financial damages.

**AS AND FOR A FIFTH CAUSE OF ACTION  
AS AGAINST ALL THIRD-PARTY DEFENDANTS  
(BAD FAITH)**

139. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “138” with the same force and effect as if fully set forth herein.

140. As alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.

141. As a result of such bad faith dealings, HBL SNF, LLC has suffered damages in an amount not less than \$15,000,000.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(FRAUD)**

142. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “141” with the same force and effect as if fully set forth herein.

143. The misrepresentations and non-disclosures by Fensterman and Nicholson and third-party defendants constitute fraud.

144. WPHP, Fensterman and Nicholson new such statements were false.

145. WPHP, Fensterman and Nicholson made such statements to deceive HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman.

146. HBL SNF, LLC has been damaged by such fraudulent conduct.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(DECLARATORY JUDGMENT)**

147. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “147” with the same force and effect as if fully set forth herein.

148. WPHP's refusal to recognize HBL's option to purchase the Facility represents a direct challenge to HBL's rights as provided for by the Lease.

149. The denial of HBL's right to purchase represents a substantial legal instability that threatens HBL's ability to continue the successful operation of the Facility.

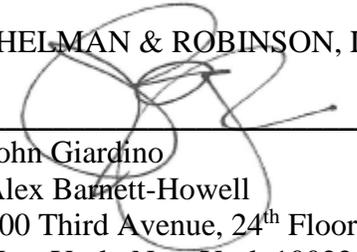
150. If the dispute over HBL's option to purchase is not resolved, HBL will suffer damages relating to WPHP's refusal to uphold the Lease provision.

**WHEREFORE**, Defendants and Third-Party Plaintiffs deny generally and specifically that it committed any wrongdoing and demand:

- 1) A determination that the amount of rent payable under the Lease be modified by any sums not reimbursable by the NYSDOH and offset by prior payments and accrued interest;
- 2) The Guaranty Agreements be nullified;
- 3) Monetary damages in an amount to be determined;
- 4) Declaratory judgment that HBL's exercise of the option to purchase provision is valid and binding on WPHP
- 5) Attorneys' fees, and
- 6) Such other relief as the Court deems appropriate.

Dated: New York, New York  
October 25, 2021

MICHELMAN & ROBINSON, LLP

By: 

John Giardino  
Alex Barnett-Howell  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10022  
[jgiardino@mrlp.com](mailto:jgiardino@mrlp.com)  
[abarnett-howell@mrlp.com](mailto:abarnett-howell@mrlp.com)  
*Attorneys for Defendants*

**VERIFICATION BY ATTORNEY**

JOHN GIARDINO, being an attorney duly admitted to practice in the courts of New York, affirms the following under penalties of perjury:

I am an attorney for Defendants HBL-SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARK NEUMAN, in the above entitled action and have read the foregoing Verified Answer and know the contents thereof; that the same is true upon information and belief, and that as to those matters I believe them to be true.

I further state that the grounds of my belief as to all matters in the Verified Answer are based upon the file maintained by my office and conference and telephone conferences with Defendants. This verification is made pursuant to the provisions of RPAPL 741 because Defendants was not available to sign the same at the time the Verified Answer was prepared.

Dated: New York, New York  
October 25, 2021

  
\_\_\_\_\_  
JOHN GIARDINO, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 :  
 Plaintiff, :  
 :  
 -against- : Index No. 60278/2020  
 :  
 HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER : **NOTICE OF MOTION**  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, WILLIAM :  
 NICHOLSON, and METROPOLITAN :  
 COMMERCIAL BANK :  
 :  
 Third-Party Defendants  
 -----X

**PLEASE TAKE NOTICE** that, upon the annexed Affidavit of Lizer Jozefovic, dated October 25, 2021, and the exhibits annexed thereto, and the accompanying memorandum of law, Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman (collectively, “Defendants”) will move this Court, located at 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, in the Commercial Division, before the Honorable Gretchen Walsh, on November 22, 2021, at 9:30 A.M., or as soon as counsel may be heard, for an order pursuant to CPLR § 3025(b), granting Defendants leave to amend its answer; declaratory judgment pursuant to CPLR § 3001; and granting such further relief as the Court may deem just and proper.

PLEASE TAKE NOTICE that pursuant to CPLR 2214, any answering papers, and any notice of cross-motion, with supporting papers, if any, shall be served upon the undersigned at least seven (7) days prior to the return date.

Dated: New York, New York  
October 25, 2021

MICHELMAN & ROBINSON, LLP

By: /s/ John Giardino  
John Giardino  
Alex Barnett-Howell  
800 Third Avenue, 24th Floor  
New York, New York 10022  
(212) 730-7700  
jgiardino@mrlip.com  
abarnett-howell@mrlip.com  
*Attorneys for Defendants and Third-Party Plaintiffs*

**HBL-SNF, LLC**  
**1280 Albany Post Road**  
**Croton-on-Hudson, NY 10520**

September 17, 2021

White Plains Healthcare Properties I, LLC  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960

**Re: Notice of Exercise of Option to Purchase**  
**White Plains Healthcare Properties I, LLC ("Landlord") and**  
**HBL-SNF, LLC ("Tenant")**  
**116-120 Church Street, White Plains, New York (the "Leased Premises")**

Gentlemen:

Please take notice that pursuant to section 3.8 of the Amended and Restated Operating Lease and in accordance with section 13.1, Tenant hereby notifies you of its exercise of its option to purchase the Leased Premises for the sum of \$65,000,000.

Tenant hereby proposes March 31, 2022 as the date of closing on the property.

Very truly yours,

DocuSigned by:  
  
HBL-SNF, LLC

cc: Gerald J. Billow, Esq.  
Posternak Blankstein & Lund LLP  
800 Boylston Street, Suite 3200  
Boston, MA 02199

Howard Fensterman, Esq.  
Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, NY 11042

Alfred E. Donnellan, Esq.  
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, NY 10601

**WHITE PLAINS HEALTH CARE PROPERTIES I, LLC**

C/O THE CONGRESS COMPANIES  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Phone: 978-535-6700  
Fax: 978-535-6701  
[inquire@congressconstruction.com](mailto:inquire@congressconstruction.com)

September 24, 2021

BY UPS Overnight Delivery, signature required  
BY EMAIL: [lizerj@watersedgeusa.com](mailto:lizerj@watersedgeusa.com)

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**RE: 116-120 Church Street, White Plains, New York ("the Leased Premises")  
TENANT LETTER OF SEPTEMBER 17, 2021.**

Lizer:

We are in receipt of your letter dated September 17, 2021, which attempts to exercise a non-existent "option" to purchase the Leased Premises. It is rejected in its entirety.

**Rejection of the September 17, 2021 letter:**

1. The Lease was terminated due to the Tenant's defaults thereunder on January 13, 2020 at 5:00 PM. We refer you to the Landlord's counsel, Alfred Donnellan's letter of January 7, 2020, attached herewith. The Tenant has no "option" rights under the Lease, since the Lease has long been terminated.
2. As set forth in the LOI dated November 20, 2019, para 6, g) Right of First Refusal and Option to Purchase, the Tenant's right of first refusal and option to purchase under the Lease were clearly suspended, pending payment in full of certain payments under the Lease, including the Security Deposits required under the Lease (as amended by the LOI), the working capital required by Section 7.7 of the Lease and *"the Tenant being in full compliance with the Lease"*. As you are aware, HBL never paid either the original lease Security Deposits nor the Security Deposits set forth in the LOI and never complied with the working capital requirements under Section 7.7 of the Lease. The Tenant is not currently, and was never, "in full compliance with the Lease".

**Tenant's duty to Indemnify the Landlord:**

1. In addition, as a result of HBL's blatant and ongoing Defaults under the Lease, (including the professional fees required to respond to this frivolous maneuver) continue to result in significant costs to the Landlord, which the Tenant is responsible to pay under Section 9.1, Tenant's indemnification, of the Lease. HBL's actions to date suggest that it is either unaware of, or in blatant disregard of this provision of the Lease. Be aware that these costs are inarguably the responsibility of the Tenant under the Lease, notwithstanding the Termination of the Lease, and must be paid forthwith.

**Amounts due to the Landlord by the Tenant:**

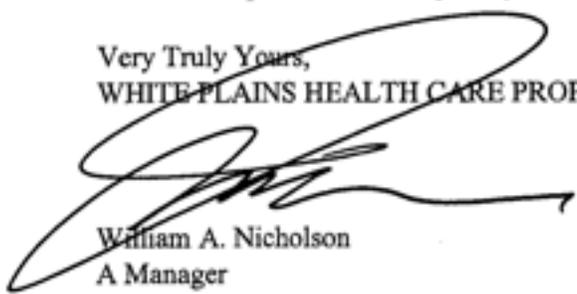
1. Due HBL's ongoing defaults, as of July 31, 2021, the Tenant is obligated under the Lease to pay to White Plains Health Care Properties the total sum of **\$111,420,213.50**, including late and default

amounts due thereunder, as set forth in the attached accounting, which was included in the Landlord's Motion for Summary Judgment.

(i) Rent and Holdover Rent:	\$20,574,253.03
(ii) Real estate taxes:	\$2,621.94
(iii) Municipal and utility deposits:	\$35,921.44
(iv) Interest rate damages for failure to close by April 1, 2020 as required by the letter of intent,	\$3,181,612.87
(v) Costs and professional fees (including certain WIP):	\$1,524,000.00
(vi) Lender default and late charges,	\$3,732,034.22
(vii) Accelerated rent	\$82,369,770.00

2. There can be no credible argument to even remotely suggest that the Tenant is not in **Default** under the Lease. **Accordingly, the Landlord hereby demands immediate payment of \$111,420,213.50, (as of the above 7/30/21 accounting) plus further ongoing amounts as set forth under the Lease) from the Tenant HBL, and from its Guarantors Lizer Josefovic and Mark Neuman.**
3. The Landlord reserves all other rights and remedies at law or in equity as against the Tenant, and against all Guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.
4. Notice is hereby given that the Landlord has incurred significant losses and expects to continue to incur significant losses in connection with the Tenant's Defaults as defined the Lease and the Guarantees. Pursuant to your obligations under the Lease and Guaranty, you (HBL and its Guarantors) are hereby placed on notice that the obligations thereunder are now due, owing and continue to accrue. As a result of these obligations, you shall not transfer any assets or otherwise attempt to conceal any assets from White Plains Health Care Properties I LLC. White Plains Health Care Properties I LLC expressly reserves all rights with respect to this matter.

Very Truly Yours,  
WHITE PLAINS HEALTH CARE PROPERTIES I, LLC



William A. Nicholson  
A Manager

CC:

By Email (lizerj@watersedgeusa.com) & BY UPS Overnight Delivery, signature required  
Lizer Josefovic, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

By Email ([jgiardino@mrlp.com](mailto:jgiardino@mrlp.com)) & BY UPS Overnight Delivery, signature required

John Giardino, Esq.  
Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022

By Email ([markn@epicmgt.com](mailto:markn@epicmgt.com)) & BY UPS Overnight Delivery, signature required

Mark Neuman, Guarantor, Individually  
22 Lyncrest Drive  
Monsey, NY 10952

By UPS Overnight Delivery, signature required

Gerald Neuman, Individually  
c/o HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

By Email:

Robert Spolzino, Esq.  
Howard Fensterman, Esq.  
Alfred E. Donnellan, Esq.  
Edward Tabor

# Exhibit 24

WHITE PLAINS HEALTH CARE PROPERTIES I, LLC - HBL-SNF LLC					
AMOUNTS PAYABLE	Reference	Amount Due	Late Charges Per Lease Para 3.2 (c): 5.00%	Overdue Rate Per Lease Sect. 9.1 (b): Prime Rate + 5.00%	TOTALS
<b>07/15/21</b>					
<b>AMOUNTS DUE UNDER LEASE &amp; LOI</b>					
<i>Note: calculated through 7/31/2021</i>					
<i>Note: Excludes Present Value of Accelerated Lease</i>					
<b>Rent:</b>					
Rent	Balance unpd at commencement	\$ 10,839.79	\$ 202,980.59	\$ 17,803.55	\$ 231,623.93
Holdover Rent	Feb 2020- July 2021	\$ 18,219,474.00	\$ 910,973.70	\$ 1,212,181.40	\$ 20,342,629.10
<b>Subtotal Rent</b>		<b>\$ 18,230,313.79</b>	<b>\$ 1,113,954.29</b>	<b>\$ 1,229,984.96</b>	<b>\$ 20,574,253.04</b>
<b>RE Taxes</b>					
RE Taxes for the period 1/1/20 - 6/30/20	Need proof of Payments	\$ -	\$ -	\$ 2,621.94	\$ 2,621.94
<b>Subtotal RE Taxes</b>		<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,621.94</b>	<b>\$ 2,621.94</b>
<b>Deposits, Other</b>					
Utility Deposits	Lease Section 4.1	\$ 19,181.10		\$ 3,560.33	\$ 22,741.43
Municipal Deposits	Lease Section 5.2	\$ 6,700.00		\$ 1,243.63	\$ 7,943.63
2020 Fire Inspection Fee	Lease Sect. 4.1	\$ 1,443.75			
ConEdison Electric Invoice	Lease Sect. 4.1	\$ 2,972.84		\$ 551.81	\$ 3,524.65
<b>Subtotal Deposits, Other</b>		<b>\$ 30,297.69</b>	<b>\$ -</b>	<b>\$ 5,623.75</b>	<b>\$ 35,921.44</b>
<b>Interest Rate Damages for Failure to Close by 04/30/20 per LOI</b>					
Interest Rate Damages First Mortgage Loan	Lease Article IX Indemnification	\$ 1,916,160.82	\$ -		\$ 1,916,160.82
Interest Rate Damages Mezz Loan	Lease Article IX Indemnification	\$ 1,265,452.05	\$ -	\$ -	\$ 1,265,452.05
<b>Subtotal Interest Rate Damages</b>		<b>\$ 3,181,612.87</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,181,612.87</b>
<b>Landlord Professional Fees &amp; Transaction Costs (Est)</b>					
Landlord Legal, Professional, Transactional	Lease Article IX Indemnification	\$ 1,524,000.00			\$ 1,524,000.00
<b>Subtotal Professional &amp; Transactional</b>		<b>\$ 1,524,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,524,000.00</b>
<b>Lender Default and Late Charges</b>					
Lender Legal and Professional	Lease Article IX Indemnification	\$ 26,727.58	\$ -	\$ -	\$ 26,727.58
Lender Default Interest - SBLI	Lease Article IX Indemnification	\$ 2,927,606.59	\$ -	\$ -	\$ 2,927,606.59
Lender Late Charges - SBLI	Lease Article IX Indemnification	\$ 231,124.71			\$ 231,124.71
Lender Late Charges - BA	Lease Article IX Indemnification	\$ 451,575.34			\$ 451,575.34
Lender Extension Fees - BA (2 Ext @ .050%)	Lease Article IX Indemnification	\$ 95,000.00			\$ 95,000.00
<b>Subtotal Lender Legal, Default and Late Charges</b>		<b>\$ 3,732,034.22</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,732,034.22</b>
<b>TOTALS</b>		<b>\$ 26,698,258.57</b>	<b>\$ 1,113,954.29</b>	<b>\$ 1,238,230.65</b>	<b>\$ 29,050,443.51</b>

RECEIVED NYSCEF: 08/19/2021

HBL SNF Default Costs due to Landlord				LATE CHARGE PER LEASE PARA 3.2 c		Overdue Rate Section Per Lease 9.1 (b)		Indemnification Lease Article 9	TOTAL Charges	Amts Due
Amount Due	Due Date	Amount Paid	Date Paid	Days Late	Days > 5 Late	5% Late Charge Per Lease 3.2 (c)	Prime Rate + Overdue Charges			
Rent							5.00%			
\$ 10,839.79	9/30/2019		7/31/2021	670	665	\$ 541.99	10.00%	\$ 1,989.77	\$ 2,531.76	
\$ 506,096.50	10/1/2019	\$ 506,096.50	10/30/2019	29	24	\$ 25,304.83	10.00%	\$ 4,021.04	\$ 29,325.87	
\$ 506,096.50	11/1/2019	\$ 506,096.50	11/18/2019	17	12	\$ 25,304.83	9.75%	\$ 2,298.23	\$ 27,603.06	
\$ 506,096.50	12/1/2019	\$ 506,096.50	12/3/2019	2	-3	\$ -	9.75%	\$ -	\$ -	
\$ 506,096.50	1/1/2020	\$ 506,096.50	1/2/2020	1	-4	\$ -	9.75%	\$ -	\$ -	
\$ 506,096.50	2/1/2020	\$ 506,096.50	2/1/2020	0	-5	\$ -	9.75%	\$ -	\$ -	
\$ 506,096.50	3/1/2020	\$ 506,096.50	3/2/2020	1	-4	\$ -	8.78%	\$ -	\$ -	
\$ 506,096.50	4/1/2020	\$ 506,096.50	5/6/2020	35	30	\$ 25,304.83	8.25%	\$ 4,003.71	\$ 29,308.53	
\$ 506,096.50	5/1/2020	\$ 506,096.50	5/26/2020	25	20	\$ 25,304.83	8.25%	\$ 2,859.79	\$ 28,164.62	
\$ 506,096.50	6/1/2020	\$ 506,096.50	6/2/2020	1	-4	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	7/1/2020	\$ 506,096.50	7/1/2020	0	-5	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	8/1/2020	\$ 506,096.50	8/7/2020	6	1	\$ 25,304.83	8.25%	\$ 686.35	\$ 25,991.18	
\$ 506,096.50	9/1/2020	\$ 506,096.50	9/4/2020	3	-2	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	10/1/2020	\$ 506,096.50	10/2/2020	1	-4	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	11/1/2020	\$ 506,096.50	11/2/2020	1	-4	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	12/1/2020	\$ 506,096.50	12/2/2020	1	-4	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	1/1/2021	\$ 506,096.50	1/4/2021	3	-2	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	2/1/2021	\$ 506,096.50	2/4/2021	3	-2	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	3/1/2021	\$ 506,096.50	3/2/2021	1	-4	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	4/1/2021	\$ 506,096.50	4/1/2021	0	-5	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	5/1/2021	\$ 506,096.50	5/6/2021	5	0	\$ 25,304.83	8.25%	\$ 571.96	\$ 25,876.78	
\$ 506,096.50	6/1/2021	\$ 506,096.50	6/7/2021	6	1	\$ 25,304.83	8.25%	\$ 686.35	\$ 25,991.18	
\$ 506,096.50	7/1/2021	\$ 506,096.50	7/7/2021	6	1	\$ 25,304.83	8.25%	\$ 686.35	\$ 25,991.18	
\$ 10,839.79						\$ 262,940.59		\$ 17,893.55	\$ 228,784.14	\$ 10,839.79
<b>SUBTOTAL RENT</b>		\$ 11,134,123.00								
Holdover Rent (300%, less the base amount above, 200% calculated in this section) - "Paid" date is for calculation purposes only assuming amounts through 07/01/21										
\$ -	9/30/2019	\$ -	9/30/2019	0	-5	\$ -	10.00%	\$ -	\$ -	
\$ -	10/1/2019	\$ -	10/1/2019	0	-5	\$ -	10.00%	\$ -	\$ -	
\$ -	11/1/2019	\$ -	11/1/2019	0	-5	\$ -	9.75%	\$ -	\$ -	
\$ -	12/1/2019	\$ -	12/1/2019	0	-5	\$ -	9.75%	\$ -	\$ -	
\$ -	1/1/2020	\$ -	6/1/2020	152	147	\$ -	9.75%	\$ -	\$ -	
\$ 1,012,193.00	2/1/2020	\$ -	7/30/2021	545	540	\$ 50,609.65	9.75%	\$ 147,357.28	\$ 197,966.83	
\$ 1,012,193.00	3/1/2020	\$ -	7/30/2021	516	511	\$ 50,609.65	8.78%	\$ 125,668.48	\$ 176,278.13	
\$ 1,012,193.00	4/1/2020	\$ -	7/30/2021	485	480	\$ 50,609.65	8.25%	\$ 110,959.92	\$ 161,569.57	
\$ 1,012,193.00	5/1/2020	\$ -	7/30/2021	455	450	\$ 50,609.65	8.25%	\$ 104,096.42	\$ 154,706.07	
\$ 1,012,193.00	6/1/2020	\$ -	7/30/2021	424	419	\$ 50,609.65	8.25%	\$ 97,004.14	\$ 147,613.79	
\$ 1,012,193.00	7/1/2020	\$ -	7/30/2021	394	389	\$ 50,609.65	8.25%	\$ 90,140.64	\$ 140,750.29	
\$ 1,012,193.00	8/1/2020	\$ -	7/30/2021	363	358	\$ 50,609.65	8.25%	\$ 83,048.36	\$ 133,658.01	
\$ 1,012,193.00	9/1/2020	\$ -	7/30/2021	332	327	\$ 50,609.65	8.25%	\$ 75,956.07	\$ 126,565.72	
\$ 1,012,193.00	10/1/2020	\$ -	7/30/2021	302	297	\$ 50,609.65	8.25%	\$ 69,092.57	\$ 119,702.22	
\$ 1,012,193.00	11/1/2020	\$ -	7/30/2021	271	266	\$ 50,609.65	8.25%	\$ 62,000.29	\$ 112,609.94	
\$ 1,012,193.00	12/1/2020	\$ -	7/30/2021	241	236	\$ 50,609.65	8.25%	\$ 55,136.79	\$ 105,746.44	
\$ 1,012,193.00	1/1/2021	\$ -	7/30/2021	210	205	\$ 50,609.65	8.25%	\$ 48,044.50	\$ 98,654.15	
\$ 1,012,193.00	2/1/2021	\$ -	7/30/2021	179	174	\$ 50,609.65	8.25%	\$ 40,952.22	\$ 91,561.87	
\$ 1,012,193.00	3/1/2021	\$ -	7/30/2021	151	146	\$ 50,609.65	8.25%	\$ 34,546.29	\$ 85,155.94	
\$ 1,012,193.00	4/1/2021	\$ -	7/30/2021	120	115	\$ 50,609.65	8.25%	\$ 27,454.00	\$ 78,063.65	
\$ 1,012,193.00	5/1/2021	\$ -	7/30/2021	90	85	\$ 50,609.65	8.25%	\$ 20,590.50	\$ 71,200.15	
\$ 1,012,193.00	6/1/2021	\$ -	7/30/2021	59	54	\$ 50,609.65	8.25%	\$ 13,498.22	\$ 64,107.87	
\$ 1,012,193.00	7/1/2021	\$ -	7/30/2021	29	24	\$ 50,609.65	8.25%	\$ 6,634.72	\$ 57,244.37	
\$ -						\$ 910,973.70		\$ 1,212,181.40	\$ 2,123,155.10	\$ 18,219,474.00
<b>SUBTOTAL ADDITIONAL RENT</b>										
<b>RE Taxes</b>										
\$ -	9/30/2019		9/30/2019	0	-5	\$ -	10.00%	\$ -	\$ -	

NYSCCF DOC. NO. 213					LATE CHARGE PER LEASE PARA 3.2 c	Overdue Rate Section Per Lease 9.1 (b)	Indemnification Lease Article 9	TOTAL Charges	Amts Due
\$ -	10/1/2019		10/1/2019	0	-5 \$	10.00%	\$ -	\$ -	
\$ -	11/1/2019		11/1/2019	0	-5 \$	9.75%	\$ -	\$ -	
\$ 61,456.39	12/1/2019	\$ -	12/31/2019	30	25 \$	9.75%	\$ 492.49	\$ 492.49	
\$ 61,456.39	1/1/2020	\$ -	1/31/2020	30	25 \$	9.75%	\$ 492.49	\$ 492.49	
\$ 61,456.39	2/1/2020	\$ -	2/28/2020	27	22 \$	9.75%	\$ 443.24	\$ 443.24	
\$ 61,456.39	3/1/2020	\$ -	3/31/2020	30	25 \$	8.78%	\$ 443.61	\$ 443.61	
\$ 61,456.39	4/1/2020	\$ -	4/30/2020	29	24 \$	8.25%	\$ 402.83	\$ 402.83	
\$ 61,456.39	5/1/2020	\$ 63,914.56	5/26/2020	25	20 \$	8.25%	\$ 347.27	\$ 347.27	
\$ -	6/1/2020		6/30/2020	29	24 \$	8.25%	\$ -	\$ -	
\$ -	6/1/2020		7/1/2020	30	25 \$	8.25%	\$ -	\$ -	
\$ -					\$ -		\$ 2,621.94	\$ 2,621.94	\$ -
<b>SUBTOTAL RE TAXES</b>									
<b>Utility &amp; Mun. Dep</b>									
\$ -	9/30/2019		9/30/2019	0	-5 \$	10.00%	\$ -	\$ -	
\$ -	10/1/2019		10/1/2019	0	-5 \$	10.00%	\$ -	\$ -	
\$ -	11/1/2019		11/1/2019	0	-5 \$	9.75%	\$ -	\$ -	
\$ 71,472.69	12/17/2019	\$ 41,175.00	3/16/2020	90	85 \$	9.75%	\$ 1,718.28	\$ 1,718.28	
\$ 30,297.69	1/1/2020	\$ -	1/31/2020	30	25 \$	9.75%	\$ 242.80	\$ 242.80	
\$ 30,297.69	2/1/2020	\$ -	2/28/2020	27	22 \$	9.75%	\$ 218.52	\$ 218.52	
\$ 30,297.69	3/1/2020	\$ -	3/31/2020	30	25 \$	8.78%	\$ 218.70	\$ 218.70	
\$ 30,297.69	4/1/2020	\$ -	4/30/2020	29	24 \$	8.25%	\$ 198.60	\$ 198.60	
\$ 30,297.69	5/1/2020	\$ -	5/31/2020	30	25 \$	8.25%	\$ 205.44	\$ 205.44	
\$ 30,297.69	6/1/2020	\$ -	6/30/2020	29	24 \$	8.25%	\$ 198.60	\$ 198.60	
\$ 30,297.69	7/1/2020	\$ -	7/31/2020	30	25 \$	8.25%	\$ 205.44	\$ 205.44	
\$ 30,297.69	8/1/2020	\$ -	8/31/2020	30	25 \$	8.25%	\$ 205.44	\$ 205.44	
\$ 30,297.69	9/1/2020	\$ -	9/30/2020	29	24 \$	8.25%	\$ 198.60	\$ 198.60	
\$ 30,297.69	10/1/2020	\$ -	10/31/2020	30	25 \$	8.25%	\$ 205.44	\$ 205.44	
\$ 30,297.69	11/1/2020	\$ -	11/30/2020	29	24 \$	8.25%	\$ 198.60	\$ 198.60	
\$ 30,297.69	12/1/2020	\$ -	12/31/2020	30	25 \$	8.25%	\$ 205.44	\$ 205.44	
\$ 30,297.69	1/1/2021	\$ -	1/31/2021	30	25 \$	8.25%	\$ 205.44	\$ 205.44	
\$ 30,297.69	2/1/2021	\$ -	2/28/2021	27	22 \$	8.25%	\$ 184.90	\$ 184.90	
\$ 30,297.69	3/1/2021	\$ -	3/31/2021	30	25 \$	8.25%	\$ 205.44	\$ 205.44	
\$ 30,297.69	4/1/2021	\$ -	4/30/2021	29	24 \$	8.25%	\$ 198.60	\$ 198.60	
\$ 30,297.69	5/1/2021	\$ -	5/31/2021	30	25 \$	8.25%	\$ 205.44	\$ 205.44	
\$ 30,297.69	6/1/2021	\$ -	6/30/2021	29	24 \$	8.25%	\$ 198.60	\$ 198.60	
\$ 30,297.69	7/1/2021	\$ -	7/31/2021	30	25 \$	8.25%	\$ 205.44	\$ 205.44	
\$ 30,297.69					\$ -		\$ 5,623.75	\$ 5,623.75	\$ 30,297.69
<b>SUBTOTAL MUN &amp; UTIL DEPOSITS</b>									
<b>Interest Rate Damages First Mortgage Loan</b>									
						7.11%	3.00%		
\$ 38,500,000.00	9/30/2019	\$ -	9/30/2019	0	-5 \$	0.00%	\$ -	\$ -	
\$ 38,500,000.00	10/1/2019	\$ -	10/31/2019	30	25 \$	0.00%	\$ -	\$ -	
\$ 38,500,000.00	11/1/2019	\$ -	11/30/2019	29	24 \$	0.00%	\$ -	\$ -	
\$ 38,500,000.00	12/1/2019	\$ -	12/31/2019	30	25 \$	0.00%	\$ -	\$ -	
\$ 38,500,000.00	1/1/2020	\$ -	1/31/2020	30	25 \$	0.00%	\$ -	\$ -	
\$ 38,500,000.00	2/1/2020	\$ -	2/28/2020	27	22 \$	0.00%	\$ -	\$ -	
\$ 38,500,000.00	3/1/2020	\$ -	3/31/2020	30	25 \$	0.00%	\$ -	\$ -	
\$ 38,500,000.00	4/1/2020	\$ -	4/30/2020	29	24 \$	0.00%	\$ -	\$ -	
\$ 38,500,000.00	5/1/2020	\$ -	5/31/2020	30	25 \$	4.11%	\$ 130,056.16	\$ 130,056.16	
\$ 38,500,000.00	6/1/2020	\$ -	6/30/2020	29	24 \$	4.11%	\$ 125,720.96	\$ 125,720.96	
\$ 38,500,000.00	7/1/2020	\$ -	7/31/2020	30	25 \$	4.11%	\$ 130,056.16	\$ 130,056.16	
\$ 38,500,000.00	8/1/2020	\$ -	8/31/2020	30	25 \$	4.11%	\$ 130,056.16	\$ 130,056.16	
\$ 38,500,000.00	9/1/2020	\$ -	9/30/2020	29	24 \$	4.11%	\$ 125,720.96	\$ 125,720.96	
\$ 38,500,000.00	10/1/2020	\$ -	10/31/2020	30	25 \$	4.11%	\$ 130,056.16	\$ 130,056.16	
\$ 38,500,000.00	11/1/2020	\$ -	11/30/2020	29	24 \$	4.11%	\$ 125,720.96	\$ 125,720.96	
\$ 38,500,000.00	12/1/2020	\$ -	12/31/2020	30	25 \$	4.11%	\$ 130,056.16	\$ 130,056.16	
\$ 38,500,000.00	1/1/2021	\$ -	1/31/2021	30	25 \$	4.11%	\$ 130,056.16	\$ 130,056.16	
\$ 38,500,000.00	2/1/2021	\$ -	2/28/2021	27	22 \$	4.11%	\$ 117,050.55	\$ 117,050.55	



		LATE CHARGE PER LEASE PARA 3.2 c	Overdue Rate Section Per Lease 9.1 (b)	Indemnification Lease Article 9	TOTAL Charges	Amts Due			
<b>Indemnification - Professional Fees Professional Fees</b>									
AFF	Through July 26, 2021			\$ 753,305.12					
	To Complete			\$ 105,000.00					
	Total			\$ 858,305.12		\$ 858,305.12			
DeBello	Through June 20, 2021			\$ 280,048.61					
	To Complete			\$ 75,000.00					
	Total			\$ 355,048.61		\$ 355,048.61			
Congress	Through May 2020 incl WIP			\$ 72,375.00					
	To Complete			\$ 225,000.00					
	Total			\$ 297,375.00		\$ 297,375.00			
Abatta	Through May 2020			\$ 5,087.24					
	To Complete			\$ -					
	Total			\$ 5,087.24		\$ 5,087.24			
Povol	Through May 2020			\$ 2,575.00					
	To Complete			\$ 5,000.00					
	Total			\$ 7,575.00		\$ 7,575.00			
To Complete				\$ 150,000.00		\$ 609.03			
<b>TOTAL TRANSACTIONAL (EST)</b>						<b>\$ 1,524,000.00</b>			
<b>Lender Charges</b>									
<b>SBLJ Legal</b>									
	James Wine, BA Counsel, DLA Piper			\$ 26,727.58					
	To Complete			\$ -					
	Total Lender Legal			\$ 26,727.58		\$ 26,727.58			
<b>SBLJ Default Interest</b>									
	Through 06/01/21			\$ 2,596,078.61					
	June 2021			\$ 160,416.67					
	July 2021			\$ 171,111.11					
	TOT			\$ 2,927,606.39		\$ 2,927,606.39			
<b>SBLJ Late Payments</b>									
	Through 06/01/21 Statement			\$ 192,947.61					
	June 2021 Est			\$ 18,778.11					
	July 2021 Est			\$ 19,397.79					
	TOT			\$ 231,124.71		\$ 231,124.71			
<b>BA Default Interest</b>									
	SBLJ Default Rate (Maturity)	8/17/2020	7/30/2021	347	\$ 9,500,000.00	5.00%	\$ 451,575.34		
	SBLJ Extension Fees	8/17/2020			\$ 9,500,000.00	0.50%	\$ 47,500.00		
		8/17/2021			\$ 9,500,000.00	0.50%	\$ 47,500.00		
	TOT				\$ 19,000,000.00		\$ 546,575.34	\$ 546,575.34	
<b>SUBTOTAL Lender</b>						<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,732,034.22</b>	<b>\$ 3,732,034.22</b>

AMOUNTS DUE

	<u>Per Affidavitt</u>	<u>Per Schedules</u>	<u>Variance</u>
Holdover rent and rent		\$ 18,219,474.00 2,123,155.10 10,839.79 220,784.14	
	\$ 20,574,253.03	20,574,253.03	-
Real estate taxes	2,621.94	2,621.94	-
Deposits and Late Charges	35,921.44	35,921.44	-
Default interest	3,181,612.87	3,181,612.87	-
Professional fees	1,524,000.00	1,524,000.00	-
Lender defaulta and late charges	3,732,034.22	3,732,034.22	-
Accelerated rent	82,369,770.00	82,369,770.00	-
	<u>\$ 111,420,213.50</u>	<u>\$ 111,420,213.50</u>	<u>T</u>

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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WHITE PLAINS HEALTHCARE PROPERTIES I, :  
LLC, :

Plaintiff, :

Index No. 60278/2020

-against- :

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
JOZOFOVIC, and MARK NEUMAN, :

Defendants and Third-Party Plaintiffs, :

-against- :

CCC EQUITIES, LLC, PROJECT EQUITY :  
CONSULTING, THE CONGRESS COMPANIES, :  
HOWARD FENSTERMAN, WILLIAM :  
NICHOLSON, and METROPOLITAN :  
COMMERCIAL BANK :

Third-Party Defendants

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**MEMORANDUM OF LAW  
IN SUPPORT OF MOTION TO AMEND AND DECLARATORY JUDGMENT**

**MICHELMAN & ROBINSON, LLP**

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**I. PRELIMINARY STATEMENT**

Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman (collectively, “HBL” or “Defendants”) respectfully submit this Memorandum of Law and accompanying Affidavit in support of HBL’s motion for leave to amend the First Amended Verified Answer with Affirmative Defenses, Counterclaims, and Third-Party Complaint, dated May 21, 2021 [Doc. No. 96] (the “Answer”) pursuant to CPLR § 3025(b), and declaratory judgment for HBL’s right to exercise Section 3.8 of the Amended Lease pursuant to CPLR § 3001.

**II. STATEMENT OF FACTS**

**1. White Plains Breaches the Amended Lease by Refusing To Honor the Put**

On or about July 2017, HBL and Plaintiff White Plains Healthcare Properties I, LLC (“White Plains”) entered into an amended lease for a skilled nursing and rehabilitation facility (the “Facility”), which was dated as of the initial lease November 19, 2015 (the “Amended Lease”). Jozefovic Aff., ¶ 4. Pursuant to Section 3.8 of the Amended Lease (the “Put”), HBL has the right to purchase the Facility pursuant to the following conditions:

Commencing on the latter of (i) the first day after the Commencement Date and (ii) 24 months from the date of the closing of that Original Mortgage . . . Tenant shall have the option to purchase the Leased Premises from Landlord for a purchase price of \$65,000,000 by giving written notice of its exercise of the Option to Purchase including a proposed closing date.

Aside from the triggering date, the Amended Lease places no other conditions precedent on HBL’s right to the exercise the Put. Jozefovic Aff., ¶ 8.

Pursuant to Section 3.1(a) of the Amended Lease, the Commencement Date occurs upon the later of “(i) the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility and (ii) the date that New York State Department of Health . . . determines that the

Landlord's Work is sufficiently complete as constructed . . . to accept patients.” Jozefovic Aff., ¶ 9.

On August 18, 2017, White Plains closed on the original mortgage with Security Benefit Life Insurance Company (“Security Benefit”). Jozefovic Aff., ¶ 12. In October 2019, the Facility received certification from the City of White Plains, and on December 2, 2019, New York State Department of Health issued its determination that the Facility was substantially complete. Jozefovic Aff., ¶ 10. Therefore, pursuant to Sections 3.1 and 3.8 of the Amended Lease, HBL had the right to exercise the Put on December 3, 2019. Jozefovic Aff., ¶ 13.

On September 17, 2021, HBL notified White Plains that it was exercising the Put and proposed a closing date of March 31, 2022. Jozefovic Aff., ¶ 15. On September 24, 2021, White Plains responded by claiming that HBL’s decision to exercise the Put was “rejected in its entirety.” Jozefovic Aff., ¶ 17.

**III. LEGAL ARGUMENT**

**1. The Terms of the Put Place No Restrictions On HBL**

“[I]t is well settled that in order to validly exercise an option to purchase real property, one must strictly adhere to the terms and conditions of the option agreement.” *Weissman v Adler*, 187 AD2d 647, 648 [2d Dept 1992]. Courts will only require tenants to be in compliance with the lease if the option specifically requires it. *See, e.g., Galapo v Feinberg*, 266 AD2d 150, 150-51 [1st Dept 1999] (“Plaintiff’s former lease accorded him a right to purchase the premises only on condition that he had not defaulted on any of the lease terms.”)

In contrast, courts have held that options can be exercised regardless of the tenant’s standing if the option is silent as to default. *See, e.g., Cohen v Nonoo*, 101 Misc 2d 1037, 1040-41 [Sup Ct 1979] (“The rent payment obligation and the option provision are independent provisions.

They could have been made dependent, but they were not. This court will not now rewrite the agreement.”); *Sharper Properties Enterprises, Inc. v Hubbard Sand & Gravel, Inc.*, 12 AD3d 494, 495 [2d Dept 2004] (“[T]he plaintiff’s alleged default did not impair its ability to exercise the option.”).

The lack of conditions precedent in Section 3.8 of the Amended Lease are clear, especially when contrasted with Section 3.1(b) of the Amended Lease, which conditions HBL’s right of renewal on its compliance with the terms of the Amended Lease:

Provided a Lease Default has not occurred and is then continuing either at the time of the exercise of the options provided below or at the end of the Term . . . Tenant shall have the option to extend the Term of this Lease for three (3) additional periods of ten (10) years.

In short, White Plains drafted Section 3.8 of the Amended Lease so that HBL could exercise the Put, regardless of whether HBL had defaulted under the Amended Lease. Therefore, HBL has the absolute right to invoke the Put, as courts have held in similar circumstances:

“At the outset we note that the option in the lease is absolute without any conditions save the time requirements for its exercise which are not at issue here. It is well established that absent an express provision conditioning the exercise of an option to purchase on the performance of the terms of a lease, the option and the lease are deemed separate and independent of one another and a breach of the latter has no effect on the rights afforded by the former. Accordingly, plaintiff was entitled to exercise its rights under the option despite the alleged default on its part.”

*Curry Rd. Ltd. v Rotterdam Realties Inc.*, 195 AD2d 780 [3d Dept 1993].

**2. White Plains’ Recent Refusal to Recognize the Put Has Resulted in New Relevant Facts and Basis for New Counterclaim by HBL**

Pursuant to CPLR § 3025(b), leave to supplement a pleading “shall be freely given.” *Davis v. S. Nassau Cmty. Hosp.*, 26 N.Y.S.3d 231, 241 (2015). Since the filing of the Answer on May 21, 2021, White Plains has refused to allow HBL to exercise the Put. On September 17, 2021, HBL

sent written notice to White Plains of its intent to exercise its option to purchase the Leased Premises, pursuant to Section 3.8 of the Lease Agreement, for the agreed upon purchase price of \$65 million. On September 24, 2021, White Plains responded to HBL’s notice by denying the validity of the provision authorizing HBL’s option to purchase.

Pursuant to CPLR § 3001, White Plains refusal to honor the Put represents a “justiciable controversy” requiring judicial intervention. *Chanos v. MADAC, LLC*, 74 A.D.3d 1007, 1008, 903 N.Y.S.2d 506 (“[T]he supreme court may render a declaratory judgment ... as to the rights and other legal relations of the parties to a justiciable controversy...[for] stabiliz[ing] an uncertain or disputed jural relationship with respect to present or prospective obligations”).

New York courts have previously found that a declaratory judgment action to determine the validity of an option in a lease is a justiciable controversy and a valid cause of action for a declaratory judgment. *Loudave Estates, Inc., v. Cross Roads Imp. Co.*, 26 Misc.2d 522, 524, 203 N.Y.S.2d 966 (Sup.Ct., N.Y. County, 1960). Here, White Plains’ refusal to recognize HBL’s legal right to exercise a purchase option represents this dispute, which can result in damages suffered by HBL. If HBL is blocked from exercising this right, its ability to successfully operate its nursing home facility will be thwarted resulting in damages.

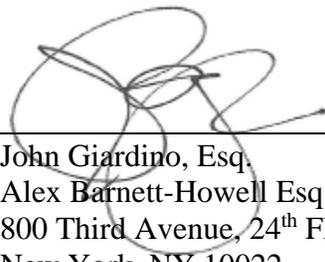
**IV. CONCLUSION**

For the foregoing reasons, Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman respectfully request that the Court grant (1) the right to amend the Answer; and (2) declaratory judgment enforcing the Put; together with such other and further relief as this Court deems just, proper, and equitable.

Dated: New York, New York  
October 25, 2021

MICHELMAN & ROBINSON, LLP

By:



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Plaintiffs*

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

**SECOND AMENDED  
VERIFIED ANSWER  
WITH AFFIRMATIVE  
DEFENSES, COUNTER-  
CLAIMS AND THIRD-  
PARTY COMPLAINT**

Defendants and  
Third-Party Plaintiff,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

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Defendants, HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and  
MARK NEUMAN (collectively, “Defendants”), by and through their counsel Michelman &  
Robinson, LLP, hereby assert the following verified answer with affirmative defenses,  
counterclaims, and third-party complaint and allege upon information and belief as follows:

**ANSWER TO COMPLAINT**

1. Defendants deny the allegations in paragraphs “1,” “2,” and “3.”
2. Defendants admit the allegations in paragraphs “4” through “11.”
3. Defendants deny the allegations in paragraphs “12” and “13.”
4. In response to the allegations in paragraphs “14” through “20,” Defendants assert

that the document speaks for itself.

5. Defendants admit the allegations in paragraphs “21” and “22.”
6. In response to the allegations in paragraph “23,” Defendants assert that the document speaks for itself.
7. Defendants deny the allegations in paragraphs “24,” “25,” and “26.”
8. In response to the allegations in paragraphs “27” through “32,” Defendants assert that the document speaks for itself.
9. Defendants deny the allegations in paragraph “33.”
10. In response to the allegations in paragraphs “34” through “37,” Defendants assert that the document speaks for itself.
11. In response to the allegations in paragraphs “38” through “40” Defendants assert that the document speaks for itself.
12. Defendants deny the allegations in paragraph “41.”
13. Defendants admit the allegations in paragraph “42.”
14. Defendants deny the allegations in paragraphs “43” through “49.”
15. In response to the allegations in paragraph “50” Defendants assert that the document speaks for itself.
16. Defendants deny the allegations in paragraphs “51” through “53.”
17. Defendants deny the allegations in paragraphs “54” through “69.”
18. In response to the allegations in paragraph “70,” Defendants assert that the document speaks for itself.
19. Defendants admit the allegations in paragraph “71.”
20. In response to the allegations in paragraphs “72” through “75,” Defendants assert that the document speaks for itself.

- 21. Defendants deny the allegations in paragraphs “76,” “77,” and “78.”
- 22. Defendants lack sufficient information to form a belief regarding the allegations and, on that basis, deny the allegations in paragraphs “79” and “80.”
- 23. Defendants deny the allegations in paragraph “81.”
- 24. In response to the allegations in paragraphs “82” and “83,” Defendants assert that the document speaks for itself.
- 25. Defendants deny the allegations in paragraphs “84” through “91.”

**FIRST CAUSE OF ACTION AGAINST HBL**  
**(BREACH OF CONTRACT)**

- 26. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “91” as if fully set forth herein.
- 27. Defendants deny the allegations in paragraphs “92” and “93.”

**SECOND CAUSE OF ACTION AGAINST HBL**  
**(BREACH OF CONTRACT)**

- 28. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “93” as if fully set forth herein.
- 29. Defendants deny the allegations in paragraphs “94” and “95.”

**THIRD CAUSE OF ACTION AGAINST JOZEFOVIC**  
**(ENFORCING GUARANTY)**

- 30. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “95” as if fully set forth herein.
- 31. Defendants deny the allegations in paragraphs “96” and “97.”

**FOURTH CAUSE OF ACTION AGAINST NEUMAN  
(ENFORCING GUARANTY)**

32. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “97” as if fully set forth herein.

33. Defendants deny the allegations in paragraphs “98” and “99.”

**FIFTH CAUSE OF ACTION AGAINST JOZEFOVIC  
(BREACH OF CONTRACT)**

34. Defendants repeat, reallege, and incorporate by reference their response to paragraphs “1” through “99” as if fully set forth herein.

35. Defendants deny the allegations in paragraphs “100” and “101.”

**AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses, without admitting that Defendants would bear the burden of proof on any of these or any other affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE  
(Plaintiff’s Breach)**

1. Plaintiff’s claims for relief are barred, in whole or in part, because plaintiff is in breach of its obligations under the Lease, the integrated development agreements, and its non-payment of mortgage debt

**SECOND AFFIRMATIVE DEFENSE  
(Failure to Perform)**

2. Plaintiff failed to perform its obligations under the Lease and integrated Project documents and is not entitled to performance by the Defendants.

**THIRD AFFIRMATIVE DEFENSE**  
**(Terms Too Indefinite To Enforce)**

3. Certain terms within the Lease which plaintiff seeks to enforce are not clear and not definite and are therefore unenforceable.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Payment)**

4. Defendants have made various substantial pre-payments of rent which have not been credited to their account, and Defendants have made monthly rental payments to plaintiff which plaintiff has failed to use for its mortgage debt.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Not Entitled to Enforcement)**

5. Plaintiff's failure to deliver the Project in compliance with NYSDOH approvals renders the Lease unenforceable.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Offsets)**

6. Defendants are entitled to substantial offsets against the rents due under the Lease.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(Fraud In The Inducement)**

7. Plaintiff induced the Defendants to enter into the Lease and guarantee agreements by making fraudulent representations and failing to disclose material facts.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Waiver)**

8. Plaintiff has accepted performance by Defendants and waives any and all right to sue for breach of contract.

**NINTH AFFIRMATIVE DEFENSE**  
**(Bad Faith/Unclean Hands)**

9. The plaintiff is not entitled to the relief it seeks as it has acted in bad faith and with unclean hands.

**TENTH AFFIRMATIVE DEFENSE**  
**(Other Affirmative Defenses)**

10. Defendants reserve the right to supplement or amend this Verified Answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this litigation.

**COUNTERCLAIMS AGAINST WHITE PLAINS**  
**HEALTHCARE PROPERTIES I, LLC**  
**AND**  
**THIRD-PARTY CLAIMS AGAINST CCC EQUITIES, LLC,**  
**PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD**  
**FENSTERMAN, AND WILLIAM NICHOLSON**

Now and for their counterclaims against plaintiff and third-party complaint against third-party defendants, Defendants, upon information and belief, allege the following: <sup>1</sup>

1. CCC Equities, LLC is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

2. Project Equity Consulting is a limited liability company duly organized and existing under the laws of the State of New York with an address and place of business at 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

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<sup>1</sup> Pursuant to the Court's instruction, Defendants incorporate all claims, allegations, and causes of action contained within the complaint filed on October 22, 2020, in the action captioned *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et al.*, Index No. 655549/2020. A copy of the complaint is attached as Exhibit A.

3. The Congress Companies is a corporation duly organized and existing under the laws of the State of Massachusetts with an address and place of business at 2 Bourbon Street, West Peabody Executive Center, Peabody, Massachusetts 01960 and regularly conducts business within the State of New York.

4. Howard Fensterman is an individual residing at 4 Pond Lane, Sands Point, New York 11050 with a business address and place of business at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, 3 Dakota Drive, Suite 300, Lake Success, New York 11042.

5. Through the period complained of herein, Fensterman acted as both a principal in the transaction and legal counsel to certain parties including the defendant Lizer Jozefovic.

6. William Nicholson is an individual residing at 12 Long Meadow Drive, Ipswich, Massachusetts 01938 with a business address and place of business at 2 Bourbon Street, West Peabody Executive Center, Suite 200, Peabody, Massachusetts 01960.

7. This case involves the development of a new state-of-the-art 160-bed skilled nursing facility on Church Street in White Plains, New York (the “Facility.”)

8. The Facility was proposed by the defendant, HBL SNF, LLC (“HBL”), and its principals Lizer Jozefovic and Mark Newman (the “Jozefovic Team”) to the New York State Department of Health (“NYSDOH”) in August 2009.

9. The Facility is dedicated to providing specialized services to “difficult to place patients,” including but not limited to, patients who exhibit psychiatric behaviors, patients who are undocumented, patients with developmental and physical disabilities, and patients who have no means of financial support and require charity care.

10. The Facility was intentionally located in White Plains to service high-density minority and high-density poverty populations as compared to surrounding regions.

11. In order to obtain a Certificate of Need from NYSDOH, the Jozefovic Team acquired skilled nursing bed licenses from other area nursing facilities including Hebrew Hospital Home of Westchester, Bethel Nursing Home, and Taylor Care Center.

12. After full review of the Jozefovic Team’s application, NYSDOH determined that the Jozefovic Team was a successful operator of nursing facilities that are authorized to care for the elderly and individuals with long-term physical care needs and has an established history of achieving high occupancy at the facilities it operated.

13. NYSDOH further determined that the Facility was unique and necessary as it provided care to patients not accepted by other facilities because of their special needs.

14. At the time the Jozefovic Team proposed the Facility, the Plaintiff White Plains Healthcare Properties I, LLC (“WPHP”) and the third-party defendants Howard Fensterman (“Fensterman”), William Nicholson (“Nicholson”), and their companies CCC Equities LLC (“CCCE”), Project Equity Construction (“PEC”), and The Congress Companies (“Congress”), approached the Jozefovic Team and proposed that they act as developers for the new Facility.

15. Led by third-party defendant Fensterman, these parties represented that they were capable of performing all aspects of development of the Facility including construction and financing (hereafter “the Project.”)

16. In fact, the Project costs for the Facility presented to NYSDOH by the Jozefovic Team were costs calculated and submitted by Fensterman and Nicholson.

17. Importantly, these costs established a total Project cost of \$56, 631,759.

18. The Project costs for the Facility were itemized by Fensterman and Nicholson as follows:

Land acquisition	\$ 4,528,333
New construction	\$37,282,722
Design Contingency	\$ 1,864,136
Construction Contingency	\$ 1,864,136
Architect/Engineering Fees	\$ 2,982,618
Construction Manager Fees	\$ 745,654
Other Fees (Consultant)	\$ 750,000
Movable Equipment	\$ 1,480,000
Financing Costs	\$ 2,112,000
Interim Interest Expense	\$ 2,710,400
CON Application Fee	\$ 2,000
CON Processing Fee	<u>\$ 309,760</u>
Total Project Cost	\$56,631,759

19. Many of these costs were to be paid to Fensterman and Nicholson directly, as well as Fensterman’s law firm, and other costs to their entities as fees, interest costs, and other Project expenses.

20. In addition, Fensterman and Nicholson represented that they could arrange for 100% of the Project financing.

21. More specifically, Fensterman and Nicholson specifically represented and agreed in writing that they could secure a HUD insured mortgage in the amount of \$42,240,000 with an interest rate of 5.5% and a term of thirty (30) years.

22. A description of this mortgage was included in the projected Medicaid Reimbursement submitted to NYSDOH as part of the Project feasibility forecast.

23. Furthermore, Fensterman represented that he could provide the necessary project equity in the amount of \$9,863,246 through his company CCC Equities, LLC.

24. The Jozefovic Team presented this financing arrangement to NYSDOH in support of its request for approval of the Facility and these costs became part of NYSDOH's Project approval.

25. Given that Fensterman and Nicholson agreed to develop, finance, and own the Project, the Jozefovic Team agreed to enter into a Lease Agreement to occupy and operate the Facility.

26. To accomplish this, Fensterman and Nicholson proposed that their company White Plains Healthcare Properties I, LLC become the landlord for the operating company owned by the Jozefovic Team known as HBL.

27. The Lease was to be for a twenty (20) year term.

28. The rent was to be calculated as an amount equal to the debt service of the HUD insured mortgage to be obtained by Fensterman and Nicholson plus a return of cash equity to WPHP on the account of the equity contributions through CCCE.

29. The annual rent proposed by Fensterman and Nicholson and presented to NYSDOH equaled \$4,318,000 annually or \$360,000 per month.

30. The amount of annual rent as calculated above was eligible for reimbursement to HBL through the NYSDOH.

31. The Project as proposed to the NYSDOH was to be completed in approximately twenty (20) months.

32. The NYSDOH gave approval for the Project on the terms described above in October 2012.

33. Throughout the NYSDOH application process, the Jozefovic Team relied upon representations made by Fensterman and Nicholson.

34. However, shortly after receiving approval from NYSDOH, the Jozefovic Team learned that Fensterman and Nicholson did not have the capital necessary to commence or complete the Project as presented.

35. As a result of this lack of capital the Project was delayed for years.

36. In an attempt to overcome this lack of capital, on November 15, 2015, HBL entered into a Development Agreement with White Plains Healthcare Properties I, LLC (the “Development Agreement.”)

37. On the same date, HBL entered into a Lease with White Plains Healthcare Properties I, LLC (the “Lease”) for the Facility in order to enable WPHP to obtain its Project financing.

38. The Development Agreement and Lease are essential parts of the same transaction and are constitute integrated agreements.

39. Pursuant to the Development Agreement, the Project was to be “turn-key” meaning that the plaintiff and third-party defendants would deliver a fully constructed facility authorized to operate as a skilled nursing facility with permanent financing in place in accordance with the approval granted by NYSDOH.

40. However, because Fensterman and Nicholson lacked sufficient capital to complete the Project on a turn-key basis, they induced the Jozefovic Team to withdraw its equity from another nursing facility which it owned and operated known as Waterview Nursing Home and to contribute that equity to the Project so that the Project could move forward in 2016.

41. In particular, the Jozefovic Team made the following capital contributions to the Project as memorialized in a Term Sheet dated November 20, 2015:

- a) \$2,200,000 paid to WPHP to be used by Congress for pre-development costs;
- b) \$197,072 to CCC Equities, LLC to be used in the discretion of Fensterman;

c) \$1,595,368.32 into a control account in the name of HBL SNF.

42. These capital contributions were not made as part of a conventional business relationship or an arms-length transaction. Instead, the Jozefovic Team made these capital contributions in reasonable reliance on Fensterman, Nicholson, Congress, and CCCE's representations that they were acting in a special capacity to protect and advance the Jozefovic Team's interests. The relationship had developed into a joint venture and a special relationship.

43. The Jozefovic Team would not have made these capital contributions but for Fensterman, Nicholson, Congress, and CCCE's representations.

44. Yet, despite repeated requests since 2015, Fensterman, Nicholson, Congress, and CCCE have failed or refused to provide an accounting of the use of the predevelopment and discretionary funds paid to them.

45. In consideration for the \$2,200,000 contribution to WPHP, WPHP agreed that these funds constituted a loan to WPHP to be repaid to HBL.

46. No provision was made for the payment of interest on the loan notwithstanding that WPHP had the use of such funds since 2015.

47. WPHP agreed to repay the principal amount of the loan by purchasing the furniture, fixtures, and equipment (the "FF&E") in the amount of \$1,500,000 for the Project and by giving HBL a future credit against Lease payments.

48. When advancing these funds to Fensterman, Nicholson, CCC Equities and Congress, the Jozefovic Team anticipated that the Facility would be delivered in September 2017.

49. The Facility was not delivered until December 2019.

50. Despite repeated requests, WPHP has never provided an accounting for purchases of the required FF&E or any documentation evidencing repayment of \$1,500,000 of the loan amount to HBL.

51. In the absence of such an accounting, HBL cannot determine how much of its loan amount, if any, has been repaid and how much of the remaining loan balance should be credited to current Lease payments.

52. In addition, accrued interest on the \$2,200,000 loan must be calculated from November 2015 and either paid to HBL or credited to payments due under the Lease.

53. The Development Agreement required that the Project be substantially completed within twenty-two (22) months or before September 2017.

54. However, at the time the Development Agreement was executed, the plaintiff knew that it could not deliver the completed Project by the promised time of September 2017

55. Subsequently, the plaintiff breached its obligations to HBL by failing to complete the Project until December 2019.

56. The delay in completing the Project caused HBL to lose substantial revenue.

57. In addition, by delivering the Project in December 2019, HBL encountered market conditions during its start-up phase in 2020 caused by the COVID-19 pandemic which adversely affected HBL's operations as it has nursing homes throughout the region.

58. HBL would not have encountered these adverse financial conditions but not for the delay caused by plaintiff and third-party defendants.

59. In addition to the Project being completed more than two (2) years late, plaintiff and third-party defendants delivered the Project well over budget.

60. The Development Agreement required the plaintiff to enter into a construction contract with Congress and to secure a 100% performance bond to guarantee the performance of the construction contract.

61. However, unbeknownst to HBL, Congress could not secure a performance bond.

62. Fensterman and Nicholson never disclosed to HBL or any of its principals that Congress could not obtain a bond.

63. As a result, WPHP entered into a contract without approval or consent from HBL for a creation of a joint venture agreement with a third-party contractor.

64. The joint venture, among other reasons, added substantial costs to the Project.

65. These substantial additional costs exceeded the capital expenditures approved by NYSDOH and are not reimbursable through NYSDOH.

66. Upon information and belief, Congress's inability to secure the performance bond is related to certain judgments taken against its principal Nicholson arising from claims for diversion of project funds in a skilled nursing project located in Milwaukee, Wisconsin dating back to 2015, the time when the Jozefovic Team advanced monies to Nicholson and Congress.

67. Neither Fensterman nor Nicholson disclosed these adverse proceedings to the Jozefovic Team.

68. In fact, Nicholson was adjudged to have committed conversion and civil theft in the amount of \$1,903,452, and that judgement was affirmed on appeal to the Seventh Circuit Court of Appeals.

69. The Development Agreement required that plaintiff and third-party defendants deliver the Project at the costs approved by NYSDOH.

70. Only in the event that HBL authorized a change order would HBL have responsibility for any cost higher than the cost approved by the NYSDOH.

71. There were no approved change orders.

72. The approved Project cost is \$57,000,000.

73. The plaintiff and third-party defendants caused the Project to exceed the approved costs by more than \$5,000,000.

74. The plaintiff and third-party defendants breached their obligations to HBL under the Development Agreement by causing the Project to be over budget.

75. As a result, HBL is not eligible for reimbursement of its rent payments as originally intended - a loss of eligibility that will cause substantial harm to HBL.

76. Given these costs overruns and the loss of eligibility for reimbursement, the Lease is unenforceable.

77. As part of the “turn-key” delivery of the Project, plaintiff was obligated to provide permanent financing for the Project on the terms of the HUD insured loan submitted by plaintiff as part of the Project approved by NYSDOH.

78. The plaintiff and third-party defendants have failed to provide such permanent financing and are in breach of the Development Agreement and the Lease.

79. In connection with the permanent financing, the plaintiff and third-party defendants were required to demonstrate sufficient equity invested in the Project for HUD or any other lender of permanent financing to grant a thirty (30) year loan to the Project.

80. Plaintiff and third-party defendants have failed to demonstrate sufficient equity in the Project.

81. Upon information and belief, Fensterman procured financial contributions from individual third parties who contributed capital to CCCE to meet the equity requirement.

82. Although this capital is required to be and has, in fact, been represented by Fensterman to be in the nature of equity, upon information and belief, these contributions from individual third-parties are loans at high rates of interest which are overdue as a result of the Project delays.

83. Fensterman, CCCE, and plaintiff have caused additional financial burden to the Project and have attempted to pass along to HBL and the Jozefovic Team these higher interest costs.

84. The Project cost overruns and the higher finance costs due to the delay in delivering the Project, together with the lack of sufficient equity, have prevented the Project from securing permanent financing.

85. The plaintiff and third-party defendants have advised HBL that they have initiated this lawsuit because they are in default of their current loan agreements.

86. As of this date, plaintiff and third-party defendants have been unable to provide to the Jozefovic Team an accurate Project accounting of Project expenditures and have refused to provide information concerning the Project financing.

87. As of this date, plaintiff and third-party defendants have been unable to procure the HUD insured financing which they represented they could secure and is required by NYSDOH Project approval.

88. As of this date, the Project does not comply with the approval issued by the NYSDOH.

89. HBL and its principals reasonably relied upon WPHP, Fensterman, Nicholson, and Congress' representations that they would fulfill their obligations under the Development Agreement and Lease.

90. If HBL and its principals knew that WPHP, Fensterman, Nicholson, and Congress would substantially breach their obligations under the Development Agreement and Lease, HBL and its principals would not have entered into the Development Agreement and Lease.

91. As a result of the failure to deliver the Project on the terms approved by NYSDOH, HBL cannot be reimbursed for the cost of the Facility as intended by the Development Agreement and the Lease and HBL and its principals have suffered financial harm as a result.

92. Throughout the development process, WPHP, Fensterman, Nicholson and Congress' false representations and adverse actions to the Jozefovic Team have adversely affected the business of HBL

93. WPHP, Fensterman, Nicholson and Congress knew that these representations were false when they were made.

94. At no point have HBL or the Jozefovic Team knowingly intended to agree, in whole or in part, to release or waive WPHP, Fensterman, Nicholson, and Congress for any of their breaches and violations of the Development Agreement and the Lease.

95. Since the Facility began operations, HBL has made regular rent payments to WPHP pursuant to the terms of the Lease.

96. As of this date, HBL has made over \$12 million in rental payments to WPHP.

97. HBL has made, and continues to make, these payments in compliance with its obligations under the Lease. HBL's payments do not constitute a waiver or release of HBL's claims against WPHP, CCCE, Congress, Fensterman, or Nicholson. On information and belief, WPHP

does not own the property for the Facility outright, but instead received entered into a mortgage agreement with Security Benefit Life Insurance Company and Security Benefit Corporation (collectively, "Security Benefit").

98. The primary purpose of HBL's rental payments to WPHP is for WPHP to satisfy its monthly mortgage payments to Security Benefit.

99. On information and belief, WPHP failed to make required mortgage payments to Security Benefit.

100. On information and belief, Security Benefit instructed WPHP to make certain payments otherwise it would institute foreclosure proceedings, potentially jeopardizing HBL's tenancy and continued operations.

101. On information and belief, although WPHP has received substantial rental payments from HBL, WPHP has refused or failed to make necessary mortgage payments to Security Benefit.

102. On information and belief, Security Benefit has declared WPHP to be in default of its mortgage, having failed to make necessary mortgage payments, charges, interest, and other required fees.

103. On information and belief, Security Benefit has demanded WPHP to send HBL a Tenant Direction Notice, instructing HBL to make all future rental payments directly to Security Benefit.

104. To date, WPHP has not instructed HBL to make future rental payments directly to Security Benefit, but instead continues to collect HBL's monthly rental payments itself.

105. On information and belief, Security Benefit has demanded that WPHP establish a Cash Management Account and instruct HBL to deposit all future rental payments into the Cash Management Account.

106. To date, WPHP has not instructed HBL to deposit future rental payments in a Cash Management Account, but instead continues to receive HBL's monthly rental payments in its own account.

107. On information and belief, Security Benefit has brought a foreclosure action against WPHP and is threatening to foreclose on the mortgage on the property for the Facility.

108. Following months of litigation, HBL attempted to exercise its right to purchase the Facility pursuant to Section 3.8 of the Lease on September 17, 2021.

109. The Lease provides in Section 3.8 that HBL has the option to purchase the Leased Premises from WPHP for \$65 million.

110. In Section 3.8, the Lease states that HBL's option begins on the latter of either the first day after the Commencement Date or 24 months from the closing of the Original Mortgage between WPHP and Security Benefit. The Lease states that this option runs until the last day of the fifteenth Lease Year of the Lease.

111. The Lease defines the Commencement Date as either the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility or the date that the NYSDOH determines that the WPHP's work is sufficiently constructed to accept patients.

112. The date of issuance of certification from NYSDOH and the City of White Plains for the Facility was in October 2019. The date that NYSDOH determined that WPHP's work was sufficiently constructed to accept patients was December 2, 2019, retroactive to November 14,

2019. Both of these events took place two years before HBL gave notice of its intent to exercise its right to purchase.

113. The Original Mortgage between WPHP and Security Benefit closed on August 18, 2017. The date that marks 24 months after this date, August 18, 2019, took place two years before HBL gave notice of its intent to exercise its right to purchase.

114. The only requirement for HBL to exercise its option to purchase the Facility was to give written notice to WPHP of its intent to exercise the option and to include a proposed closing date.

115. On September 17, 2021, HBL gave WPHP written notice of its intent to exercise its option to purchase the Facility and included a proposed closing date of March 31, 2022.

116. On September 24, 2021, WPHP responded to HBL's notice, denying the validity of HBL's option and refusing to perform the provision, directly challenging rights asserted by HBL.

117. HBL will be unable to exercise its right to purchase the Facility unless WPHP recognizes the validity of the purchase option provision in the Lease.

**AS AND FOR A FIRST CAUSE OF ACTION AS AGAINST WPHP,  
CCCE, CONGRESS, AND FENSTERMAN  
(DEMAND FOR ACCOUNTING)**

118. Defendants repeat and reallege each and every allegation set forth in paragraphs "1" through "117" with the same force and effect as if fully set forth herein.

119. HBL SNF, LLC, Lizer Jozefovic and Mark Neuman had a trust-based relationship with Fensterman, Nicholson, WPHP, Congress, and CCCE.

120. Fensterman, Nicholson, WPHP, Congress, and CCCE made repeated representations that they would maintain a special relationship with HBL SNF, LLC, Lizer Jozefovic and Mark Neuman, and that they would advocate and protect their interests.

121. In reasonable reliance on these representations and on this special relationship, HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman advanced monies to WPHP and Fensterman prior to commencement of the Project in order to allow the Project to proceed.

122. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman would not have advanced these funds but for their reliance on this special, trust-based relationship.

123. HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman are entitled to an accounting of the use of the funds advanced for the Project.

**AS AND FOR A SECOND CAUSE OF ACTION AS AGAINST WPHP  
(PAYMENT OF INTEREST)**

124. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “123” with the same force and effect as if fully set forth herein.

125. HBL SNF, LLC is entitled to imputed interest on the \$2,200,000 made to WPHP loan from November 2015 to present.

**AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST WPHP  
(BREACH OF CONTRACT)**

126. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “125” with the same force and effect as if fully set forth herein.

127. WPHP breached the Development Agreement and the Lease.

128. As a result of such breach, HBL SNF, LLC has been damaged by the loss of reimbursable capital expenditures and has incurred other costs due to the nonperformance of WPHP.

129. In addition, HBL SNF, LLC has lost funds and continues to lose revenues as a result of Project delays.

**AS AND FOR A FOURTH CAUSE OF ACTION  
AS AGAINST FENSTERMAN AND NICHOLSON  
(FRAUD IN THE INDUCEMENT)**

130. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “129” with the same force and effect as if fully set forth herein.

131. Third-party defendants Fensterman and Nicholson fraudulently induced HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman to enter into the Development Agreement, the Lease, and the Guaranty.

132. Fensterman and Nicholson misrepresented the Project costs.

133. Fensterman and Nicholson misrepresented their ability to secure permanent HUD financing.

134. Fensterman and Nicholson misrepresented their ability to complete the Project.

135. Fensterman misrepresented the capital contributions made to CCCE to satisfy the equity requirement for the Project.

136. Fensterman and Nicholson failed to disclose the claimant civil proceeding against Nicholson for civil theft.

137. By reason of such fraud in the inducement, Defendants Lizer Jozefovic and Mark Neuman have no obligations under the guarantees.

138. By reason of such fraud in the inducement, HBL SNF, LLC has suffered financial damages.

**AS AND FOR A FIFTH CAUSE OF ACTION  
AS AGAINST ALL THIRD-PARTY DEFENDANTS  
(BAD FAITH)**

139. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “138” with the same force and effect as if fully set forth herein.

140. As alleged throughout this third-party complaint, the plaintiff and third-party defendants acted in bad faith.

141. As a result of such bad faith dealings, HBL SNF, LLC has suffered damages in an amount not less than \$15,000,000.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(FRAUD)**

142. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “141” with the same force and effect as if fully set forth herein.

143. The misrepresentations and non-disclosures by Fensterman and Nicholson and third-party defendants constitute fraud.

144. WPHP, Fensterman and Nicholson new such statements were false.

145. WPHP, Fensterman and Nicholson made such statements to deceive HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman.

146. HBL SNF, LLC has been damaged by such fraudulent conduct.

**AS AND FOR A SIXTH CAUSE OF ACTION  
AS AGAINST WPHP AND ALL THIRD-PARTY DEFENDANTS  
(DECLARATORY JUDGMENT)**

147. Defendants repeat and reallege each and every allegation set forth in paragraphs “1” through “147” with the same force and effect as if fully set forth herein.

148. WPHP's refusal to recognize HBL's option to purchase the Facility represents a direct challenge to HBL's rights as provided for by the Lease.

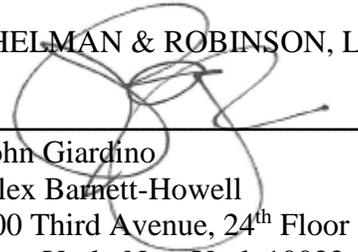
149. The denial of HBL's right to purchase represents a substantial legal instability that threatens HBL's ability to continue the successful operation of the Facility.

150. If the dispute over HBL's option to purchase is not resolved, HBL will suffer damages relating to WPHP's refusal to uphold the Lease provision.

**WHEREFORE**, Defendants and Third-Party Plaintiffs deny generally and specifically that it committed any wrongdoing and demand:

- 1) A determination that the amount of rent payable under the Lease be modified by any sums not reimbursable by the NYSDOH and offset by prior payments and accrued interest;
- 2) The Guaranty Agreements be nullified;
- 3) Monetary damages in an amount to be determined;
- 4) Declaratory judgment that HBL's exercise of the option to purchase provision is valid and binding on WPHP
- 5) Attorneys' fees, and
- 6) Such other relief as the Court deems appropriate.

Dated: New York, New York  
October 25, 2021

MICHELMAN & ROBINSON, LLP  
By:   
John Giardino  
Alex Barnett-Howell  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10022  
[jgiardino@mrlp.com](mailto:jgiardino@mrlp.com)  
[abarnett-howell@mrlp.com](mailto:abarnett-howell@mrlp.com)  
*Attorneys for Defendants*

**VERIFICATION BY ATTORNEY**

JOHN GIARDINO, being an attorney duly admitted to practice in the courts of New York, affirms the following under penalties of perjury:

I am an attorney for Defendants HBL-SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC and MARK NEUMAN, in the above entitled action and have read the foregoing Verified Answer and know the contents thereof; that the same is true upon information and belief, and that as to those matters I believe them to be true.

I further state that the grounds of my belief as to all matters in the Verified Answer are based upon the file maintained by my office and conference and telephone conferences with Defendants. This verification is made pursuant to the provisions of RPAPL 741 because Defendants was not available to sign the same at the time the Verified Answer was prepared.

Dated: New York, New York  
October 25, 2021

  
\_\_\_\_\_  
JOHN GIARDINO, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 : Index No. 60278/2020  
 Plaintiff, :  
 :  
 -against- :  
 :  
 HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, WILLIAM :  
 NICHOLSON, and METROPOLITAN :  
 COMMERCIAL BANK :  
 :  
 Third-Party Defendants  
 -----X

**AFFIDAVIT OF LIZER JOZEFOVIC IN SUPPORT OF MOTION FOR  
 LEAVE TO AMEND AND DECLARATORY JUDGMENT**

LIZER JOZEFOVIC, being duly sworn, deposes and says:

1. I respectfully submit this affidavit, based upon my personal knowledge, in support of Defendants and Third-Party Plaintiffs HBL SNF, LLC (“HBL SNF”) Lizer Jozefovic (“Jozefovic”), and Mark Neuman (“Neuman”) (collectively, “HBL” or “Defendants”) Motion for Leave to Amend and Declaratory Judgment.

2. Beginning in 2009, I began combining nursing home beds and convinced the New York State Department of Health (“NYSDOH”) to approve the construction of a 161-bed nursing home (the “Facility”).

3. Plaintiff White Plains Healthcare Properties I, LLC and Third-Party Defendants CCC Equities, LLC (“CCCE”), Project Equity Consulting, The Congress Companies (“Congress”), Howard Fensterman (“Fensterman”), and William Nicholson (collectively “White Plains”), claimed they could provide the necessary financing and construction management for the Facility, after which they would serve as HBL’s landlord.

4. On or about July 2017, I entered into an amended lease (the “Amended Lease”) with White Plains.

5. A true and correct copy of the Amended Lease is attached as Exhibit A.

6. The terms of the Amended Lease were substantially different from what I had agreed to in the original lease, as I was required to pay an additional \$146,000 per month, or \$1,750,000 per year, in rent.

7. Given the high cost of rent, White Plains agreed to give HBL the right to immediately purchase the Facility.

8. Pursuant to Section 3.8 of the Amended Lease (the “Put”), HBL has the right to purchase the Facility upon the later of (1) “the first day after the Commencement Date;” or (2) “24 months from the date of the closing of that Original Mortgage.”

9. Pursuant to Section 3.1(a) of the Amended Lease, the Commence Date occurs upon the later of (1) “the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility;” or (2) “the date that New York State Department of Health . . . determines that the Landlord's Work is sufficiently complete as constructed . . . to accept patients.”

10. On December 2, 2019, NYSDOH notified White Plains that “the facility was found to be in substantial compliance” and was authorized to begin receiving patients.

11. Therefore, pursuant to Section 3.1 of the Amended Lease and the NYSDOH Authorization Notice, the Commencement Date occurred on December 2, 2019.

12. On August 18, 2017, White Plains and Security Benefit Life Insurance Company (“Security Benefit”) entered into a construction loan agreement (the “Loan Agreement”).

13. Therefore, pursuant to Section 3.8 of the Amended Lease, HBL had the right to exercise the Put on (1) December 3, 2019; *i.e.*, one day after the Commencement Date; or (2) August 18, 2019; *i.e.*, 24 months from the date of the closing of the mortgage with Security Benefit.

14. Section 3.8 of the Amended Lease does not contain any other conditions precedent regarding HBL’s right to exercise the Put.

15. On September 17, 2021, HBL notified White Plains that it was exercising the Put and proposed a closing date of March 31, 2022 (the “September 17 Letter”).

16. A true and correct copy of the September 17 Letter is attached as Exhibit B.

17. On September 24, 2021, White Plains responded by claiming that HBL’s decision to exercise the Put was “rejected in its entirety” (the “September 24 Letter”).

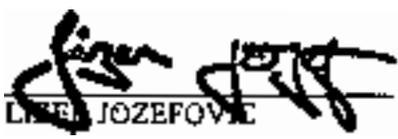
18. A true and correct copy of the September 24 Letter is attached as Exhibit C.

19. White Plains has refused, as is continuing to refuse, to honor the Put.

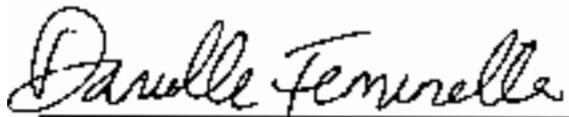
20. If White Plains refuses to honor the Put, HBL will be deprived of its contractual rights as HBL will be unable to exercise Section 3.8 of the Amended Lease and purchase the Facility.

Dated: New York, New York

October 25, 2021

By:   
LIRE JOZEFOWE

Sworn to before me this  
25 day of October, 2021

  
\_\_\_\_\_  
Notary Public

Danielle Femarella  
Notary Public, State of New York  
No. 01CH5084689  
Qualified in Westchester County  
Commission Expires 9/8/2023

**HBL-SNF, LLC**  
**1280 Albany Post Road**  
**Croton-on-Hudson, NY 10520**

September 17, 2021

White Plains Healthcare Properties I, LLC  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960

**Re: Notice of Exercise of Option to Purchase**  
**White Plains Healthcare Properties I, LLC ("Landlord") and**  
**HBL-SNF, LLC ("Tenant")**  
**116-120 Church Street, White Plains, New York (the "Leased Premises")**

Gentlemen:

Please take notice that pursuant to section 3.8 of the Amended and Restated Operating Lease and in accordance with section 13.1, Tenant hereby notifies you of its exercise of its option to purchase the Leased Premises for the sum of \$65,000,000.

Tenant hereby proposes March 31, 2022 as the date of closing on the property.

Very truly yours,

DocuSigned by:  
  
HBL-SNF, LLC

cc: Gerald J. Billow, Esq.  
Posternak Blankstein & Lund LLP  
800 Boylston Street, Suite 3200  
Boston, MA 02199

Howard Fensterman, Esq.  
Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, NY 11042

Alfred E. Donnellan, Esq.  
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, NY 10601

**WHITE PLAINS HEALTH CARE PROPERTIES I, LLC**

C/O THE CONGRESS COMPANIES  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Phone: 978-535-6700  
Fax: 978-535-6701  
[inquire@congressconstruction.com](mailto:inquire@congressconstruction.com)

September 24, 2021

BY UPS Overnight Delivery, signature required  
BY EMAIL: [lizerj@watersedgeusa.com](mailto:lizerj@watersedgeusa.com)

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**RE: 116-120 Church Street, White Plains, New York ("the Leased Premises")  
TENANT LETTER OF SEPTEMBER 17, 2021.**

Lizer:

We are in receipt of your letter dated September 17, 2021, which attempts to exercise a non-existent "option" to purchase the Leased Premises. It is rejected in its entirety.

**Rejection of the September 17, 2021 letter:**

1. The Lease was terminated due to the Tenant's defaults thereunder on January 13, 2020 at 5:00 PM. We refer you to the Landlord's counsel, Alfred Donnellan's letter of January 7, 2020, attached herewith. The Tenant has no "option" rights under the Lease, since the Lease has long been terminated.
2. As set forth in the LOI dated November 20, 2019, para 6, g) Right of First Refusal and Option to Purchase, the Tenant's right of first refusal and option to purchase under the Lease were clearly suspended, pending payment in full of certain payments under the Lease, including the Security Deposits required under the Lease (as amended by the LOI), the working capital required by Section 7.7 of the Lease and *"the Tenant being in full compliance with the Lease"*. As you are aware, HBL never paid either the original lease Security Deposits nor the Security Deposits set forth in the LOI and never complied with the working capital requirements under Section 7.7 of the Lease. The Tenant is not currently, and was never, "in full compliance with the Lease".

**Tenant's duty to Indemnify the Landlord:**

1. In addition, as a result of HBL's blatant and ongoing Defaults under the Lease, (including the professional fees required to respond to this frivolous maneuver) continue to result in significant costs to the Landlord, which the Tenant is responsible to pay under Section 9.1, Tenant's indemnification, of the Lease. HBL's actions to date suggest that it is either unaware of, or in blatant disregard of this provision of the Lease. Be aware that these costs are inarguably the responsibility of the Tenant under the Lease, notwithstanding the Termination of the Lease, and must be paid forthwith.

**Amounts due to the Landlord by the Tenant:**

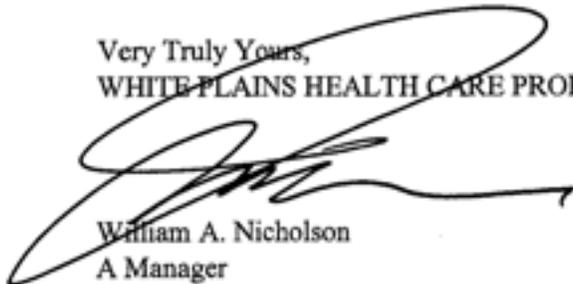
1. Due HBL's ongoing defaults, as of July 31, 2021, the Tenant is obligated under the Lease to pay to White Plains Health Care Properties the total sum of **\$111,420,213.50**, including late and default

amounts due thereunder, as set forth in the attached accounting, which was included in the Landlord's Motion for Summary Judgment.

(i) Rent and Holdover Rent:	\$20,574,253.03
(ii) Real estate taxes:	\$2,621.94
(iii) Municipal and utility deposits:	\$35,921.44
(iv) Interest rate damages for failure to close by April 1, 2020 as required by the letter of intent,	\$3,181,612.87
(v) Costs and professional fees (including certain WIP):	\$1,524,000.00
(vi) Lender default and late charges,	\$3,732,034.22
(vii) Accelerated rent	\$82,369,770.00

2. There can be no credible argument to even remotely suggest that the Tenant is not in **Default** under the Lease. **Accordingly, the Landlord hereby demands immediate payment of \$111,420,213.50, (as of the above 7/30/21 accounting) plus further ongoing amounts as set forth under the Lease) from the Tenant HBL, and from its Guarantors Lizer Josefovich and Mark Neuman.**
3. The Landlord reserves all other rights and remedies at law or in equity as against the Tenant, and against all Guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.
4. Notice is hereby given that the Landlord has incurred significant losses and expects to continue to incur significant losses in connection with the Tenant's Defaults as defined the Lease and the Guarantees. Pursuant to your obligations under the Lease and Guaranty, you (HBL and its Guarantors) are hereby placed on notice that the obligations thereunder are now due, owing and continue to accrue. As a result of these obligations, you shall not transfer any assets or otherwise attempt to conceal any assets from White Plains Health Care Properties I LLC. White Plains Health Care Properties I LLC expressly reserves all rights with respect to this matter.

Very Truly Yours,  
WHITE PLAINS HEALTH CARE PROPERTIES I, LLC



William A. Nicholson  
A Manager

CC:

By Email (lizerj@watersedgeusa.com) & BY UPS Overnight Delivery, signature required  
Lizer Josefovich, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

By Email ([jgiardino@mrlp.com](mailto:jgiardino@mrlp.com)) & BY UPS Overnight Delivery, signature required

John Giardino, Esq.  
Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022

By Email ([markn@epicmgt.com](mailto:markn@epicmgt.com)) & BY UPS Overnight Delivery, signature required

Mark Neuman, Guarantor, Individually  
22 Lyncrest Drive  
Monsey, NY 10952

By UPS Overnight Delivery, signature required

Gerald Neuman, Individually  
c/o HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

By Email:

Robert Spolzino, Esq.  
Howard Fensterman, Esq.  
Alfred E. Donnellan, Esq.  
Edward Tabor

# Exhibit 24

WHITE PLAINS HEALTH CARE PROPERTIES I, LLC - HBL-SNF LLC					
AMOUNTS PAYABLE	Reference	Amount Due	Late Charges Per Lease Para 3.2 (c): 5.00%	Overdue Rate Per Lease Sect. 9.1 (b): Prime Rate + 5.00%	TOTALS
<b>07/15/21</b>					
<b>AMOUNTS DUE UNDER LEASE &amp; LOI</b>					
<i>Note: calculated through 7/31/2021</i>					
<i>Note: Excludes Present Value of Accelerated Lease</i>					
<b>Rent:</b>					
Rent	Balance unpd at commencement	\$ 10,839.79	\$ 202,980.59	\$ 17,803.55	\$ 231,623.93
Holdover Rent	Feb 2020- July 2021	\$ 18,219,474.00	\$ 910,973.70	\$ 1,212,181.40	\$ 20,342,629.10
<b>Subtotal Rent</b>		<b>\$ 18,230,313.79</b>	<b>\$ 1,113,954.29</b>	<b>\$ 1,229,984.96</b>	<b>\$ 20,574,253.04</b>
<b>RE Taxes</b>					
RE Taxes for the period 1/1/20 - 6/30/20	Need proof of Payments	\$ -	\$ -	\$ 2,621.94	\$ 2,621.94
<b>Subtotal RE Taxes</b>		<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,621.94</b>	<b>\$ 2,621.94</b>
<b>Deposits, Other</b>					
Utility Deposits	Lease Section 4.1	\$ 19,181.10		\$ 3,560.33	\$ 22,741.43
Municipal Deposits	Lease Section 5.2	\$ 6,700.00		\$ 1,243.63	\$ 7,943.63
2020 Fire Inspection Fee	Lease Sect. 4.1	\$ 1,443.75			
ConEdison Electric Invoice	Lease Sect. 4.1	\$ 2,972.84		\$ 551.81	\$ 3,524.65
<b>Subtotal Deposits, Other</b>		<b>\$ 30,297.69</b>	<b>\$ -</b>	<b>\$ 5,623.75</b>	<b>\$ 35,921.44</b>
<b>Interest Rate Damages for Failure to Close by 04/30/20 per LOI</b>					
Interest Rate Damages First Mortgage Loan	Lease Article IX Indemnification	\$ 1,916,160.82	\$ -		\$ 1,916,160.82
Interest Rate Damages Mezz Loan	Lease Article IX Indemnification	\$ 1,265,452.05	\$ -	\$ -	\$ 1,265,452.05
<b>Subtotal Interest Rate Damages</b>		<b>\$ 3,181,612.87</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,181,612.87</b>
<b>Landlord Professional Fees &amp; Transaction Costs (Est)</b>					
Landlord Legal, Professional, Transactional	Lease Article IX Indemnification	\$ 1,524,000.00			\$ 1,524,000.00
<b>Subtotal Professional &amp; Transactional</b>		<b>\$ 1,524,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,524,000.00</b>
<b>Lender Default and Late Charges</b>					
Lender Legal and Professional	Lease Article IX Indemnification	\$ 26,727.58	\$ -	\$ -	\$ 26,727.58
Lender Default Interest - SBLI	Lease Article IX Indemnification	\$ 2,927,606.59	\$ -	\$ -	\$ 2,927,606.59
Lender Late Charges - SBLI	Lease Article IX Indemnification	\$ 231,124.71			\$ 231,124.71
Lender Late Charges - BA	Lease Article IX Indemnification	\$ 451,575.34			\$ 451,575.34
Lender Extension Fees - BA (2 Ext @ .050%)	Lease Article IX Indemnification	\$ 95,000.00			\$ 95,000.00
<b>Subtotal Lender Legal, Default and Late Charges</b>		<b>\$ 3,732,034.22</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,732,034.22</b>
<b>TOTALS</b>		<b>\$ 26,698,258.57</b>	<b>\$ 1,113,954.29</b>	<b>\$ 1,238,230.65</b>	<b>\$ 29,050,443.51</b>

HBL SNF Default Costs due to Landlord				LATE CHARGE PER LEASE PARA 3.2 c		Overdue Rate Section Per Lease 3.1 (b)		Indemnification Lease Article 9	TOTAL Charges	Amts Due
Amount Due	Due Date	Amount Paid	Date Paid	Days Late	Days > 5 Late	5% Late Charge Per Lease 3.2 (c)	Prime Rate + Overdue Charges			
Rent							5.00%			
\$ 10,839.79	9/30/2019		7/31/2021	670	665	\$ 541.99	10.00%	\$ 1,989.77	\$ 2,531.76	
\$ 506,096.50	10/1/2019	\$ 506,096.50	10/30/2019	29	24	\$ 25,304.83	10.00%	\$ 4,021.04	\$ 29,325.87	
\$ 506,096.50	11/1/2019	\$ 506,096.50	11/18/2019	17	12	\$ 25,304.83	9.75%	\$ 2,298.23	\$ 27,603.06	
\$ 506,096.50	12/1/2019	\$ 506,096.50	12/3/2019	2	-3	\$ -	9.75%	\$ -	\$ -	
\$ 506,096.50	1/1/2020	\$ 506,096.50	1/2/2020	1	-4	\$ -	9.75%	\$ -	\$ -	
\$ 506,096.50	2/1/2020	\$ 506,096.50	2/1/2020	0	-5	\$ -	9.75%	\$ -	\$ -	
\$ 506,096.50	3/1/2020	\$ 506,096.50	3/2/2020	1	-4	\$ -	8.78%	\$ -	\$ -	
\$ 506,096.50	4/1/2020	\$ 506,096.50	5/6/2020	35	30	\$ 25,304.83	8.25%	\$ 4,003.71	\$ 29,308.53	
\$ 506,096.50	5/1/2020	\$ 506,096.50	5/26/2020	25	20	\$ 25,304.83	8.25%	\$ 2,859.79	\$ 28,164.62	
\$ 506,096.50	6/1/2020	\$ 506,096.50	6/2/2020	1	-4	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	7/1/2020	\$ 506,096.50	7/1/2020	0	-5	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	8/1/2020	\$ 506,096.50	8/7/2020	6	1	\$ 25,304.83	8.25%	\$ 686.35	\$ 25,991.18	
\$ 506,096.50	9/1/2020	\$ 506,096.50	9/4/2020	3	-2	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	10/1/2020	\$ 506,096.50	10/2/2020	1	-4	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	11/1/2020	\$ 506,096.50	11/2/2020	1	-4	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	12/1/2020	\$ 506,096.50	12/2/2020	1	-4	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	1/1/2021	\$ 506,096.50	1/4/2021	3	-2	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	2/1/2021	\$ 506,096.50	2/4/2021	3	-2	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	3/1/2021	\$ 506,096.50	3/2/2021	1	-4	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	4/1/2021	\$ 506,096.50	4/1/2021	0	-5	\$ -	8.25%	\$ -	\$ -	
\$ 506,096.50	5/1/2021	\$ 506,096.50	5/6/2021	5	0	\$ 25,304.83	8.25%	\$ 571.96	\$ 25,876.79	
\$ 506,096.50	6/1/2021	\$ 506,096.50	6/7/2021	6	1	\$ 25,304.83	8.25%	\$ 686.35	\$ 25,991.18	
\$ 506,096.50	7/1/2021	\$ 506,096.50	7/7/2021	6	1	\$ 25,304.83	8.25%	\$ 686.35	\$ 25,991.18	
\$ 10,839.79						\$ 262,940.59		\$ 17,803.55	\$ 228,744.14	\$ 10,839.79
<b>SUBTOTAL RENT</b>		\$ 11,134,123.00								
Holdover Rent (300%, less the base amount above, 200% calculated in this section) - "Paid" date is for calculation purposes only assuming amounts through 07/01/21										
\$ -	9/30/2019	\$ -	9/30/2019	0	-5	\$ -	10.00%	\$ -	\$ -	
\$ -	10/1/2019	\$ -	10/1/2019	0	-5	\$ -	10.00%	\$ -	\$ -	
\$ -	11/1/2019	\$ -	11/1/2019	0	-5	\$ -	9.75%	\$ -	\$ -	
\$ -	12/1/2019	\$ -	12/1/2019	0	-5	\$ -	9.75%	\$ -	\$ -	
\$ -	1/1/2020	\$ -	6/1/2020	152	147	\$ -	9.75%	\$ -	\$ -	
\$ 1,012,193.00	2/1/2020	\$ -	7/30/2021	545	540	\$ 50,609.65	9.75%	\$ 147,357.28	\$ 197,966.93	
\$ 1,012,193.00	3/1/2020	\$ -	7/30/2021	516	511	\$ 50,609.65	8.78%	\$ 125,668.48	\$ 176,278.13	
\$ 1,012,193.00	4/1/2020	\$ -	7/30/2021	485	480	\$ 50,609.65	8.25%	\$ 110,959.92	\$ 161,569.57	
\$ 1,012,193.00	5/1/2020	\$ -	7/30/2021	455	450	\$ 50,609.65	8.25%	\$ 104,096.42	\$ 154,706.07	
\$ 1,012,193.00	6/1/2020	\$ -	7/30/2021	424	419	\$ 50,609.65	8.25%	\$ 97,004.14	\$ 147,613.79	
\$ 1,012,193.00	7/1/2020	\$ -	7/30/2021	394	389	\$ 50,609.65	8.25%	\$ 90,140.64	\$ 140,750.29	
\$ 1,012,193.00	8/1/2020	\$ -	7/30/2021	363	358	\$ 50,609.65	8.25%	\$ 83,048.36	\$ 133,658.01	
\$ 1,012,193.00	9/1/2020	\$ -	7/30/2021	332	327	\$ 50,609.65	8.25%	\$ 75,956.07	\$ 126,565.72	
\$ 1,012,193.00	10/1/2020	\$ -	7/30/2021	302	297	\$ 50,609.65	8.25%	\$ 69,092.57	\$ 119,702.22	
\$ 1,012,193.00	11/1/2020	\$ -	7/30/2021	271	266	\$ 50,609.65	8.25%	\$ 62,000.29	\$ 112,609.94	
\$ 1,012,193.00	12/1/2020	\$ -	7/30/2021	241	236	\$ 50,609.65	8.25%	\$ 55,136.79	\$ 105,746.44	
\$ 1,012,193.00	1/1/2021	\$ -	7/30/2021	210	205	\$ 50,609.65	8.25%	\$ 48,044.50	\$ 98,654.15	
\$ 1,012,193.00	2/1/2021	\$ -	7/30/2021	179	174	\$ 50,609.65	8.25%	\$ 40,952.22	\$ 91,561.87	
\$ 1,012,193.00	3/1/2021	\$ -	7/30/2021	151	146	\$ 50,609.65	8.25%	\$ 34,546.29	\$ 85,155.94	
\$ 1,012,193.00	4/1/2021	\$ -	7/30/2021	120	115	\$ 50,609.65	8.25%	\$ 27,454.00	\$ 78,063.65	
\$ 1,012,193.00	5/1/2021	\$ -	7/30/2021	90	85	\$ 50,609.65	8.25%	\$ 20,590.50	\$ 71,200.15	
\$ 1,012,193.00	6/1/2021	\$ -	7/30/2021	59	54	\$ 50,609.65	8.25%	\$ 13,498.22	\$ 64,107.87	
\$ 1,012,193.00	7/1/2021	\$ -	7/30/2021	29	24	\$ 50,609.65	8.25%	\$ 6,634.72	\$ 57,244.37	
\$ -						\$ 910,973.70		\$ 1,212,181.40	\$ 2,123,155.10	\$ 18,219,474.00
<b>SUBTOTAL ADDITIONAL RENT</b>										
<b>RE Taxes</b>										
\$ -	9/30/2019		9/30/2019	0	-5	\$ -	10.00%	\$ -	\$ -	





		LATE CHARGE PER LEASE PARA 3.2 c	Overdue Rate Section Per Lease 9.1 (b)	Indemnification Lease Article 9	TOTAL Charges	Amts Due			
<b>Indemnification - Professional Fees Professional Fees</b>									
AFF	Through July 26, 2021			\$ 753,305.12					
	To Complete			\$ 105,000.00					
	Total			\$ 858,305.12		\$ 858,305.12			
DeBello	Through June 20, 2021			\$ 280,048.61					
	To Complete			\$ 75,000.00					
	Total			\$ 355,048.61		\$ 355,048.61			
Congress	Through May 2020 incl WIP			\$ 72,375.00					
	To Complete			\$ 225,000.00					
	Total			\$ 297,375.00		\$ 297,375.00			
Abatta	Through May 2020			\$ 5,087.24					
	To Complete			\$ -					
	Total			\$ 5,087.24		\$ 5,087.24			
Povol	Through May 2020			\$ 2,575.00					
	To Complete			\$ 5,000.00					
	Total			\$ 7,575.00		\$ 7,575.00			
To Complete				\$ 150,000.00		\$ 609.03			
<b>TOTAL TRANSACTIONAL (EST)</b>						<b>\$ 1,524,000.00</b>			
<b>Lender Charges</b>									
<b>SBLJ Legal</b>									
	James Wine, BA Counsel, DLA Piper			\$ 26,727.58					
	To Complete			\$ -					
	Total Lender Legal			\$ 26,727.58		\$ 26,727.58			
<b>SBLJ Default Interest</b>									
	Through 06/01/21			\$ 2,596,078.61					
	June 2021			\$ 160,416.67					
	July 2021			\$ 171,111.11					
	TOT			\$ 2,927,606.39		\$ 2,927,606.39			
<b>SBLJ Late Payments</b>									
	Through 06/01/21 Statement			\$ 192,947.61					
	June 2021 Est			\$ 18,779.11					
	July 2021 Est			\$ 19,397.79					
	TOT			\$ 231,124.71		\$ 231,124.71			
<b>BA Default Interest</b>									
	SBLJ Default Rate (Maturity)	8/17/2020	7/30/2021	347	\$ 9,500,000.00	5.00%	\$ 451,575.34		
	SBLJ Extension Fees	8/17/2020			\$ 9,500,000.00	0.50%	\$ 47,500.00		
		8/17/2021			\$ 9,500,000.00	0.50%	\$ 47,500.00		
	TOT				\$ 19,000,000.00		\$ 546,575.34	\$ 546,575.34	
<b>SUBTOTAL Lender</b>						<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,732,034.22</b>	<b>\$ 3,732,034.22</b>

AMOUNTS DUE

	<u>Per Affidavitt</u>	<u>Per Schedules</u>	<u>Variance</u>
Holdover rent and rent		\$ 18,219,474.00 2,123,155.10 10,839.79 220,784.14	
	\$ 20,574,253.03	20,574,253.03	-
Real estate taxes	2,621.94	2,621.94	-
Deposits and Late Charges	35,921.44	35,921.44	-
Default interest	3,181,612.87	3,181,612.87	-
Professional fees	1,524,000.00	1,524,000.00	-
Lender defaulta and late charges	3,732,034.22	3,732,034.22	-
Accelerated rent	82,369,770.00	82,369,770.00	-
	<u>\$ 111,420,213.50</u>	<u>\$ 111,420,213.50</u>	<u>T</u>

*the Commercial Division*  
At ~~the Court~~ of the Supreme Court of the State of New York, held in and for the County of Westchester, at the Courthouse located at 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the 29<sup>th</sup> day of ~~August~~ October, 2021.

PRESENT:

Hon. Gretchen Walsh  
Justice Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,  
  
Plaintiff,

Index No. 60278/2020

-against-

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC, and MARK NEUMAN,  
  
Defendants and Third-Party Plaintiffs,

-against-

CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK  
  
Third-Party Defendants  
-----X

**ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

UPON the annexed First Amended Verified Amended Answer with Affirmative Defenses, Counterclaims, and Third-Party Complaint dated May 21, 2021, the Complaint dated October 22, 2020 from the consolidated action *Lizer Jozefovic v. White Plains Healthcare Properties I, LLC et*

al., No. 655549/2020, the Affirmation of Lizer Jozefovic dated October 25, 2021, the Memorandum of Law dated October 25, 2021, and upon each of the exhibits and all of the papers and proceedings heretofore had herein, and sufficient cause being alleged therefore:

LET THE PLAINTIFF WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, and THIRD-PARTY DEFENDANTS CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK, show cause before this Court located at <sup>The Commercial Division</sup> ~~145 West~~

Room \_\_\_\_\_, 111 Dr. Martin Luther King Jr. Blvd, White Plains, NY 10601, on the 12<sup>th</sup> day of ~~October~~ <sup>November</sup> 2021 10 a.m. ~~pm~~ <sup>(VIATEAMS)</sup>, or as soon thereafter as counsel may be heard:

WHY a preliminary order pursuant to Article 63 of the Civil Practice Law and Rules should not be entered, pending determination of this action: (1) Invalidating and nullifying the auction held by Plaintiff and Third-Party Defendants on July 1, 2021, of Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC; (2) Enjoining Plaintiff and Third-Party Defendants from taking any further actions to complete the sale of Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC during the pendency of this action; and (3) Granting such other relief as the Court deems just and proper.

IT BEING alleged in the Amended Answer and Third-Party Complaint, the Complaint, and the Affirmations that temporary relief is necessary to prevent irreparable harm to Defendants and Third-Party Plaintiffs pending the hearing and determination of the motion for a preliminary injunction, and it appearing that Defendants and Third-Party Plaintiffs are entitled to a preliminary injunction pursuant to CPLR § 6301 to enjoin Plaintiff and Third-Party Defendants as stated above; it is

ORDERED, that pending the hearing and determination of Defendants and Third-Party Plaintiffs' motion for a preliminary injunction, ~~(1) The auction held by Plaintiff and Third-Party Defendants on July 1, 2021, was commercially unreasonable and is therefore invalidated; and (2) Plaintiff and Third-Party Defendants are temporarily enjoined and restrained from taking any further actions to transfer, assign, convey or sell Lizer Jozefovic's membership interest in Waterview Acquisition I, LLC.~~

AND IT IS FURTHER ORDERED that Plaintiff and Third-Party Defendants' response to this motion, if any, shall be ~~hand delivered or emailed to Defendants and Third-Party Plaintiffs' counsel and filed with the Court on or before~~ <sup>serv'd on</sup> ~~November 11~~ <sup>via NYSCEF</sup> ~~November 11~~ <sup>4 p.m. or</sup>, 2021;

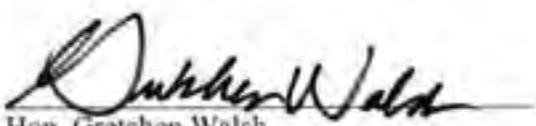
~~AND IT IS FURTHER ORDERED that Defendants and Third-Party Plaintiffs reply, if any, should be delivered or emailed to Plaintiff and Third-Party Defendants' counsel and filed with the Court on or before \_\_\_\_\_, 2021;~~

~~SUFFICIENT CAUSE BEING ALLEGED THEREFORE, IT IS ORDERED THAT service of this order and the papers upon which it is granted be deemed due, timely and sufficient if made as follows:~~

- ~~a) By overnight mail service upon Plaintiff White Plains Healthcare Properties I, LLC, on or before the \_\_\_\_ day of \_\_\_\_\_, 2021, or by electronic service of said papers;~~
- ~~b) By overnight mail service upon Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson on or before the \_\_\_\_ day of \_\_\_\_\_, 2021, or by electronic service of said papers; and~~

~~c) By overnight mail service upon Third-Party Defendant Metropolitan Commercial Bank, on or before the \_\_\_\_\_ day of \_\_\_\_\_, 2021, or by electronic service of said papers.~~

ENTER:



Hon. Gretchen Walsh  
JUSTICE OF THE SUPREME COURT

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**60278/2020 - Westchester County Supreme Court**

Short Caption: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al**  
 Case Type: **Commercial Division**  
 Case Status: **Active**  
 eFiling Status: **Full Participation Recorded**  
 Assigned Judge: **Gretchen Walsh**

[E-mail Participating Parties](#)

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226	<a href="#">EXHIBIT(S)</a> - 41 (Motion #6) <i>HBL Medicaid Rates Dated 11-14-2019</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
227	<a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION</a> (Motion #6) <i>Affidavit of Howard Fensterman</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
228	<a href="#">EXHIBIT(S)</a> - 34 (Motion #6) <i>Fed Ex Receipt</i>	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
229	<a href="#">STATEMENT OF MATERIAL FACTS</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
230	<a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #6)	<a href="#">Donnellan, A.</a> Filed: 08/19/2021 Received: 08/19/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
231	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Giardino, J.</a> Filed: 09/07/2021 Received: 09/07/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>
232	<a href="#">LETTER / CORRESPONDENCE TO JUDGE</a>	<a href="#">Donnellan, A.</a> Filed: 10/08/2021	<b>Processed</b> <a href="#">Confirmation Notice</a>

Received: 09/08/2021

- 233 [LETTER / CORRESPONDENCE TO JUDGE](#) [Giardino, J.](#) **Processed**  
 Filed: 09/17/2021 [Confirmation Notice](#)  
 Received: 09/17/2021
- 234 [LETTER / CORRESPONDENCE TO JUDGE](#) (Motion #6) [Donnellan, A.](#) **Processed**  
 Filed: 09/24/2021 [Confirmation Notice](#)  
 Received: 09/24/2021
- 235 [LETTER / CORRESPONDENCE TO JUDGE](#) (Motion #6) [Giardino, J.](#) **Processed**  
 Filed: 09/24/2021 [Confirmation Notice](#)  
 Received: 09/24/2021
- 236 [AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION AND IN SUPPORT OF CROSS-MOTION](#) (Motion #6) [Giardino, J.](#) **Processed**  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 237 [EXHIBIT\(S\)](#) - A (Motion #6) [Giardino, J.](#) **Processed**  
*Development Agreement*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 238 [EXHIBIT\(S\)](#) - B (Motion #6) [Giardino, J.](#) **Processed**  
*Term Sheet*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 239 [EXHIBIT\(S\)](#) - C (Motion #6) [Giardino, J.](#) **Processed**  
*Amended Lease*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
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- 240 [EXHIBIT\(S\)](#) - D (Motion #6) [Giardino, J.](#) **Processed**  
*Collateral Assignment*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
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- 241 [EXHIBIT\(S\)](#) - E (Motion #6) [Giardino, J.](#) **Processed**  
*August 2017 Emails*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 242 [EXHIBIT\(S\)](#) - F (Motion #6) [Giardino, J.](#) **Processed**  
*Loan Agreement*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 243 [EXHIBIT\(S\)](#) - G (Motion #6) [Giardino, J.](#) **Processed**  
*Letter of Intent*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 244 [EXHIBIT\(S\)](#) - H (Motion #6) [Giardino, J.](#) **Processed**  
*Notice of Default*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 245 [EXHIBIT\(S\)](#) - I (Motion #6) [Giardino, J.](#) **Processed**  
*Security Benefit Letters*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
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- 246 [EXHIBIT\(S\)](#) - J (Motion #6) [Giardino, J.](#) **Processed**  
*Foreclosure Action*  
 Filed: 10/25/2021 [Confirmation Notice](#)  
 Received: 10/25/2021
- 247 [EXHIBIT\(S\)](#) - K (Motion #6) [Giardino, J.](#) **Processed**

*Kent Payments*

Filed: 10/25/2021  
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| 248 | <a href="#">EXHIBIT(S)</a> - L (Motion #6)<br><i>Tax Records</i>   | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 249 | <a href="#">EXHIBIT(S)</a> - M (Motion #6)<br><i>Utility Records</i>   | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 250 | <a href="#">EXHIBIT(S)</a> - N (Motion #6)<br><i>Certificates of Insurance</i>                                   | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 251 | <a href="#">EXHIBIT(S)</a> - O (Motion #6)<br><i>Provider agreements and Rate Sheets</i>                         | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 252 | <a href="#">EXHIBIT(S)</a> - P (Motion #6)<br><i>First Amended Document Requests to Plaintiff</i>                | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 253 | <a href="#">EXHIBIT(S)</a> - Q (Motion #6)<br><i>Amended Answer</i>  | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 254 | <a href="#">RESPONSE TO STATEMENT OF MATERIAL FACTS</a><br>(Motion #6)   | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 255 | <a href="#">MEMORANDUM IN OPPOSITION TO MOTION AND</a><br><a href="#">IN SUPPORT OF CROSS-MOTION</a> (Motion #6) | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 256 | <a href="#">ORDER TO SHOW CAUSE ( PROPOSED )</a> (Motion #7)   | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a><br><a href="#">Payment Receipt</a> |
| 257 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT OF</a><br><a href="#">PROPOSED OSC/EXPARTE APP</a> (Motion #7)   | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 258 | <a href="#">EXHIBIT(S)</a> - A (Motion #7)<br><i>Notification of Disposition of Collateral</i>                   | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 259 | <a href="#">EXHIBIT(S)</a> - B (Motion #7)<br><i>Letter re auction</i>   | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 260 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #7)   | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 261 | <a href="#">ANSWER (AMENDED)</a>   | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a>                                    |
| 262 | <a href="#">NOTICE OF MOTION</a> (Motion #8) *Corrected*   | <a href="#">Giardino, J.</a>  | <b>Processed</b>   |

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| 263 | <a href="#">EXHIBIT(S)</a> - A (Motion #8)<br><i>Amended Laase</i>  | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 264 | <a href="#">EXHIBIT(S)</a> - B (Motion #8)<br><i>Notice of Exercise of Option Letter</i>  | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 265 | <a href="#">EXHIBIT(S)</a> - C (Motion #8)<br><i>Response Letter</i>  | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 266 | <a href="#">MEMORANDUM OF LAW IN SUPPORT</a> (Motion #8)  | <a href="#">Giardino, J.</a><br>Filed: 10/25/2021<br>Received: 10/25/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 267 | <a href="#">EXHIBIT(S)</a> - A (Motion #8)<br><i>PROPOSED Second Amended Verified Answer and Third-Party Complaint</i>  | <a href="#">Giardino, J.</a><br>Filed: 10/26/2021<br>Received: 10/26/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 268 | <a href="#">AFFIDAVIT OR AFFIRMATION IN SUPPORT</a> (Motion #8)<br><i>AFFIDAVIT OF LIZER JOZEFOVIC IN SUPPORT OF MOTION FOR LEAVE TO AMEND AND DECLARATORY JUDGMENT</i> | <a href="#">Giardino, J.</a><br>Filed: 10/26/2021<br>Received: 10/26/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 269 | <a href="#">EXHIBIT(S)</a> - A (Motion #8)<br><i>Amended Lease</i>  | <a href="#">Giardino, J.</a><br>Filed: 10/26/2021<br>Received: 10/26/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 270 | <a href="#">EXHIBIT(S)</a> - B (Motion #8)<br><i>Notice of Exercise of Option Letter</i>  | <a href="#">Giardino, J.</a><br>Filed: 10/26/2021<br>Received: 10/26/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 271 | <a href="#">EXHIBIT(S)</a> - C (Motion #8)<br><i>Response Letter</i>  | <a href="#">Giardino, J.</a><br>Filed: 10/26/2021<br>Received: 10/26/2021 | <b>Processed</b><br><a href="#">Confirmation Notice</a> |
| 272 | <a href="#">ORDER TO SHOW CAUSE</a> (Motion #7)   | Court User<br>Filed: 10/29/2021<br>Received: 10/29/2021                   | <b>Processed</b><br><a href="#">Confirmation Notice</a> |



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September 7, 2021

**VIA NYSCEF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King, Jr., Blvd.  
White Plains, New York 10601

**Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.**  
**Index No. 60278/2020**

Dear Judge Walsh:

As you know, we represent the HBL parties in this dispute. We will appear before Your Honor for the scheduled settlement conference on **Thursday, September 9<sup>th</sup> at 9:30 a.m.** with our clients Mr. Josefovic, Mr. Neuman, and other executives of the company.

In anticipation of the settlement conference, I wanted to provide a report on our efforts to settle this matter in the hopes that my update will facilitate our discussions. I am enclosing a copy of the settlement proposal we tendered to plaintiff's counsel on July 23<sup>rd</sup> which addresses plaintiff's claims as follows:

1. Unpaid Real Estate Taxes. We have provided proof of payment for all property taxes through the current date, and there are no outstanding taxes due. White Plains has accepted this position.
2. Reimbursement of Security Deposits. We have offered to reimburse White Plains for any unreturned security deposits. White Plains has responded by stating that the security deposits are a minor issue which are immaterial to the resolution of this dispute.
3. The \$1,600,000 Rent Security Account. We have offered to provide a letter of credit in the amount of \$1.6M or, in the alternative, a cash account separate and apart from the funds in the JP Morgan account, to be escrowed as rent security. We understand that plaintiff will accept the \$1.6M rent escrow account.
4. The \$3.7M Security Letter of Credit. In November 2019, HBL made a \$2.2M payment to White Plains. As this payment remains unallocated, we have proposed that the \$2.2M be credited to this undertaking, as well as HBL's other unallocated capital contributions. White Plains has not responded to this proposal.

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
September 7, 2021  
Page 2

5. Resolution of the Waterview Collateral Assignment. Given the posting of \$1.6M in rent security, we believe the issue regarding the assignment of Mr. Josefovic's membership interest in a separate nursing home is resolved, eliminating the need for further litigation involving the collateral assignment.
6. Cooperation with Security Benefit. We have proposed cooperating to secure an extension of White Plains' mortgage with Security Benefit Life Insurance Company ("Security Benefit"). Counsel for Security Benefit has agreed to such discussions, so long as both parties are represented. White Plains has refused to participate in such discussions. We note that the moratorium on evictions and foreclosures has been extended to January 15, 2022.
7. Discontinuance of all claims against Howard Fensterman. We have offered to discontinue all claims against Mr. Fensterman in his role as counsel to Mr. Josefovic and HBL. We understand White Plains has accepted this term.

As we have made—and continue to make—good faith efforts to resolve this action, HBL strongly opposes White Plains' premature motion for summary judgment [Dkt. Nos. 183-230] [Mot. Seq. #6]. White Plains does not dispute that it has received more than \$4.4 million in capital contributions from HBL, yet there has been no accounting for the use or application of these invested funds. To date, there has been no discovery on this critical and potentially dispositive issue.

Moreover, pursuant to your Preliminary Conference Order of November 13, 2020 [Dkt. No. 36], the parties were required to complete discovery before bringing dispositive motions, and the Order of Reference to Mediation, dated June 3, 2021 [Dkt. No. 105], required the parties to make a good-faith effort to resolve the dispute via mediation with Frank Spano, Esq. In addition to refusing to respond to any of HBL's discovery requests, White Plains now refuses to participate in mediation as set forth in our settlement proposal.

Finally, as you know, White Plains' purported auction of Mr. Josefovic's membership interest was a complete failure as, contrary to representations made to Your Honor, it failed to attract a single bidder. Instead, White Plains is attempting to seize an asset worth millions with a token, self-dealing \$100.00 bid. Given that White Plains refuses to set aside this purported auction and engage in good faith settlement discussions, HBL will proceed with the filing of its Order to Show Cause to set aside this commercially unreasonable auction.

As the moratorium has been extended to January 15, 2022, we believe that the parties should be able to resolve this matter. We look forward to a productive settlement conference on Thursday.

Respectfully yours,

**MICHELMAN & ROBINSON, LLP**

  
John Giardino

JG:ec

cc: Alfred E. Donnellan, Esq. Via ECF  
Robert Malatak, Esq. Via ECF

**FOR SETTLEMENT PURPOSES ONLY**  
**WITHOUT PREJUDICE**

**HBL SNF, LLC SETTLEMENT PROPOSAL  
TO  
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

---

THIS CONFIDENTIAL SETTLEMENT AGREEMENT is entered into between HBL SNF, LLC (“HBL”) and White Plains Healthcare Properties I, LLC (“White Plains”) (collectively, the “Parties”) as follows:

1. The Parties shall enter into a “standstill agreement” and take no further action with respect to:
  - i. All proceedings in Westchester County Supreme Court in the civil action captioned *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.*, Index No. 60278/2020; and
  - ii. Any applications or proceedings with the New York State Department of Health with respect to White Plains, Waterview, or any other facility in which Lizer Josefovic and/or Mark Neuman have any interest.
2. HBL shall provide proof of payment of all real estate taxes for the facility located at 116-120 Church Street, White Plains, New York (the “Facility”), pursuant to Section 4.2 of the Amended and Restated Operating Lease, dated November 19, 2015 (the “Amended Lease”).
3. Pursuant to Section 4.1 of the Amended Lease, HBL agrees to tender payment to White Plains in the amount of \$26,725.25 to reimburse White Plains for certain utility deposits previously made for the Facility provided that:
  - i. White Plains provides HBL with proof that the funds remain on deposit with each utility company; and
  - ii. White Plains provides an assignment of such deposits to HBL in form and manner acceptable to the utility company and HBL.
4. HBL shall deliver a letter of credit in the amount of \$1,600,000 to White Plains issued by Chase Bank in the form attached hereto in satisfaction of the requirements of Section 7.1(a)(iii) of the Amended Lease. The Parties agree to enter into a second amendment to the Amended Lease replacing this form of security for the security provided for in Section 7.1(a)(iii) of the Amended Lease.

5. White Plains shall execute the Intercreditor Agreement in the form attached hereto in the amount of \$3,000,000.
6. HBL will remit the sum of \$1,000,000 in cash within five (5) business days of closing on an AR line of credit (the "Cash Payment"), which sum shall be deposited into an escrow account to satisfy the security requirements set forth in Section 7.1(a)(ii) of the Amended Lease and treated in the manner set forth in Section 7 below.
7. Together with the payment of \$2,200,000 which HBL made to White Plains in November 2019, the Cash Payment shall satisfy the requirements of Section 7.1(a)(ii) of the Amended Lease. The Parties agree to enter into a second amendment to the Amended Lease replacing this form of security for the security provided for in Section 7.1(a)(ii) of the Amended Lease.
8. White Plains agrees to amend the Amended Lease to provide for treatment of the unamortized portion of the \$700,000 rent credit owed to HBL.
9. HBL agrees to execute and deliver a Tenant Estoppel Certificate for the Amended Operating Lease as further amended pursuant to this Agreement.
10. Upon satisfaction of Sections 7.1(a)(ii) and 7.1(a)(iii) of the Amended Lease as set forth in Sections 4 and 7 above, the Guaranty of Lease between Lizer Jozefovic and White Plains, dated November 19, 2015, and the Guaranty of Lease between Mark Neuman and White Plains, dated November 19, 2015 (collectively, the "Guaranty Agreements"), shall be terminated in accordance with Section 3.4 of the Guaranty Agreements.
11. Upon satisfaction of Sections 7.1(a)(ii) and 7.1(a)(iii) of the Amended Lease as set forth in Sections 4 and 7 above, the Collateral Assignment and Pledge of Membership Interest and Security Agreement, dated August 11, 2017 (the "Collateral Assignment"), shall be terminated in accordance with Section 2 of the Collateral Assignment.
12. Through its counsel, White Plains shall coordinate a meeting with counsel for Security Benefit Life Insurance Company ("Security Benefit"). This meeting shall include counsel for HBL for the purposes of resolving Security Benefit's claims, obtaining consent to amendments to Sections 4 and 7 of the Amended Lease as set forth above, and obtaining a forbearance period to allow for refinancing of the property.
13. The parties shall agree to participate in mediation with Frank Spano, Esq. to resolve any remaining issues of damages alleged by White Plains and HBL including, but not limited to:
  - i. White Plains' claims for default interest;
  - ii. White Plains' claim for attorneys' fees; and

iii. HBL’s claim for loss of income due to the shortfall in Medicaid reimbursement revenues provided that, in the event White Plains closes on project financing with a first mortgage in the amount of \$42,240,000 within six (6) months of the execution of this Agreement, HBL will withdraw its claim for loss of reimbursement damages, it being recognized that increased rates of reimbursement and the resulting increase in net income is in the interest of both Parties.

In the event the Parties are unable to resolve these claims in mediation, these claims shall be the subject of further proceedings in the civil action.

14. HBL agrees to discontinue with prejudice the claims in its Complaint asserted against Howard Fensterman related to his role as counsel to Lizer Jozefovic, HBL, or any other entity in which Lizer Josefovich has an interest, namely, the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> causes of action.

15. All terms of the Amended Lease other than those amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, this Confidential Settlement Agreement is executed by the Parties on the last date indicated below.

**HBL SNF, LLC**, a New York limited Liability company

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**, a Massachusetts limited liability company

By: \_\_\_\_\_  
Name: Lizer Josefovich  
Title: \_\_\_\_\_  
Dated:

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

**WISE & WIEDERKEHR, LLP**

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**Alfred E. Donnellan**  
**Partner**  
aed@ddw-law.com

September 8, 2021

**VIA NYSCEF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King, Jr. Blvd.  
White Plains, NY 10601

**Re: *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC, et al***  
***Index No. 60278/2020***

Dear Justice Walsh:

This is in response to Mr. Giardino’s letter of yesterday purporting to set forth the defendants’ efforts to settle this matter. In reality, the defendants have offered nothing at all. Every “concession” they purport to make is, in fact, a reduction in HBL’s obligations under the lease.

HBL was obligated by the lease to provide \$5.3 million in security in July 2019. The defendants do not dispute that it has never done that. Now, after White Plains Healthcare Properties has terminated the lease by reason of HBL’s failure to provide the required security deposit, HBL proposes to “settle” this litigation by providing \$1.6 million in “a cash account . . . to be escrowed as rent security” and to provide additional security by taking a credit for the \$2.2 million it paid as a non-refundable deposit under the letter of intent, as well as a credit for “other unallocated capital contributions.” To begin with, the two sums together do not equal \$5.3 million. Further, the lease does not provide, and no landlord would accept, that the security deposit be held in escrow. The defendants forfeited the \$2.2 million when they defaulted under the letter of intent. They are not entitled to a credit for it now. Finally, the defendants never made any capital contributions. From my discussion with Mr. Giardino, I assume he is referring to a \$700,000 payment HBL made before construction. The original lease provided for a rent credit to pay that amount back with interest. When HBL renegotiated the lease in 2017, however, the rent was further reduced and the specific \$700,000 credit was absorbed in that rent reduction. The defendants have never claimed otherwise until now. They are not entitled to that credit a second time.

Although I have had a number of conversations with Mr. Giardino about resolving this matter and we have had one settlement meeting with the parties, the defendants have yet to offer any basis on which it would make sense for White Plains Healthcare Properties to settle this

litigation. Each of their proposed “concessions” leaves them with better lease terms than the lease terms they breached and ignores the substantial losses and risks that HBL’s default has caused to White Plains Healthcare Properties.

HBL’s failure to provide the security deposit for more than two years is the essential, and unavoidable, default in this case. The defendants admit that they have never made the required security deposit and they are not even offering to make it now. Because of that default the defendants are liable under the express terms of the lease for \$20,574,253.03 in holdover rent and default-related charges and \$82,369,770 in accelerated rent. These are enforceable lease terms. *See Fifty States Mgt. Corp. v. Pioneer Auto Parks, Inc.*, 46 N.Y.2d 573 (1979); *Seabring, LLC v. Elegance Restaurant Furniture Corp.*, 188 A.D.3d 744 (2d Dep’t 2020); *White Plains Plaza Realty, LLC v. Town Sports International, LLC*, 79 A.D.3d 1025 (2d Dep’t 2010). The defendants do not seem to understand that White Plains Healthcare Properties will be entitled to summary judgment for these amounts.

White Plains Healthcare Properties is willing to resolve this litigation for far less than the amounts to which it is entitled as a result of HBL’s default. But the settlement must, at a minimum, compensate White Plains Healthcare Properties for the damage it has incurred. The problem is that if the financial terms the defendants are offering are an accurate reflection of their financial capability, it seems unlikely that they will ever have sufficient funds to compensate White Plains Healthcare properties for its losses here or even satisfy its obligations under the lease obligations going forward. A more likely resolution is for HBL to pay some lesser amount in damages and surrender the lease to White Plains Healthcare Properties so it can lease the property to a tenant that can perform. That would allow White Plains Healthcare Properties to refinance its construction loan and move forward on a profitable basis.

Our clients appreciate the Court’s willingness to engage in the effort to resolve this litigation. We look forward to seeing you tomorrow morning.

Respectfully,

/s/ Alfred E. Donnellan  
Alfred E. Donnellan

cc: John Giardino, Esq. (via NYSCEF)



**JOHN GIARDINO**  
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September 17, 2021

**VIA NYSCEF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King, Jr., Blvd.  
White Plains, New York 10601

**Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.**  
**Index No. 60278/2020**

Dear Judge Walsh:

As agreed in our September 9<sup>th</sup> settlement conference, we have tendered the attached settlement proposal to Mr. Donnellan as counsel for White Plains. The settlement offer is for the purchase of the Leased Premises with a proposed purchase price of \$75,000,000.

As we discussed in Chambers, we have requested that the Seller take six percent (6%) of the purchase price in the form of a purchase money note for forty-eight (48) months at an interest rate of 6% per annum. We are confident that we can accomplish a closing of the proposed transaction in January of 2022 before the expiration of the current moratorium on mortgage foreclosures.

We respectfully ask that Your Honor schedule a follow up settlement conference to address any issues which remain the subject of these negotiations. We have proposed to Mr. Donnellan that October 18, 2021 be set as the date for filing our answering papers to the summary judgment motion and our motion to set aside the Waterview sale. We would ask to schedule a follow up settlement conference before October 8<sup>th</sup> to eliminate the need for further litigation activities.

We thank you for your efforts in this matter.

Respectfully yours,

**MICHELMAN & ROBINSON, LLP**

John Giardino

JG:ec  
Enclosure  
cc: Alfred E. Donnellan, Esq. Via ECF  
Robert Malatak, Esq. Via ECF  
HBL SNF, LLC Attn: Lizer Jozefovic

**FOR SETTLEMENT PURPOSES ONLY**  
**WITHOUT PREJUDICE**

**HBL SNF, LLC SETTLEMENT PROPOSAL**  
**TO**  
**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

---

THIS CONFIDENTIAL SETTLEMENT AGREEMENT is entered into between HBL SNF, LLC (“HBL”) and White Plains Healthcare Properties I, LLC (“White Plains”) (collectively, the “Parties”) as follows:

1. The Parties shall enter into a “standstill agreement” and take no further action with respect to:
  - i. All proceedings in Westchester County Supreme Court in the civil action captioned *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.*, Index No. 60278/2020; and
  - ii. Any applications or proceedings with the New York State Department of Health with respect to White Plains, Waterview, or any other facility in which Lizer Josefovic and/or Mark Neuman have any interest.
  
2. HBL shall purchase the real property from White Plains on the following terms:
  1. Purchase Price: \$ 75,000,000
  
  2. Purchaser credits against purchase price:
    - a) 2019 Purchase Deposit \$ 2,200,000
    - b) Prepayment of FFE \$ 1,500,000
    - c) Reimbursement for lost Medicaid payments \$ 1,800,000
    - \$ 5,500,000
  
  3. Net Purchase Price: \$ 69,500,000
  
  4. Net Purchase Price payable as follows:

Cash at Closing	\$ 65,000,000
Seller Note payable in 48 months at 6%	\$ 4,500,000
  
  5. Closing shall take place on January 31, 2022.

3. HBL shall pay all rent and additional rent through the date of closing.
4. White Plains shall execute the Intercreditor Agreement in the form attached hereto in the amount of \$3,000,000.
5. At closing, the Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 (“Collateral Assignment”) shall be terminated in accordance with Section 2 of the Collateral Assignment and the Membership Interest shall be the property of Lizer Jozefovic.
6. Through its counsel, White Plains shall coordinate a meeting with counsel for Security Benefit Life Insurance Company (“Security Benefit”). This meeting shall include counsel for HBL for the purposes of resolving Security Benefit’s claims, obtaining consent to the intercreditor agreement, and obtaining a forbearance period to allow for closing on the purchase of the property.
7. HBL agrees to discontinue with prejudice the claims in its Complaint asserted against Howard Fensterman related to his role as counsel to Lizer Jozefovic, HBL, or any other entity in which Lizer Josefovic has an interest, namely, the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> causes of action.

IN WITNESS WHEREOF, this Confidential Settlement Agreement is executed by the Parties on the last date indicated below.

**HBL SNF, LLC**, a New York limited  
Liability company

**WHITE PLAINS HEALTHCARE  
PROPERTIES I, LLC**, a Massachusetts  
limited liability company

By: \_\_\_\_\_  
Name: Lizer Josefovic  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

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

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**Alfred E. Donnellan**  
**Partner**  
aed@ddw-law.com

September 24, 2021

**VIA NYSCEF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King, Jr. Blvd.  
White Plains, NY 10601

Re: **White Plains Healthcare Properties I, LLC v. HBL SNF, LLC, et al.,  
Westchester County Supreme Court Index No. 60278/2020**

Dear Justice Walsh:

We write to request the Court's assistance is setting the briefing schedule for Plaintiff's motion for summary judgment (Motion #6), which was e-filed on August 19, 2021. Counsel for the parties have conferred to set due dates for the opposition and reply filings but have been unable to reach an agreement. Opposing counsel has proposed October 14, 2021 for Defendants' opposition and November 14, 2021 for Plaintiffs' reply. Opposing counsel has indicated that he is unable to address Defendants' opposition earlier because of other work commitments. While ordinarily our office is amenable to accommodating scheduling conflicts, Plaintiff's motion has been pending for weeks; the court held a pre-motion conference four weeks ago. Our client has engaged in settlement discussions with the express understanding that the litigation would not be delayed. Plaintiff, therefore, request that Defendants' opposition be due by October 4, 2021 with the Plaintiff's reply due October 14, 2021 making the motion returnable October 15, 2021.

Respectfully submitted,

/s/ Alfred E. Donnellan  
Alfred E. Donnellan

cc: John Giardino, Esq. (via NYSCEF)



**JOHN GIARDINO**  
jgiardino@mrlp.com

**New York Office**  
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September 24, 2021

**VIA NYSCEF**

Honorable Gretchen M. Walsh  
Supreme Court of the State of New York  
County of Westchester  
111 Dr. Martin Luther King, Jr., Blvd.  
White Plains, New York 10601

**Re: White Plains Healthcare Properties I, LLC v. HBL SNF, LLC et al.**  
**Index No. 60278/2020**

Dear Judge Walsh:

As you know, we represent the HBL parties in this dispute. We write regarding our recent communications concerning a settlement conference with the Court and in response to the White Plains' parties letter dated September 24, 2021 [No. 234].

Your Honor has provided dates for a follow up settlement conference. Unfortunately, the religious holidays continue through September 29<sup>th</sup> making our client unavailable until September 30<sup>th</sup>. We are available and prepared to attend the conference on the 1<sup>st</sup> as the Court offered and have agreed that the parties can attend telephonically if travel to Westchester is not convenient on that date.

White Plains has not provided a date for the settlement conference and instead is attempting to accelerate the briefing schedule for the motion for its summary judgment. We advised Mr. Donnellan that (1) Mr. Giardino is involved in a matter in Los Angeles the week of October 4<sup>th</sup> and (2) that we have expended our time and resources as the Court has directed to facilitating a settlement.

We believe additional motion practice at this stage will harm settlement efforts, increase litigation costs, and waste judicial resources. The settlement offer we have tendered is in good faith and intended to bring about a total resolution of these disputes. We request the Court's assistance in mediating this proposal—without resorting to further unnecessary motion practice—by scheduling a settlement conference for **Friday, October 1, 2021**.

We have provided counsel with a reasonable briefing schedule should these settlement efforts fail.

Respectfully yours,

**MICHELMAN & ROBINSON, LLP**

John Giardino

cc: Alfred E. Donnellan, Esq. Via ECF  
Robert Malatak, Esq. Via ECF

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 : Index No. 60278/2020  
 Plaintiff, :  
 :  
 -against- :  
 :  
 HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, WILLIAM :  
 NICHOLSON, and METROPOLITAN :  
 COMMERCIAL BANK :  
 :  
 Third-Party Defendants  
 -----X

**AFFIDAVIT OF LIZER JOZEFOVIC IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CROSS-MOTION TO STRIKE**

LIZER JOZEFOVIC, being duly sworn, deposes and says:

1. I respectfully submit this affidavit, based upon my personal knowledge, in opposition to Plaintiff White Plains Healthcare Properties I, LLC and Third-Party Defendants CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman, and William Nicholson’s (collectively “White Plains” or “Plaintiffs”) motion for summary judgment, dated August 19, 2021, and in support of Defendants and Third Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman (“Neuman”) (collectively, “HBL” or “Defendants”) cross-

motion to strike White Plains' Notice to Admit, dated June 2, 2021, as improper, or in the alternative, grant HBL additional time to respond.

2. For more than two decades, I have owned and operated skilled nursing and rehabilitation facilities in New York State all of which consistently provide the highest levels of care to patients.

3. Since 2001 I have retained the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP ("Abrams Fensterman LLP") to serve as counsel to my businesses.

4. Abrams Fensterman LLP has served as my legal counsel in the purchase of five nursing homes, numerous refinancings, and continues to represent my business interests for collections, regulatory and corporate compliance, and other legal matters.

5. Abrams, Fensterman continues to provide these legal services despite taking an adverse position against me in this action as counsel for White Plains Healthcare Properties I, LLC.

6. Mr. Howard Fensterman ("Fensterman"), a partner at Abrams Fensterman LLP, is well-known for raising funds for healthcare transactions.

7. In or about March 2009, Westchester University Medical center offered 71 skilled nursing and 20 ventilator beds for sale pursuant to an agreement with and with the approval of the New York State Department of Health ("NYSDOH").

8. Westchester University Medical issued a Request for Proposal for the purchase of these beds to nursing home operators in Westchester County.

9. Neuman and I were the successful bidders for the purchase through a facility we own known as Waterview Hills Rehabilitation Center.

10. Upon the award of the bid, I consulted with Fensterman about the transaction and he agreed to lend us the sum of \$725,000 for the project which involved the construction of a modern skilled nursing facility. The loan included a 14% interest rate, a loan fee of 10%, or \$72,500, and one year's interest payments paid into an interest reserve account.

11. Fensterman also introduced me to William Nicholson ("Nicholson") of The Congress Companies, a business associate and client of Fensterman, and recommended that Nicholson act as the developer of the new Westchester facility.

12. After reviewing the proposed project, Nicholson advised that the new facility could not be built cost-effectively with only 91 beds and that the project needed additional bed capacity to move forward.

13. At this time, I became aware of certain additional beds owned by Hebrew Hospital Home ("HHH"), and I approached HHH and reached an agreement with HHH to acquire their beds to add to the new Westchester SNF project.

14. Fensterman and Nicholson formed White Plains Healthcare Properties I for the purposes of acting as the developer of the new SNF facility.

15. As developer, White Plains committed to provide the construction, management services, and permanent financing for the "turn-key" development of the new 162 bed SNF facility, after which White Plains would own the facility and serve as HBL's landlord until HBL purchased the facility for an agreed upon option purchase price.

16. White Plains memorialized the terms of the "turn-key" development in a written application which it submitted to NYSDOH for approval.

17. That application included the following terms, among others:

- a. a total project cost of \$56,631,759, including all necessary fixtures, furniture, and equipment;

- b. construction financing which, after five years, would convert to permanent \$42,240,000 HUD-insured mortgage with a thirty-year term at an interest rate of 5.5%; and
- c. \$ 9,863,246 in project equity to be contributed in cash by CCC Equities, a related entity formed by Fensterman.

18. On November 15, 2015, in reliance on the terms proposed by White Plains and in reliance upon White Plains' representations that it could fund the development and secure permanent financing as required by NYSDOH, HBL entered into a development agreement (the "Development Agreement") and a lease with White Plains.

19. A true and correct copy of the Development Agreement is attached as Exhibit A.

20. Under the Development Agreement, White Plains was required to deliver a "turn-key" facility:

- a. with construction completed in accordance with NYSDOH regulations and approval;
- b. to operate as a skilled nursing facility; and
- c. pursuant to Article VII(B) of the Development Agreement, White Plains would obtain "a Construction Loan or other financing acceptable to the Developer and [NYSDOH] which upon completion shall convert to permanent mortgage financing (the "Permanent Financing") in an amount which is at least 75% of the Project Cost."

21. The Development Agreement and lease required that the Facility be completed in 20 months or less, and rent be paid at \$360,000 per month.

22. However, early in the project, Fensterman and Nicholson required that HBL contribute capital in order for the project to continue.

23. As memorialized in a term sheet dated November 20, 2015 (the "Term Sheet"), Neuman and I contributed capital to CCC, as follows:

- a. \$2,200,000 for predevelopment costs;

- b. \$197,072 for transaction costs and legal fees of Fensterman; and
  - c. \$1,595,368.32 into a control rent security account.
24. A true and correct copy of the Term Sheet is attached as Exhibit B.
25. The Term Sheet was not an investment in White Plains, as neither I nor HBL received any equity interest.
26. Rather, the \$2,200,000 contribution was a short-term loan to be repaid by White Plains to HBL, as follows:
- a. (1) White Plains agreed to repay \$1,500,000 of the principal amount by granting HBL title to the furniture, fixtures, and equipment (the “FF&E”); and
  - b. (2) by giving HBL a future credit against rent payments of \$700,000.
27. Additionally, the \$1,595,368 for the rent security account (the “RSA”) was to be segregated in an account at Chase Bank for the purpose of future rent security.
28. Despite HBL’s capital contribution to the project, White Plains failed to complete the Facility on schedule.
29. On April 18, 2016, NYSDOH notified White Plains that it considered the Facility an “abandoned project,” which required White Plains to obtain a new Certificate of Need in order to proceed.
30. It was not until June 12, 2017 that White Plains finally issued the Contract for General Construction of the Facility and on July 26, 2017, NYSDOH notified White Plains that (1) White Plains was authorized to start construction by or before September 15, 2017, and (2) that the approved project cost was fixed at \$56.6 million.
31. Thereafter, White Plains was unable to obtain the necessary project financing due to various credit issues associated with the development and its principals.

32. Specifically, NYSDOH approved a mortgage of \$42,400,000 which was to be converted to permanent HUD long-term financing after five (5) years.

33. If, as required by Article VII(B) of the Development Agreement, White Plains had successfully obtained a construction loan which converted to permanent mortgage financing, this would have prevented further disputes.

34. White Plains was only able to secure a \$38,500,000 construction loan from Security Benefit Life Insurance Company (“Security Benefit”) with a three (3) year term and a \$9,800,000 mezzanine loan from Bradford Allan.

35. I advised White Plains that these terms were not what had been agreed upon or approved by NYSDOH, but White Plains proceeded with construction with this financing scheme anyway.

36. On or about July 2017, I entered into an amended lease with White Plains (the “Amended Lease”).

37. A true and correct copy of the Amended Lease is attached as Exhibit C.

38. The terms of the Amended Lease were substantially different from the lease I had originally executed and required that rent be paid in the amount of \$506,096.50 per month, an increase in the original rent of \$360,000 per month, a difference of \$146,000 per month or \$1,750,000 per year.

39. Over the term of the Amended Lease, this increased rent would result in an additional \$44,000,000 in rent payments to White Plains.

40. This increase was offset by my ability to purchase the Facility for a fixed price of \$65,000,000 at my option thereby eventually reducing the monthly cash outlay for the Facility.

41. On August 11, 2017, White Plains demanded that I enter into a collateral assignment (the “Collateral Assignment”). The purpose of the Collateral Assignment was to add Fensterman as a “signatory” to the \$1.6 million RSA to satisfy the security deposit requirements under the Amended Lease, after which the Collateral Assignment would automatically self-terminate.

42. A true and correct copy of the Collateral Assignment is attached as Exhibit D.

43. On August 17, 2017, my counsel delivered the executed certification statements for Fensterman to assume signatory authority over the RSA, satisfying any and all obligations I had under the Amended Lease and the Collateral Assignment (the “August 2017 Emails”).

44. A true and correct copy of the August 2017 Emails are attached as Exhibit E.

45. For some reason, Fensterman never transacted these documents and White Plains never communicated with me again about any issue with the RSA.

46. On August 18, 2017, I was informed that White Plains and Security Benefit had entered into a construction loan agreement (the “Loan Agreement”) and construction commenced.

47. A true and correct copy of the Loan Agreement is attached as Exhibit F.

48. On December 2, 2019, NYSDOH provided White Plains with a letter stating that “the facility was found to be in substantial compliance.” Under Section 3.1(a) of the Amended Lease, this approval triggered the Commencement Date.

49. Not only did White Plains complete the Facility more than two years late, but White Plains incurred \$5 million in cost overruns above the NYSDOH-approved budget of \$56.6 million.

50. I was not presented with any request at any time to approve any cost overruns or change order.

51. Furthermore, the Security Benefit construction loan was for a period of only three (3) years, not five (5), as agreed on and White Plains did not obtain permanent long-term financing for the Facility in the form of the HUD-insured loan approved by NYSDOH.

52. Although HBL had no obligation to make any rent payments prior to the Commencement Date of December 2, 2019, White Plains requested that HBL pay rent for the months of October and November 2019 to bridge project cash short falls. This additional \$1 million payment has never been credited to HBL.

53. HBL began nursing home operations in December and immediately suffered setbacks due to White Plains' delay and the onset of the COVID-19 pandemic.

54. I held two conferences with White Plains where I raised my concerns about White Plains' failure to obtain the NYSDOH-approved mortgage financing and White Plains' failure to deliver the FF&E.

55. These failures caused substantial damages to HBL.

56. NYSDOH informed me that I would not receive any capital cost reimbursement because White Plains had failed to obtain the proper project financing.

57. After substantial negotiations, NYSDOH did agree to provide reimbursement payments, reduced by \$35.00 per day per Medicaid patient, which represents losses of \$68,000 per month and an annualized loss of \$816,000

58. Additionally, despite HBL's repeated requests, White Plains has refused to convey title to the FF&E, assets which properly belong to HBL.

59. In addition, White Plains failed to provide an accounting for the use of the predevelopment and discretionary funds HBL provided and failed to credit \$700,000 against HBL's rent payments.

60. In 2019, to resolve these many defaults and deficiencies, HBL attempted to purchase the facility as originally contemplated.

61. HBL entered into a letter of intent (the "LOI").

62. A true and correct copy of the LOI is attached as Exhibit G.

63. Pursuant to the LOI, HBL made a \$2.2 million down payment to White Plains.

64. Despite HBL's efforts, White Plains took no further steps to complete the transaction proposed in the LOI and, importantly, never transferred title to the FF&E.

65. To date, White Plains has refused to account for or return this \$2.2 million payment and has failed and refused to turn over the FF&E or return the \$1.5 million provided by HBL for its purchase.

66. Although HBL has made each and every monthly Fixed Rent Payment to White Plains, White Plains defaulted on its mortgage with Security Benefit.

67. On October 16, 2019, Security Benefit issued a notice of default to White Plains for failing to establish a cash management account, as required by the Loan Agreement.

68. By October 30, 2019, White Plains was required to direct HBL to pay rent into a cash management account for Security Benefit. When this did not occur, Security Benefit issued a second notice of default to White Plains on November 5, 2019.

69. On January 7, 2020, I received a letter from Alfred Donnellan, an attorney at DelBello Donnellan Weingarten Wise & Wiederkehr LLP. The letter purported to terminate the Amended Lease (the "Notice of Default").

70. A true and correct copy of the Notice of Default is attached as Exhibit H.

71. The Notice of Default references both sections of the Amended Lease and the LOI. It asserts the right to "terminate the Lease as well as Tenant's right of possession of the Leased

Premises” by January 13, 2020, as well as an acceleration of the remaining rent totaling \$84,073,989.91, under Section 16.1 of the Amended Lease

72. Since the Notice of Default, White Plains has accepted monthly rent each and every month without demurrer, restrictive endorsement, or any communication claiming that rent was being accepted without prejudice to the rights of White Plains concerning the alleged defaults.

73. White Plains took no action to take possession of the leased premises despite their January 13, 2020 notice.

74. HBL has received no further communications from White Plains, Fensterman, or Nicholson which indicated that HBL was in default of the Amended Lease.

75. HBL has received no communications from White Plains, Fensterman, or Nicholson that Alfred Donnellan was their agent and that they had instructed him to terminate the Amended Lease.

76. I have always considered the Notice of Termination to be defective and unenforceable.

77. On April 16, 2020, Security Benefit issued a third notice of default, stating that White Plains was solely at fault for breaching the terms of the Loan Agreement by failing to (1) provide monthly payments of interest; and (2) establish a cash management account.

78. On May 22, 2020, Security Benefit issued a fourth notice of default to White Plains for the failure to (1) provide monthly payments of interest; (2) establish a cash management account; (3) send a Tenant Direction Notice for direct payment from HBL to Security Benefit; (4) forward the \$2.2 million payment to Security Benefit, which had been received from HBL; (5) provide financial statements for White Plains; and (6) provide financial statements for each guarantor. Security Benefit makes no reference to HBL’s obligations in these letters and notices.

79. A true and correct copy of Security Benefit's notices of default to White Plains are attached as Exhibit I.

80. Although I have paid over \$500,000 per month in rental payments to White Plains each and every month, pursuant to Security Benefit's complaint, White Plains has inexplicably failed to pay Security Benefit, raising troubling questions concerning what White Plains is doing with my rental payments.

81. On August 1, 2020, the Loan Agreement matured.

82. On May 1, 2021, and September 1, 2021, Security Benefit brought foreclosure actions against White Plains. These actions were voluntarily discontinued.

83. A true and correct copy of Security Benefit's foreclosure action against White Plains from September 1, 2021 is attached as Exhibit J.

84. Despite White Plains' breach of the Development Agreement, the Amended Lease, and the Loan Agreement, HBL has substantially complied with its obligations under the Amended Lease.

85. By funding and maintaining the RSA, HBL has substantially satisfied its obligation to post a security deposit under both the Amended Lease and the Collateral Assignment.

86. White Plains failed to become a signatory on the account, and White Plains has never demanded that HBL provide additional security deposits.

87. In addition, although the subject of modification, White Plains never requested delivery of the \$3.7 million letter of credit, even while negotiations took place in May and June of 2020 to sign an intercreditor agreement and release HBL's accounts reasonably.

88. HBL has made consecutive Fixed Rent Payments to White Plains every month, totaling over \$12.5 million. White Plains has accepted the Fixed Rent Payments without dispute.

89. A true and correct copy of HBL's Fixed Rent Payments to White Plains is attached as Exhibit K.

90. In addition to these rent payments, I subsidized losses in operations in part the purpose of the letter of credit in the amount of \$14,000,000.

91. Although the Commencement Date did not occur until December 2019, HBL pre-paid two Fixed Rent Payments for October and November 2019, which have never been properly credited.

92. HBL has paid all applicable real estate taxes for the Facility, and there are no outstanding charges for real estate or other taxes.

93. A true and correct copy of the Facility's current tax records are attached as Exhibit L.

94. HBL has paid all applicable utility charges, utility deposits and municipal maintenance escrows, and there are no outstanding charges for Con Edison, or any other utility.

95. A true and correct copy of the Facility's current utility records are attached as Exhibit M.

96. HBL has maintained the necessary types and amounts of insurance for the Facility.

97. A true and correct copy of the Facility's certificates of insurance are attached as Exhibit N.

98. HBL has delivered necessary provider agreements, rate sheets, and financial and operational reporting to White Plains.

99. A true and correct copy of the Facility's provider agreements, rate sheets, and financial, and operational reporting are attached as Exhibit O.

100. As HBL is in substantial compliance with the Amended Lease and the Amended Lease has not been legally terminated, HBL has no obligation to pay holdover or accelerated rent.

101. On September 18, 2020, White Plains commenced this action against HBL.

102. On May 7, 2021, my counsel served a request for the production of documents and things to White Plains (the “Document Requests”).

103. A true and correct copy of the Document Requests are attached as Exhibit P.

104. On May 21, 2021, my counsel filed a First Amended Verified Answer with Affirmative Defenses, Counterclaims, and Third-Party Complaint (the “Answer”).

105. A true and correct copy of the Answer is attached as Exhibit Q.

106. To date, White Plains has refused to produce a single document in response to the Document Requests.

107. HBL requires White Plains to comply with the Document Requests, as documentary evidence would show that White Plains has accepted HBL’s performance under the Amended Lease.

108. HBL requires White Plains to comply with the Document Requests, as documentary evidence would show that White Plains has accepted, and continues to accept, HBL’s monthly rental payments without dispute.

109. HBL requires White Plains to comply with the Document Requests, as documentary evidence would show that White Plains’ dispute with Security Benefit does not involve HBL.

110. To date, no depositions have occurred.

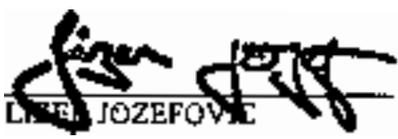
111. HBL must depose Fensterman and Nicholson to provide a full and complete record of why White Plains failed to transact the documents for the RSA.

112. HBL must depose Fensterman and Nicholson to account for the \$2,200,000 payment HBL provided to White Plains pursuant to the Term Sheet.

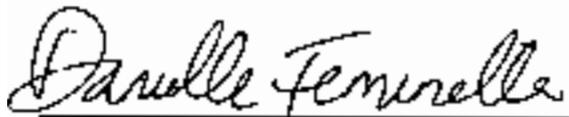
113. HBL must depose Fensterman and Nicholson to account for the \$2,200,000 payment HBL provided to White Plains pursuant to the LOI.

Dated: New York, New York

October 25, 2021

By:   
LINA JOZEFOVIC

Sworn to before me this  
25 day of October, 2021

  
\_\_\_\_\_  
Notary Public

Danielle Femarella  
Notary Public, State of New York  
No. 01CH5084689  
Qualified in Westchester County  
Commission Expires 9/8/2023

# EXHIBIT A

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") dated as of November 19, 2015 by and between HBL SNF, LLC a New York Limited Liability Company having an office at 537 Route 22, Purdys, New York 10578 (hereinafter referred to as the "Operator/Tenant") and WHITE PLAINS HEALTHCARE PROPERTIES I, LLC, a Massachusetts limited liability company with its principal place of business located at 2 Bourbon Street, Suite 200, Peabody, MA 01960 ("WPHCP") (hereinafter referred to as the "Developer") (collectively the "Parties");

WHEREAS, the Operator/Tenant has requested the Developer to design and construct a 160 Bed Skilled Nursing Facility at 116-120 Church Street, White Plains, New York; and

WHEREAS, the parties have simultaneously herewith entered into that certain operating lease by and between Developer as Landlord and Tenant/Operator, as Tenant dated as of the date hereof for a 160 bed skilled nursing facility at 116-120 Church Street, White Plains, New York (the "Lease"); and

WHEREAS, the Developer desires to design and construct said facility upon the conditions set forth herein;

NOW, THEREFORE, in consideration of one (\$1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, the Operator/Tenant and the Developer hereby mutually covenant and agree as follows:

**ARTICLE I  
DESCRIPTION OF THE DEVELOPMENT**

The Project to be developed, designed and constructed shall consist of a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Project") at 115-120 Church Street, White Plains, New York (the "Church Street Location") bounded and described and more particularly set forth in Exhibit A annexed hereto (the "Land"). Developer reserves the right to change the site, subject only to the prior approval of the DOH should it become impracticable or commercially unfeasible to construct the Project on the Church Street Location.

A. The Developer has caused The Architectural Team, 50 Commandant's Way, at Admirals Hill, Chelsea, MA 02150 (the "Architect") to prepared outline drawings and specifications for the development of the Project (the "Outline Plans and Specifications 3<sup>rd</sup> Edition") which satisfies the design standards of the New York State Department of Health ("DOH"). The Operator/Tenant has reviewed and approved the Outline Plans and Specifications 3<sup>rd</sup> Edition. The Developer has submitted the Outline Plans and Specifications 3<sup>rd</sup> Edition to DOH for approval.

B. The Parties acknowledge and agree the 1<sup>st</sup> and 2<sup>nd</sup> Editions of the Outline Plans and Specifications have been provided by Developer, approved by Operator/Tenant, and



submitted to DOH as required. The parties acknowledge that all municipal entitlements have been received for the Land, based upon the approved 2<sup>nd</sup> Edition of the Outline Plans and Specifications, except that a building permit and trade permits have yet to be applied for as of the date of this Agreement. The Operator/Tenant acknowledges that Developer has received approvals of the Outline Plans and Specifications 2<sup>nd</sup> Edition for 179 beds from all other federal, state, municipal and other governmental authorities having jurisdiction thereof (collectively, the "Approving Authorities") and requests that Developer resubmit to the Approving Authorities the Outline Plans and Specifications 3<sup>rd</sup> Edition for 160 beds.

C. After the Outline Plans and Specifications 3d Edition have been approved (the "Plans and Specifications"), no material amendments to the Plans and Specifications will be made without the prior written consent of Developer, Operator/Tenant and the Approving Authorities. The Developer will not be required to make proposed changes which do not comply with the provisions of this section. In the event of disputes as to whether changes proposed by Operator/Tenant constitute impermissible deviations from the criteria described above, the matter will be submitted for determination to Developer's Architect, whose decision will be final. Except as provided in Article IV hereof, the Project shall be constructed in accordance with the Plans and Specifications.

**ARTICLE II  
PERMITS AND APPROVALS**

A. The Operator/Tenant is the applicant under that certain Certificate of Need Project No. 092058B, entitled Westchester Health Care Properties, LLC, which was contingently approved by the DOH and The Public Health and Planning Council on October 11, 2012 (the "CON"), to establish and construct a 160 bed skilled nursing care facility at Church Street Location (the "Contingent Approval").

B. Developer shall be responsible for using commercially reasonable efforts to obtain, based on the Outline Plans and Specifications 3<sup>rd</sup> Edition, all permits and approvals without limitation, from all governmental and regulatory agencies other than the DOH, exercising jurisdiction over the development of the Project (collectively the "Approvals"). Operator/Tenant shall cooperate and sign all necessary applications and other documents as may be required from the Operator/Tenant in order to obtain the Approvals. All fees and costs incurred by the Developer in obtaining the Approvals shall be included in the Project Cost (as hereinafter defined).

C. The Operator/Tenant shall be solely responsible for obtaining, at its sole cost, all necessary DOH approvals regarding the Project, including the CON, and any amendments or modifications thereto, (all such approvals collectively the "DOH Approvals"), provided that the Developer shall cooperate with Operator/Tenant, and interface with DOH as necessary, with respect to obtaining the DOH approvals of the Outline Plans and Specifications 3rd Edition.

**ARTICLE III  
DEVELOPER AND TENANT/OPERATOR RESPONSIBILITIES**

RECEIVED NYSCEF: 10/25/2021

A. The Operator/Tenant shall satisfy each and every requirement contained in the Contingent Approval including without limitation:

- (1) Payment of the DOH fees of at least \$309,760,
- (2) Submission and DOH approval of the Outline Plans and Specifications 3rd Edition,
- (3) Evidence of Operator / Tenant's Working Capital Loan (hereinafter defined),
- (4) Signed agreements for the so-called bed rights (requires payment of at least \$345,000.

The payment for items III A. (1) and (4) shall be included in disbursements to be made to Developer from the proceeds of the Waterville/Salem Financing (defined below).

B. The Operator/Tenant shall at its sole expense do all things necessary to assure and confirm its ownership of the so-called bed rights necessary for the CON and the Project.

C. Upon the satisfaction of all contingencies set forth in Article VII (unless otherwise agreed to by Developer, in writing), the requirements contained in the Contingent Approval and in Section 3(c), the Developer shall promptly initiate development of the Project in accordance with the Plans and Specifications. The quality of the materials and workmanship on the Project shall meet or exceed all applicable governmental and building industry standards, including all DOH standards for occupancy.

D. Developer shall use commercially reasonable efforts to cause the Project to be substantially completed and ready for occupancy within 22 months following the receipt of all Approvals and DOH Approvals and financing necessary for the Project Developer shall be responsible to start and finish the Project within the guidelines and the dates set forth by DOH in the final approval letter, as may be adjusted in accordance with DOH regulations.

E. Except for the DOH Approvals, the Developer shall be responsible for all for all development costs including, but not limited to, obtaining the site plan approval, sewer and water hookups and approvals, Department of Transportation, Land Acquisition, Demolition, Cleanup, "Land Carry" (Real estate taxes and insurances prior to C of O), Zoning, Legal, Estimating and Construction Management Fees, Architects, Engineers, Designers and other engineering professionals, Testing, Borings, Hazmat Surveys, Site Surveys, Industrial Hygienists, Reproductions, Signage, printing, fences, Building Permits, and Construction Costs.

F. The Developer will maintain at its onsite office, the outline Plans and Specifications, any amendments thereto and any other drawings relating to the development and make the same available to Operator/Tenant for inspection and will furnish them copies thereof, if requested. Upon written request, the Developer will provide Operator/Tenant with copies of all certificates and requisitions (together with appropriate backup documentation) of Developer and of its architects, engineers and subcontractors pertaining to the Project and will also provide Operator/Tenant with copies of all certificates and requisitions of Developer delivered to the construction lender.

G. The Developer shall (1) enter into a construction contract (the "Construction Contract") acceptable to the Construction Lender with Congress Building Corp. ("Congress") or

an entity controlled by Congress, located at 2 Bourbon Street, Peabody, MA 01960 and (2) require that Congress will provide 100% Performance & Payment bonds from a Surety on the accredited list of the U. S Treasury, (which list is published annually by the Federal Register), to guarantee the undertakings, covenants, terms, conditions and agreements of the Construction Contract, and such bond will include the Developer and the Construction Lender (if required by lender) as obligees. Developer shall provide such guarantees of completion as may be required by the Construction Lender.

H. The Project will be a "turnkey job" as said term is commonly used in the construction trade except that Operator/Tenant shall purchase or lease its own minor movable equipment, expendables, computers, business equipment, maintenance tools and supplies. Operator/Tenant shall purchase the FF&E from Developer for \$1,500,000.00, the payment for which shall be disbursed to Developer from the Waterville/Salem Financing.

I. Except as provided in the Lease, on the Substantial Completion Date the Tenant/Operator shall (i) be deemed to have taken occupancy and accepted possession of the Project, (ii) have agreed that the Project has been completed in accordance with the Plans and Specifications, and (iii) have agreed that the Developer has fulfilled all of its responsibilities hereunder to the satisfaction of Tenant/Operator.

J. Operator/Tenant /Tenant shall grant to Developer a perfected security interest in all assets of Operator/Tenant including the CON, and an executed lease for the Project, personally guaranteed by the principals of the Operator/Tenant. The lease, security and underlying security agreement shall provide that in the event that the Operator/Tenant defaults, Developer may assume control of the CON and/or any licenses owned or controlled by Operator/Tenant ("Licenses"), and or other collateral, and is authorized to proceed with the Project as it deems necessary using the CON and/or Licenses, and/or the other collateral provided.

K. An affiliate of Operator Tenant, owned and controlled by Lizer Jozefovic, is in the process of refinancing a nursing facility located in Westchester County, N.Y. referred to herein as "Waterville/Salem". Operator Tenant and Lizer Jozefovic shall cause Waterville/Salem to deliver the proceeds of the refinancing of Waterville/Salem (the "Waterville/Salem Financing") in the amount of at least \$3,900,000 to Operator/Tenant and Developer.

L. If the Working Capital Loan (defined below) is not already committed by either the Mezzanine Lender or the Construction Lender as a separate loan, at least six months prior to the proposed Substantial Completion Date, the Operator/Tenant shall make diligent, truthful and proper applications to Institutional Lenders as such term is defined in Article 12-D of the NYS Banking Law, for working capital financing for the operation of the project in the amount of not less than reasonably required by Developer and the Construction Lender ("Working Capital Loan") and to furnish, without delay, such verifications of bank accounts and employment, or any other instruments or information as may be required by the Institutional Lenders in the processing of the Operator/Tenant's applications. The Working Capital Loan shall be secured by a lien against Operator/Tenant's accounts receivable and other assets. For the avoidance of

doubt, the Working Capital Loan shall be in addition to, and not in lieu of, the working capital/initial operating deficit/rent payment reserves which shall be required by the Construction Lender.

M. Operator/Tenant shall inform the Institutional Lenders that the Construction Lender and holder of the Permanent Financing has or will have a first lien against all assets of Operator/Tenant (to the extent permitted by applicable law) and that an intercreditor agreement shall be required of the Institutional Lender.

N. Operator/Tenant represents and warrants that its principals understand and agree that a personal guaranty of the Lease shall be required from them.

ARTICLE IV  
TOTAL DEVELOPMENT COST  
CHANGES IN DESIGN OR DEVELOPMENT COST

A. As of the date hereof, the total project cost approved by DOH is \_\_\_\_\_ (the "Approved Project Cost"). The Parties acknowledge and agree that the actual total cost of the Project ("Project Cost") as of the date hereof is approximately \$60.0 million, is not possible to exactly ascertain as of the date of this Agreement due to circumstances beyond the control of all parties to this Agreement, and is projected to be greater than the Approved Project Cost. From time to time, the Developer will advise the Tenant/Operator of Developer's then best estimate of the Project Cost. The Tenant/Operator shall file and diligently pursue with DOH all applications required to increase the Approved Project Cost such that it equals the then best estimate of the Project Costs. The Developer shall provide to the Operator/Tenant prompt notice of, and substantiation for any increases in Project Cost, at the earliest possible date (and if practicable within 90 days of such increase), for submission to DOH pursuant to the applicable Sections of DOH regulations.

B. The Operator/Tenant may desire changes in the Plans and Specifications for the Project consisting of additions, deletions or other revisions for the Project ("Contract Changes"). All requests for Contract Changes for the Project shall be authorized by a change order submitted on standard change order form prepared by Developer (the "Change Order"). Subject to paragraph C. below, any Change Order, requested by Operator/Tenant, shall not be effective, nor shall the Developer be required to proceed with any such Change Order, until the Operator/Tenant obtains the approval of the DOH for an increase in Project Cost resulting from such Change. Developer shall cooperate with the Operator /Tenant to obtain any such DOH approvals.

C. Notwithstanding anything to the contrary, if Operator/Tenant requests that Developer proceed with a Contract Change based on a Change Order that has not been approved by DOH, any increase in the Project Cost resulting from such Change Order requested by



Operator/Tenant ("Operator/Tenant Required Cost") will be the responsibility of Operator/Tenant. At the sole option of Developer, any Operator/Tenant Required Cost will be either (i) paid in full by Operator/Tenant to Developer within 30 days of invoice to Operator/Tenant, or (ii) added to the Fixed Rent (as defined in the Lease) pursuant to Section 3.2(IV) thereof.

ARTICLE V  
AUTHORIZED REPRESENTATIVES

A. Operator/Tenant's Representative. Operator/Tenant shall designate an individual to represent it on all matters regarding the Project (the "Operator/Tenant's Representative"). Operator/Tenant's Representative shall be reasonably available at all times during which development activities are taking place. The Operator/Tenant's Representative shall have the authority, on behalf of Operator/Tenant, to approve changes in the scope of this Agreement and the Project, render decisions with respect to the Project and approve all Contract Changes and Change Orders, as provided hereinabove. Any changes in this Agreement and Contract Changes or Change Orders authorized by the Operator/Tenant's Representative shall be binding upon Operator/Tenant. Operator/Tenant hereby designates Lizer Jozefovic as its Operator/Tenant's Representative, and he will remain as such until Operator/Tenant gives Developer forty-eight (48) hours prior written notice that a change in its Developer's Representative.

B. Developer's Representative. Developer hereby designates William Nicholson as its representative on all matters regarding the development of the Project, and he shall remain as such until Developer gives Operator/Tenant forty-eight (48) hours prior written notice of a change in its Developer's representative.

ARTICLE VI  
DEVELOPER FINANCING

Developer Financing. The Developer, at its sole cost and expense, shall use commercially reasonable efforts (including providing a sufficient balance sheet and such personal financials as reasonably required by the Construction Lender), and shall be responsible for procuring all development financing for the Project (the "Construction Loan"). The Operator/Tenant shall be responsible for and hereby covenants to cooperate with the Developer in the prompt preparation and delivery of any and all financial projections, business plans, market studies, discharge capture plans, and any other such information, data, or projections concerning the operations, personal financial statements of the Operator/Tenant and its principals, as the Lender or Developer may request from time to time. The Operator/Tenant further covenants and agrees to file and or apply at the request of the Developer and/or its designated Health Care Consultant or attorney any and all applications, modifications or other requests for a change in the approval or its terms (as defined herein) or an increase in the Approved Project Cost.

ARTICLE VII  
CONTINGENCIES



A. The Developer shall have obtained all Approvals for the development of the Project based upon the Outline Plans and Specifications, 3d Edition, 160 Beds. The Parties acknowledge that all necessary land use approvals for the development of the Project have been previously obtained based upon the approved Outline Plans and Specifications, 2<sup>nd</sup> Edition, 179 Beds. The Operator/Tenant agrees to assist and fully cooperate with Developer in connection with obtaining the Approvals.

B. The Developer shall have obtained a Construction Loan or other financing acceptable to the Developer and the DOH which upon completion shall convert to permanent mortgage financing (the "Permanent Financing") in an amount which is at least 75% of the Project Cost.

C. The Operator/Tenant shall have obtained all DOH Approvals.

With regard to each of the foregoing contingencies (the "Contingencies") each Party agrees to exert, vigorously and expeditiously, all necessary efforts on its behalf to initiate or assist in the satisfaction of each of the Contingencies. Each Party agrees to do nothing that would be detrimental to the satisfaction of the Contingencies.

**ARTICLE VIII  
SUBSTANTIAL COMPLETION DATE**

The "Substantial Completion Date" shall mean the date which is the later of: (i) the date specified in the AIA Form G704, duly executed and certified by the Architect, that the Project was substantially completed and in substantial compliance with the Plans and Specifications for the Project, (ii) the date Developer delivers a Temporary Certificate of Occupancy (the "TCO") for the Project, and (iii) the date the DOH approves the Project as constructed (but not necessarily the Operator/Tenant's operations) to accept patients, provided, however, if the Developer is unable to obtain the TCO or Permanent CO because of the actions or inactions of the Operator/Tenant, its employees or agents including, but not limited to, a delay in obtaining the necessary DOH approvals then delivery of the TCO shall not be a condition under this clause (i); Developer will give Operator/Tenant thirty (30) days' notice of the date Developer expects to be the Substantial Completion Date.

**ARTICLE IX  
HOLD HARMLESS**

A. Developer agrees to indemnify and hold harmless Operator/Tenant, and its managers, officers and employees from and against any and all claims, including reasonable legal fees, liability costs and expenses to the extent arising out of Developer's breach of this Agreement or in connection with, the work undertaken in the Project by the Developer.

B. Operator/Tenant agrees to indemnify and hold harmless Developer and its managers, officers and employees from and against any and all claims, including reasonable legal fees, liability costs and expenses, to the extent arising out of Operator/Tenant's breach of this Agreement or the negligence or willful acts of the Operator/Tenant or any of its employees or agents.

**ARTICLE XI  
PUNCH LIST PREPARATION**

On or prior to the Substantial Completion Date, the Operator/Tenant, the Developer and the Architect, whose decision will be final with respect to all construction matters, shall jointly prepare a list of the items for the Project that remain to be completed or corrected, assign a dollar value for the cost to complete the work and estimate a reasonable time for its completion or correction (collectively the "Punch List"). The Developer shall cause the Construction Lender to withhold 125% of such value. Upon approval of the Architect, and Construction Lender, as any items are completed on the Punch List, those monies withheld by the Construction Lender on account of such uncompleted Punch List items shall be released to Developer.

**ARTICLE XII  
REPRESENTATIONS AND WARRANTIES OF OPERATOR/TENANT**

Operator/Tenant represents and warrants to Developer that:

- A. It is a New York limited liability company and in good standing under the laws of New York State.
- B. It has obtained all necessary consents to enter into this Agreement and perform its obligations hereunder.
- C. This Agreement will not violate the terms of any other agreement by which the Operator/Tenant may be bound.

**ARTICLE XIII  
REPRESENTATIONS AND WARRANTIES  
OF DEVELOPER**

Developer represents and warrants to Operator/Tenant that:

- A. It is a Massachusetts limited liability company and in good standing under the laws of the Commonwealth of Massachusetts.
- B. It has obtained all necessary Limited Liability Company consents to enter into this



Agreement and perform its obligations hereunder.

C. It has obtained all necessary limited liability company authorizations to enter into this Agreement.

ARTICLE XIV  
PAYMENTS BY DEVELOPER

Developer shall pay in a commercially reasonable manner all labor, materials and all liabilities incurred in the performance of its obligations under this Agreement.

ARTICLE XV  
WARRANTY

All Warranties shall be provided and enforceable solely in the Lease.

ARTICLE XVI  
MISCELLANEOUS

A. Applicable Law. This Agreement has been entered into, and shall be governed by, the laws of the State of New York.

B. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. This Agreement is assignable by Developer to any joint venture, partnership or limited liability company in which William Nicholson, or an entity controlled, directly or indirectly by him, is a principal thereof, and to any lender or lenders of Developer. Upon such assignment and assumption by the assignee of all obligations of Developer under this Agreement, the existing Developer shall be relieved of all obligations hereunder.

C. Survival of Representations and Warranties. All representations and warranties in this Agreement shall survive the Substantial Completion Date.

D. Further Action. The Parties agree to execute and deliver all documents, provide all information and take, or refrain from taking, all such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

E. Notices and Addresses. Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be deemed to have been given, served and delivered if delivered by recognized national overnight carrier, or mailed by United States registered or certified mail, addressed to the party entitled to receive the same at his address set forth below, or sent by fax (with a copy sent by first class mail). Each party hereto may change his mailing address by giving to each other party hereto,



written notice of such new address in the manner provided above. Except wherever specified in this Agreement, any notice shall be deemed to have been served and delivered on the date on which such notice is faxed (provided a copy is sent by first class mail), hand delivered, or two (2) days following the date it is mailed.

If to Developer:  
White Plains Healthcare Properties I, LLC  
c/o The Congress Companies  
2 Bourbon Street, Suite 200  
Peabody, Ma 01960  
Attn: William Nicholson

With a copy to:  
Posternak Blankstein & Lund LLP  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199  
Attn: Gerald J. Billow, Esq.

And

Abrams Fensterman  
1111 Marcus Avenue  
Lake Success, New York 11042  
Attn: Howard Fensterman, Esq.  
Attn: Greg Stoller, Esq.

If to Operator/Tenant:  
HBL SNF, LLC  
537 Routes 22  
Pardys, New York 10578  
Attn: Liza Jozefovic

With a copy to:  
Michelman & Robinson  
800 Third Avenue  
New York, New York  
Attn: Mark Zaffin, Esq

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)



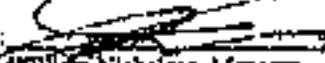
Signature Page for Development Agreement

IN WITNESS WHEREOF, the Parties have hereunto caused this Agreement to be executed the day and year first above written.

OPERATOR/TENANT:  
HBL SNF, LLC

By:   
Name: Liza Jendovic  
Manager

DEVELOPER:  
White Plains Healthcare Properties I, LLC,

By:   
William Nicholson, Manager



# EXHIBIT B

**November 20, 2015**  
**TERM SHEET**  
**REGARDING**  
**WHITE PLAINS INSTITUTE FOR REHABILITATION AND HEALTH CARE**  
**USE OF PROCEEDS FROM REFINANCE OF WATERVIEW AND SALEM AND**  
**CCC EQUITIES PAYOFFS**

This Term Sheet is intended to clarify the pertinent information shared at the meeting of 04/22/2015, attended by Howard Fensterman, as Manager of CCC Equities I, LLC (“CCC”), William Nicholson as Manager of White Plain Healthcare Properties I, LLC (“WPHCP”), Lizer Jozefovic as Manager of HBL/SNF, LLC (“HBL/SNF”) the Tenant, and Mark Zafrin as counsel to HBL/SNF, and to further outline the action items required in order to break ground in the Spring of 2016.

**1) ASSIGNMENT OF CCC EQUITIES MORTGAGES:**

- a) CCC Mortgage: CCC shall assign the series of notes issued by Mokray Acquisitions I, LLC to CCC and the mortgages related thereto, listed on Exhibit 1 attached hereto, to M&T Realty Capital upon payment in full of the amounts set forth in the payoff letter, dated November 20, 2015. The assignment and payoff is not to be construed as a reduction of the equity holdings of CCC in WPHCP, but a “release” of the loans for the purposes of the proceeds being used to fund HBL/SNF and the project.
- b) Disbursement of Proceeds: The proceeds from the CCC Mortgage payoff shall be paid to Madison Title Agency, LLC to be further disbursed as follows:
  - i) \$2,200,000.00 to an account in the name of WPHCP designated by Congress Construction Company to be used for the related pre-development costs of the project , as set for in Paragraph 3 of the “Partners Term Sheet” dated May 26, 2015, as further provided below.
  - ii) \$197,072.00 to CCC or order for the purpose of further distribution in the discretion of Howard Fensterman, as Manager of CCC.
  - iii) The Balance \$1,595,368.32 to an account designated by HBL/SNF (the “**Control Account**”), and, until the closing of a construction loan with Lancaster Pollard (or equivalent), any withdrawals or disbursements from the Control Account shall be subject to the dual signatures of an authorized officer or representative of HBL/SNF and WPHCP. Subsequent to such a closing with Lancaster Pollard (or equivalent), any withdrawals or disbursements from the Control Account shall be subject to any restrictions or limitations as determined by Lancaster Pollard (or equivalent). The funds in the Control Account may be invested in instruments of not greater risk than 90 day treasury notes and not to be further disbursed until (a) the closing of the Lancaster Pollard loan and/or (b) a further agreement between HBL/SNF and WPHCP.

c) Guarantees: Simultaneously with the assignment of the Mokray notes and mortgages and the satisfaction of the payoff letter, Lizer Jozefovic and William Nicholson shall jointly and severally issue a guaranty in favor of WPHCP, pursuant to which they shall guarantee any deficiency between the amount of CCC's investment in WPHCP and the proceeds realized from the collateral (Project, Beds, Entitlements, Land, Plans, Control Account, Etc.,) in event the project's assets needs to be sold because Lancaster Pollard (or equivalent) does not provide construction funding and/or Mezzanine financing or as a result of any breach of HBL/SNF's or Lizer Jozefovic's obligations.

hereunder.

d) Use of Proceeds: The proceeds from the CCC Mortgage payoff are intended to be used as follows;

- (a) \$1,595,368.32 shall be used to capitalize HBL/SNF;
- (b) \$2,200,000.00 from the accounts of WPHCP, generally, for :
  - (i) \$990,000.00 (approximately) to be used for Architect's and Engineer's fees;
  - (ii) \$50,000 (approximately) to be used Interior, Food Service, and other Designers' fees;
  - (iii) \$343,000.00 as additional down payment to Hebrew Hospital as per contract (Operating Agreement version 8 or latest version), to be released to Hebrew Hospital upon execution of the HBL/SNF Operating Agreement,
  - (iv) \$309,750.00 to be paid to the New York State Department of Health ("DOH") for the application fee as per the November 15, 2012 NY DOH Conditional Approval Letter;
  - (v) Balance of \$507,250.00 to be held by WPHCP and disbursed as WPHCP determines, for the following preconstruction costs,
    - 1. Application or other fees to Lancaster Pollard,
    - 2. Taxes, Insurances and other ongoing property/maintenance/safety costs,
    - 3. Other fees,
    - 4. Other pre-construction professional fees and other fees and costs,
    - 5. Survey, environmental, Market Study, Appraisal, and other 3rd party fees for the loan.

e) \$2,200,000.00 disbursement to WPHCP is to be characterized as a non interest bearing loan and repaid to HBL/SNF as follows;

- 1. \$1,500,000.00 is to be deemed as an advance payment for FF&E for the project and repayable only by delivery of title to the FF&E. HBL/SNF will show the FF&E as an asset on its balance sheet; HBL/SNF is to own and be responsible for replacing FF&E. Tenant shall also have ownership of replacement reserve for FF&E.

2. \$700,000.00 shall be repaid as a deduction from the rent over an above payments for P&I, Taxes and Reserves at the rate of \$2,700.00 per month for a term of 420 months .

f) Prior to the assignment of the notes and mortgages, WPHCP shall be granted a security interest in all of the assets of HBL/SNF, including without limitation, the Control Account, and all of the HBL/SNF's rights in and to the beds (including without limitation HBL/SNF's rights, title and interest in and to the purchase and sale agreements pertaining to the beds) and DOH approvals to secure the agreements of Lizer Jozefovic and HBL/SNF hereunder.

II) HBL/SNF and Lizer Jozefovic shall cooperate and deliver all items required by Lancaster Pollard (or other construction lender) in order to most expeditiously close the construction loan.

III) HBL/SNF shall be responsible to fund all of its costs and expenses, as tenant, relating to the development, and fill up of White Plains Institute For Rehabilitation And Health Care, including without limitation expenses payable to DOH, amounts in excess of the funds provided herein for the beds, and professional and consulting fees. Funding for such costs and expenses shall not be made from the Control Account.

IV) HBL/SNF and WPHCP shall enter into a lease (the "Lease"), substantially in the form attached hereto as Exhibit A, which includes, among other things:

a) HBL/SNF shall deposit in the Control Account an amount not less than the requirements of the construction lender's working capital and reserve requirements, including without limitation any shortfall amount as between the construction lender's requirements and the amount in the Control Account.

b) If WPHCP sells the real property to a bona fide third party purchaser prior to the twelfth lease year under the Lease, WPHCP may purchase the HBL/SNF right of first refusal for an amount equal to ten percent (10%) of the excess of the sale price (less costs and fees, including broker's fees) over the TPC (defined below); provided, however, commencing on the twelfth year of the Lease after the commencement date under the Lease and continuing until December 31<sup>st</sup> of the fifteenth year after the commencement date under the Lease, HBL/SNF shall have a right to purchase the real property from WPHCP for a price equal to the sum of (a) the actual total project cost ("TPC"), plus (b) the following amounts:

- i) For Year 12, TPC plus \$1,500,000.
- ii) For Year 13, TPC plus \$1,650,000.
- iii) For Year 14, TPC plus \$1,800,000.

iv) For Year 15, TPC plus \$1,950,000.

c) HBL/SNF will be responsible for funding the initial operating deficit so as not to delay the loan closing, in the amounts and according to the terms as may be required by the construction lender.

(V) HBL/SNF and WPHCP shall enter into a Development Agreement, substantially in the form attached hereto as Exhibit B.

(Signature Page to Follow)

Agreed and accepted this 20<sup>th</sup> day of November 2015

CCC Equities I, LLC

By: \_\_\_\_\_  
Howard Fensterman, Managing Member

HBL SNF, LLC

By:  \_\_\_\_\_  
Jozefovic, Managing Member

White Plains Healthcare Properties I, LLC

BY: \_\_\_\_\_  
William Nicholson, Manager

# EXHIBIT D

COLLATERAL ASSIGNMENT AND PLEDGE OF MEMBERSHIP INTEREST AND SECURITY AGREEMENT

THIS ASSIGNMENT made as of August 11, 2017, by Lizer Jozefovic, an individual having an address at 53 Mariner Way, Monsey New York 10952 (the "Assignor") to Howard Fensterman as nominee for White Plains Health Care Properties LLC, a Massachusetts Limited Liability Company (the "Assignee") with reference to the following facts.

WHEREAS, HBL-SNF a New York Limited Liability Company ("Operator/Tenant") an entity controlled by Assignor had entered into a development agreement with WHITE PLAINS HEALTHCARE PROPERTIES I, LLC (the "Developer") dated November 19, 2015 (the "Agreement") which was amended by and between the Parties by that certain first Amendment to the Development Agreement (the "Amendment") dated as of July 12, 2017.

WHEREAS, the Development Agreement among other things obligated the Tenant to enter into a Lease with Developer in return for the Developer, developing, designing, financing and Building a 160 Bed Skilled Nursing Home for Tenant in White Plains New York; and

WHEREAS the Development Agreement obligated the Tenant to obtain CON approval to build such 160 Bed Skilled Nursing Home for Tenant in White Plains New York and to deliver to Developer such documents as are reasonably requested by Developers lenders; and

WHEREAS, the Tenant has obtained all CON approvals necessary to construct the Skilled Nursing Home and the Developer has obtained all zoning and building department of approvals and a Construction Loan; and

WHEREAS, in or about November 2015 in consideration of Howard Fensterman and/or CCC Equities assigning all mortgages held by them on property owned by Waterview Acquisition I, LLC agreed that he would pre-pay Two Million Two Hundred Thousand Dollars to White Plains Healthcare Properties and would additionally establish a joint signature account in JP Morgan Bank into which the sum of One Million Six Hundred Thousand Dollars was deposited; and

WHEREAS, The Lease requires the sum of 1.6 Million Dollars to be delivered to Landlord at least 60 days prior to the Commencement date of the Lease as additional security for the Tenants faithful performance of the terms and conditions of the Lease; and

WHEREAS, Section 10.2 of the Loan Agreement by and between Developer and its Construction lender restates the language of the Lease and Developer has undertaken to ensure that the 1.6 Million Dollars on deposit with JP Morgan shall be delivered according to the terms and provisions of the Lease; and

WHEREAS, the Sums in the JP Morgan Account entitled HBL SNF, LLC, Account Number [REDACTED] 7272 have been transferred to two JP Morgan Account's entitled Waterview Acquisition I, LLC Account Number [REDACTED] 7002 and Account Number [REDACTED] 0885 in which Howard Fenstennan is not a signatory and the parties want to enter into this agreement by which Howard Fensterman will be added as a signatory to such account under terms and conditions set forth below; and

WHEREAS, Tenant and Assignor have promised to add Howard Fensterman as a signatory to such account so as to ensure that no withdrawals may be made so as to reduce the amount of the account below 1.6 Million and so as to ensure that when required 60 days prior to the commencement date the money in the account or equivalent shall be delivered as additional cash security for the lease; and;

WHEREAS in order to secure the promises made by Assignor concerning such account Assignor has agreed to deliver to Assignee this Assignment; and the Assignor desires to pledge to Assignee all of his membership interest in Waterview Acquisition I, LLC (the "Company"), in order to secure the promises made herein and in the Lease and Security Agreement delivered to the Construction Lender;

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignee and the Assignor hereby agree as follows:

1. As collateral security for the Borrowers' obligations under the Lease, the Security Agreement, the Loan, and the Development Agreement the Assignor hereby pledges and assigns and grants a first and superior security interest in and to all of his rights, title and interest as a member in the Company (the "Collateral").

2. Upon the effectuation of Section 7.1(a)(iii) of the lease which requires Sixty days prior to the anticipated Commencement Date, the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account, the interest in the Company assigned to the Assignee pursuant to Paragraph 1 hereof shall be automatically reassigned by the Assignee to the Assignor without recourse, representation or warranty, and this Assignment shall automatically terminate and be void and of no further effect. Notwithstanding the foregoing, the Assignee hereby agrees to execute any document reasonably required for the purpose of evidencing the reassignment of such interest and the termination of this Assignment.

3. The Assignor represents, covenants and warrants that he is the legal and beneficial owner of the Collateral and has not and will not enter into any assignment, mortgage, pledge or other instrument which transfers or encumbers all or any part of his interest in the Company and that there are no current liens or encumbrances that exist as of the day of the execution of this assignment.

4. The Assignor agrees not to subsequently further amend or voluntarily permit the amendment of the operating agreement of the Company that would in any manner materially adversely affect this Assignment and/or the rights of the Assignee hereunder without the consent of the Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

5. The Assignor covenants and agrees not to voluntarily withdraw as the managing member of the Company without the prior written consent of Assignee, which consent shall not be unreasonably withheld, conditioned or delayed.

6. The covenants provided for in this Assignment shall be binding upon the

successors and assignees of the parties hereto.

7. This Assignment shall be governed by the laws of the State of New York.

8. Neither this Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument in writing duly signed by or on behalf of the Assignor or Assignee.

9. Assignor represents and warrants that he has a 71 % membership interest in the Company and that he is manager thereof.

10. In accordance with the laws of the State of New York and as part of the consideration for the making of the Loan, Assignor consents to the jurisdiction of any local, state or federal court located within New York and further consents that all service of process may be made by registered mail to his address set forth below and service so made shall be deemed completed five (5) days after the same shall have been mailed.

11. Assignor covenants and agrees to execute such additional documents and to take such further actions as may be reasonably required to carry out the provisions and intent of this Assignment including, without limitation, executing a financing statement or statements and continuations thereof. In addition, Assignor grants to Assignee a power of attorney coupled with an interest to effectuate the terms of the foregoing sentence and to file all continuations, renewals or amended financing statements without the signature of Assignor.

13. Should Assignor violate the terms and provisions concerning the maintenance of the account as set forth in the resolution of Waterview Acquisition I, LLC annexed hereto as Exhibit A the Assignee shall have:

(a) The right to sell the Collateral in the State of New York at one or more public or private sales at such price and on such terms as Assignee in its discretion accepts, for cash, upon or for future delivery. Upon any such sale, the Assignee shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral. Such purchaser at any such sale shall hold the Collateral sold absolutely free from any claim or right on the part of the Assignor, and the Assignor hereby waives (to the extent permitted by law) all rights of redemption, stay or appraisal which he has or may have under any rule of law or statute now existing or hereafter adopted. The Assignee shall give the Assignor twenty-one (21) days' written notice by registered or certified mail, postage prepaid, return receipt requested (which Assignor acknowledges is reasonable and sufficient), of the Assignee's intention to make any such public or private sale. Such notice, in the case of public sale, shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places in the State of New York as the Assignee may fix in the

notice of such sale. The Assignee shall not be obligated to make any sale of the Collateral if it shall determine not to do so, regardless of the fact that notice of such sale of the Collateral may have been given. The Assignee may, upon one day's written notice, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place within in the State of New York to which the same was so adjourned. In case sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Assignee until the sale price is paid by the purchaser or purchasers thereof, but the Assignee shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold, and, in case of any such failure, such Collateral may be sold again upon like notice. As an alternative to exercising the power of sale herein conferred upon it, the Assignee may proceed by a suit or suits at law or in equity to foreclose this Assignment and to sell the Collateral, or any portion thereof, pursuant to a judgment or decree of a court of competent jurisdiction;

(b) such other rights with respect to the Collateral as shall be afforded to secured parties by the Uniform Commercial Code of the State of New York including, but not limited to, the right to setoff; and/or

(c) to apply any proceeds of any disposition of the Collateral to the payment of the cash security required under the terms and provisions of the lease and reasonable expenses of the Assignee in connection with the exercise of its rights or remedies, including reasonable fees and expense of attorneys, and any balance shall be paid to such party as shall be entitled thereto pursuant to law.

13. The Assignor hereby waives any right to require that the Assignee proceed against any real or personal property or any guaranty given as security for the Note, whether or not existing or hereafter given, before exercising its rights and remedies with respect to the Collateral.

14. This Agreement may be executed in counterparts, each of which, when taken together, shall be construed as one and the same instrument.

15. All notices, demands and other communications provided for herein shall be deemed received upon personal delivery or delivery by national overnight delivery service, or three (3) business days following deposit in the U.S. mail, postage prepaid, first class registered or certified,

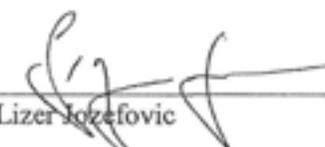
to Assignor or assignee at the following addresses:

If to Assignor:  
Liner Jozefovic  
53 Mariner Way  
Monsey, New York

With a copy to:  
Michelman & Robinson, LLP  
800 Third Avenue  
New York, New York  
Attention: Mark H. Zafrin, Esq.

If to Assignee:  
Howard Fensterman  
C/o Abrams, Fensterman et al  
3 Dakota Drive  
Suite 300  
Lake Success, New York 11042

IN WITNESS WHEREOF, Assignor has duly executed this Assignment, as of the day and year first written above.

  
Lizer Jozefovic

The Company hereby acknowledges receipt of this Assignment by Assignor.

WATERVIEW ACQUISITION I, LLC

By: 

# EXHIBIT E

**Mark H. Zafrin (NY)**

**From:** Howard Fensterman <HFensterman@Abramslaw.com>  
**Sent:** Thursday, August 10, 2017 10:07 AM  
**To:** Mark H. Zafrin (NY)

Mark: I have substantially watered down and modified Gerry's language. The below reflects what we agreed to . Please confirm with Gerry and have him do the paperwork to finalize this. If you have any issues with what I did please call me on cell.

You did not send me your daughters singing video. Please do so because I am interested to see her sing at this age. Enjoy the orientation. Life is going by very quickly. I do not even remember those times in my life.

With respect to the Waterview account:

1. Howard Fensterman and Lizer Jozefovic shall be co- signatories to the Waterview account, provided however that Howard Fensterman shall be the sole signatory authorized on any direction for the account to be diminished below 1.6 million dollars. This authority shall be relegated to removal of the funds pursuant to the terms of the lease between HBL SNF, LLC as Tenant And White Plains Healthcare Property I , LLC as Landlord. Lizer and Waterview agree to maintain at least \$1.6 M in account. Howard Fensterman agrees that he shall consent to all sums in excess 1.6 million being withdrawn from the account by the direction of Lizer Jozefovic. The terms of this paragraph shall be incorporated into written agreements, and a resolution and direction to JP Morgan Chase Bank.
2. Waterview and Lizer Jozefovic agree that the foregoing resolution cannot be modified without the consent of Howard Fensterman. The obligation of Waterview and Lizer Jozefovic to comply with the terms of the above resolution shall be secured by a pledge of Lizer Jozefovic's membership interest in Waterview, which he represents is unencumbered, along with a UCC 1 filing on same.

With respect to Mark Neuman Guaranty:

"Per your request the undersigned, the beneficiary of your Guaranty dated as of November 19, 2015 (the "Guaranty"), and landlord under the lease with HBL SNF, LLC of that date (the "Lease"), agrees that it will terminate your Guaranty upon satisfaction of the following conditions:

1. You terminate all of the beneficial interest you may have in HBL SNF, LLC and you do not park your interest in any nominee provided this may only be done after construction of the building;
2. New York State Department of Public Health has removed you from the license once it is issued after the construction of the building which is contemplated to be accomplished within 30 days;
3. The Tenant is otherwise in compliance with the lease.

**Mark H. Zafrin (NY)**

**From:** Howard Fensterman <HFensterman@Abramslaw.com>  
**Sent:** Wednesday, August 16, 2017 2:32 PM  
**To:** Mark H. Zafrin (NY)  
**Subject:** Re:

Where do I send it?

*Sent from my iPad*

On Aug 16, 2017, at 12:34 PM, Mark H. Zafrin (NY) <mzafrin@mrlip.com> wrote:

Enclosed please find the Chase Certification that we received today; Please note that the Certification requires that the Resolution that we prepared be annexed as an exhibit. What I need from Howard is original signature cards from Howard with wet ink signatures—Lizer should have all of the resolutions and certifications signed this evening.

**Mark H. Zafrin**

Los Angeles | Orange County | San Francisco | Chicago | New York

800 Third Avenue, 24th Floor, New York, NY 10022  
T 212.730.7700 F 212.730.7725  
E [mzafrin@mrlip.com](mailto:mzafrin@mrlip.com) [www.mrlip.com](http://www.mrlip.com)  
Bio vCard

The contents of this e-mail message and its attachments are intended solely for the addressee(s) hereof. In addition, this e-mail transmission may be confidential and it is subject to privilege protecting communications between attorneys or solicitors and their clients. If you are not the named addressee, or if this message has been addressed to you in error, you are directed not to read, disclose, reproduce, distribute, disseminate or otherwise use this transmission. Delivery of this message to any person other than the intended recipient(s) is not intended in any way to waive privilege or confidentiality. If you have received this transmission in error, please alert the sender by reply e-mail and also request that you immediately delete this message and its attachments, if any. UNAUTHORIZED INTERCEPTION PROHIBITED BY FEDERAL LAW (18 U.S.C. 2522).

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**Howard Fensterman, Esq.**

**ABRAMS, FENSTERMAN, FENSTERMAN, EISMAN, FORMATO, FERRARA, WOLF & CARONE, LLP**

**Managing Partner**

Tel: 516-328-2300

Direct: 516-328-3953

Email: [hfensterman@abramslaw.com](mailto:hfensterman@abramslaw.com)



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~~Manhattan~~  
~~(212) 279-9200~~

~~Brooklyn~~  
~~(718) 215-5300~~

~~Rochester~~  
~~(585) 218-9999~~

**WWW.ABRAMSLAW.COM**

CONFIDENTIALITY NOTICE: This e-mail may be an attorney-client communication and may contain information that is privileged and confidential and is therefore subject to legal restrictions and penalties regarding its unauthorized disclosure or other use. If you are not the intended recipient you are prohibited from copying, forwarding, distributing, disseminating, or otherwise viewing this e-mail and any attachments hereto. Please notify the sender and delete this e-mail if you are not the intended recipient.

**From:** Mark H. Zafrin (NY)

**Sent:** Thursday, August 17, 2017 9:29 AM

**To:** Howard Fensterman <HFensterman@Abramslaw.com>; Gerald Billow <gbillow@PBL.COM>

**Subject:**

Howard I need your signature on the last page

**Limited Liability Company Certification**

**Chase Investments**

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
 Account Maintenance Fax (800) 805-3909

**Account Information**

Account Number	0885 (NON MANAGED)	WATERVIEW ACQUISITION I L
Account Description	LTD LIABILITY CO	L.C
Rep of Record	0V01	537 RT 22
Completed By	KENNETH GATES (CHCKG17)	PURDYS NY 10578-2900

**Limited Liability Company Information**

Use this form to certify the member/manager(s) authorized to act on an investment account for a Limited Liability Company. A Signatory Information Sheet **MUST BE provided** for all signers.

Limited Liability Company Name  
 Waterview Acquisition I LLC

Limited Liability Company Tax ID Number (TIN)  
 7872

Limited Liability Company Type  
 Member Managed Company

**Member/Manager Information**

Member/Manager Name  
 Mark Neuman

Member/Manager Name  
 Herbert Jozefovic

Member/Manager Name  
 Howard Fensterman

Member/Manager Name  
 \_\_\_\_\_

**Certification**

In consideration of J.P. Morgan Securities LLC ("JPMS") opening and/or maintaining an investment account ("Account") for the Limited Liability Company ("LLC") named above, the undersigned duly authorized to bind the LLC and all of its Members/Managers personally, certify as follows:

**FIRST:** The name of the LLC to which this Certification applies is as indicated above.

**SECOND:** All Members/Managers are over the age of majority in their respective state of residence. Each of the Members/Managers listed above is hereby individually authorized, for and on behalf of the LLC.

**THIRD:** JPMS is authorized to accept orders for trading, purchases and sales of assets and other instructions for the receipt and withdrawal and disposition of assets to any name, including themselves and third parties, whether free or versus payment, or trade or non-trade related (including to any Members/Managers) from those Members/Managers listed above, pursuant to the terms of the LLC and applicable law. The LLC is duly authorized and permitted to engage in cash and margin transactions in any and all forms of securities including, but not limited to, evidences of interest, participation, or indebtedness, instruments of any issuer (whether publicly registered or exempt from registration) including, but not limited to, common or preferred stock, scrip, warrants and rights; bills, notes, bonds or debentures of any coupon, including "zero coupon" or maturity; certificates of deposit, bank notes or deposit notes; commercial paper, money market instruments; listed and/or over-the-counter options, commodities, commodity futures, options on futures (including single stock futures contracts and other securities futures products), transactions in foreign currencies; limited partnership interests and other interests in hedge funds, buyout funds, real estate investment trusts, venture capital funds, private equity funds and private equity investment vehicles; whole mortgage loans, any and all interests and participations in mortgage loans, mortgage-backed and asset backed securities; any kind of derivative investment, including interest rate, currency, credit, equity or other swap transactions; repurchase and reverse\* repurchase transactions, buy/forward sale transactions, dollar rolls, secured lending transactions and any instrument or interest generally regarded as an investment or hedge, secured or unsecured, or any transaction, that is similar to any of those described above (including an option with respect to any of them).

(continued on next page)

**INVESTMENT PRODUCTS ARE:**  
**NOT FDIC INSURED • NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES • SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED**



**Certification Regarding Municipal Advisor Rule**

**Chase Investments**

A division of J.P. Morgan Securities LLC, member FINRA/SIPC.

New Accounts Fax (866) 966-4455  
Account Maintenance Fax (800) 805-3909

Use this form to certify entity status on an investment account.

**Account Holder Information**

Name of Account Owner ("Entity")

Waterview Aquisition LLC

For the purposes of Section 15d of the Securities Exchange Act of 1934 (the "Municipal Advisor Rule"), I hereby represent, warrant, and certify to J.P. Morgan Securities LLC ("JPMS") on behalf of the Entity, each of the following and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue:

I am a knowledgeable official representative of the Entity, am authorized to sign this certificate, have access to the appropriate information or have direct knowledge of the source of the funds of the Entity that enables me to make these representations; and, if necessary, have consulted with legal counsel, in regard to these representations, warranties and certifications.

**Certification Regarding Municipal Entity Status (select one)**

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a **Municipal Entity**
- The Entity is not a **Municipal Entity**

The term "**Municipal Entity**" means any state, political subdivision of a state, or municipal corporate instrumentality of a state, including: (1) any agency, authority or instrumentality of the state, political subdivision or municipal corporate instrumentality; (2) any plan, program or pool of assets sponsored or established by the state, political subdivision or municipal corporate instrumentality thereof; and (3) any other issuer of municipal securities.

**Certification Regarding Obligated Entity Status (select one)**

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a **Obligated Person**
- The Entity is not a **Obligated Person**

The term "**Obligated Person**" means any person or entity, including an issuer of municipal securities, who is either generally or through an enterprise, fund or account of such person, committed by contract or other arrangement to support the payment of all, or a part of, the obligations on the municipal securities to be sold in an offering of municipal securities, except the term Obligated Person shall not include: (1) a person who provides municipal bond insurance, letters of credit or other liquidity facilities; or (2) a person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility or other credit enhancement.

**Certification Regarding Proceeds with JPMS (select one)**

Regarding the account(s) the Client has with, or will establish with, JPMS:

- Amounts to be invested in accounts established at JPMS for the entity may constitute **Proceeds of Municipal Securities** or **Municipal Escrow Accounts**
- Amounts to be invested in accounts established at JPMS for the entity may not constitute **Proceeds of Municipal Securities** or **Municipal Escrow Accounts**

The term "**Proceeds of Municipal Securities**" means monies derived by a municipal entity from the primary offering of municipal securities, investment income derived from the investment or reinvestment of such monies, and any monies of a municipal entity or obligated person held in funds under legal documents for the municipal securities that are reasonably expected to be used as security or a source of payment for the payment of the debt service on the municipal securities, including reserves, sinking funds and pledged funds created for such purpose, and the investment income derived from the investment or reinvestment of monies in such funds.

The term "**Municipal Escrow Investments**" means proceeds of municipal securities and any other funds of a municipal entity or Obligated Person that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities.

**Signature**

I hereby represent, warrant and certify to JPMS on behalf of the Entity, each of the foregoing and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue.

Authorized Signature 	Date (mm/dd/yyyy) 11/06/17
Authorized Signer Name (please print) Mark Neuman	

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**Limited Liability Company Certification**

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New Accounts Fax (866) 966-4455  
 Account Maintenance Fax (800) 805-3909

**Certification (continued)**

A Member/Manager may: (1) give to, and receive from, JPMS or its affiliates oral, written or electronic instructions, confirmations, notices or demands with respect to the account and any transaction; (2) bind the LLC to enter into and perform any transaction or agreement, amendment or modification thereof, relating to the account and any transaction involving the LLC; (3) lend or borrow money or securities and secure the repayment thereof with the property of the LLC; (4) pay in cash or by check or by credit or debit card or draft drawn upon the funds of the LLC any sums required to be paid in connection with the account and any transaction; (5) direct the sale or exercise of any rights with respect to any securities or other property; (6) agree to any terms or conditions or execute or otherwise assent to any document or agreement affecting the account and any transaction; (7) direct JPMS to surrender any securities or other property for the purpose of effecting any exchange or conversion thereof; (8) appoint any other person or persons to do any and all things which such Member/Manager of the LLC is hereby empowered to do; and (9) generally, take all such action as such Member/Manager of the LLC may deem necessary or desirable to implement or facilitate the trading activities described herein. Members/Managers are permitted to sell, assign and endorse for transfer, certificates representing stocks, bonds or other securities now registered or hereafter registered in the name of the LLC. If a Member/Manager is an entity (e.g., Corporation), then the appropriate ancillary documents (e.g., corporate resolution) is required. If the Members/Managers want to authorize a third party to transact on the account, the General Partners must also submit a JPMS Trading Authorization form naming such party. Subject to the policies of JPMS and its affiliates, or in the event JPMS or its affiliates receive conflicting instructions, or reasonably believe instructions from one Member/Manager might conflict with the wishes of another Member/Manager or other authorized third party, JPMS or its affiliates may do any of the following: (a) choose which instructions to follow and which to disregard; (b) suspend all activity in the Account until written instructions, signed by all Members/Managers, are received; (c) close the Account and deliver all securities and other property, net of debits or liabilities, to the address of record; and/or (d) take other legal action.

**FOURTH:** Members/Managers certify that they have the power under the LLC Agreement and applicable law to open and maintain an Account with JPMS and its affiliates (including margin accounts\*) and to enter into transactions, both purchases and sales, of securities and other property for the LLC. Notwithstanding the herein certifications, any person with actual or apparent authority is authorized and empowered by the LLC to undertake any activity. All actions previously taken by any Member/Manager in connection with or related to the matters set forth in, or reasonably contemplated or implied by the herein certifications be, and each of them hereby is, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the LLC.

**FIFTH:** Members/Managers warrant and represent that the information above is accurate and complete. Members/Managers, jointly and severally, agree to indemnify and hold harmless JPMS, its agents, employees, representatives and affiliates, from and against any and all liabilities, judgments, claims, settlements, losses, damages, obligations, and expenses, including reasonable attorney fees, arising from or relating to this Certification and/or for effecting transactions for the Account in reliance thereon. If fewer than all Members/Managers sign, those signing certify that they are authorized to bind the LLC and all Members/Managers thereof to the terms of this Certification. Members/Managers agree to inform JPMS, in writing, of any changes in the identity of the Members/Managers listed above, any other amendments to the LLC and/or any other event that could alter the Certifications made herein including its revocation. Such written notice should be provided to JPMS at the following address: J.P. Morgan Securities LLC, Attention: Account Processing, IL-0291 4th Floor, 131 South Dearborn Street, Chicago, IL 60603-5506 or any other address that has been provided by JPMS specifically for such purpose. JPMS may rely on this Certification indefinitely or until written notice to the contrary is received by JPMS. Members/Managers agree that this release and discharge shall survive the revocation of this Certification with respect to transactions entered into prior to the effectiveness of such revocation.

**\*Additional Documentation Required**

**Member Signature(s)**

Authorized Members

All Members/Managers have signed below

Member Signature <i>X</i> <i>Reed Ayuma</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <i>X</i> <i>[Signature]</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <i>X</i> <i>[Signature]</i>	Date (mm/dd/yyyy) 8/16/17
Member Signature <i>X</i>	Date (mm/dd/yyyy) / /

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EXHIBIT A

ACTION OF THE MEMBERS AND MANAGERS

OF

WATERVIEW ACQUISITION I, LLC

AUGUST 11<sup>th</sup> 2017

The undersigned, each being a Member or Manager of WATERVIEW ACQUISITION I, LLC, a New York limited liability company (the "Company"), and collectively constituting all of the Members and Managers of the Company, do each hereby consent to and adopt the following resolutions as resolutions of the Members and Managers of the Company:

AUTHORIZATION

WHEREAS, it is deemed to be in the best interests of the Company and its members and affiliates to enter into an agreement with White Plains Health Care Properties as Developer (the "Developer"), for Developer to design and construct a 160 Bed Residential Health Care Facility in White Plains New York (the Facility).

WHEREAS, Marc Neuman, Lizer Jozefovic and Gerald Neuman and the Company will derive substantial economic benefit by increasing their market share in Westchester County by the construction of the Facility; and

WHEREAS, Waterview Acquisition I, LLC is the owner of that certain account maintained at JP Morgan Account's entitled Waterview Acquisition I, LLC Account Number [REDACTED]7002 and Account Number [REDACTED]0885 (the "Account") in which Marc Neuman and Lizer Jozefovic are the sole signatories;

WHEREAS, in order to achieve the Companies goals set for the above it is in the best interest of the Company and its members to add Howard Fensterman as a signatory to that account and place certain restrictions on withdrawals from the account pending the construction of the Facility

THEREFORE, BE IT RESOLVED, that

1. The Company add Howard Fensterman as a co-signatory to the following account Waterview Acquisition I, LLC Account Number [REDACTED]7002 and Account Number [REDACTED]0885 at JP Morgan Chase together with Marc Neuman and Lizer Jozefovic;
2. Howard Fensterman's signature shall be required on any withdrawal or any direction to the Bank on the account where such withdrawal or direction shall cause the balance and value of the account to fall below 1.6 million dollars until such

time as the Facility is completed and an affiliated entity HBL-SNF satisfies its obligation to post a 1.6 million dollar additional cash security deposit according to Section 7.1(a)(iii) of the lease between HBL SNF, LLC as Tenant And White Plains Healthcare Property I, LLC as Landlord which requires Sixty days prior to the anticipated Commencement Date that the funds in the JP Morgan Chase Bank account in the amount of not less than \$1,600,000 shall be deposited into the Landlords Rent Security Account,

3. Howard Fensterman's signature shall be required to withdraw all sums in the account in excess of 1.6 million at the direction of Lizer Jozefovic or Marc Neuman and by his signature below agrees to give such consent unless such withdrawal shall cause the balance in the account to fall below 1.6 Million dollars.

RESOLVED FURTHER, that the managers of the Company designated by any of them (such manager or managers, which are authorized to act singly or together pursuant hereto, being hereinafter designated as "authorized managers"), be and they are each hereby authorized, directed and empowered, in the name of the Company, to execute and deliver to JP Morgan Bank and all , agreements or instruments including this Resolution to JP Morgan Bank required to evidence and effectuate the terms of this Resolution which shall be incorporated into a formal resolution and direction to JP Morgan Chase Bank, N.A. evidencing the agreements memorialized by this Resolution.

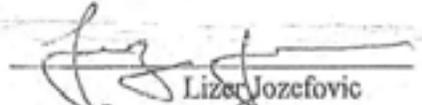
RESOLVED FURTHER, that any and all acts of any of the authorized managers of the Company done or made heretofore in connection with the actions authorized by this Resolution and the execution of all agreements related thereto, are hereby ratified and approved in all respects.

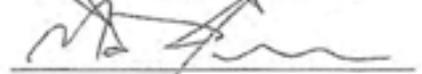
RESOLVED FURTHER, that JP Mortgage Bank may conclusively rely upon a copy of these resolutions and is authorized to act upon these resolutions for past, present and future transactions until (a) written notice of its revocation is delivered JP Morgan Bank. The authority hereby granted shall apply with equal force and effect to the successors in office of the managers herein named.

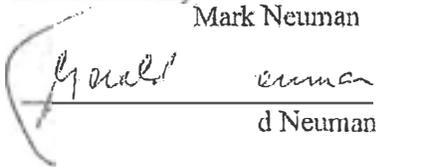
[SIGNATURE PAGE FOLLOWS]

The foregoing action is taken pursuant to the applicable New York limited liability company statutory laws and the operating agreement of the Company, by the written consent of a majority of its members and managers of the Company acting without a meeting.

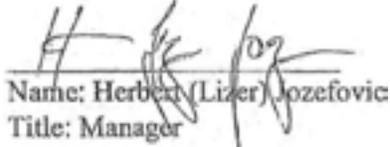
MEMBERS:

  
 Lizer Jozefovic

  
 Mark Neuman

  
 Gerald Neuman

MANAGERS:

  
 Name: Herbert (Lizer) Jozefovic  
 Title: Manager

AUTHORIZED SIGNATORY

\_\_\_\_\_  
 Howard Fensterman

**Limited Liability Company Certification**

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**Certification (continued)**

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**FOURTH:** Members/Managers certify that they have the power under the LLC Agreement and applicable law to open and maintain an Account with JPMS and its affiliates (including margin accounts\*) and to enter into transactions, both purchases and sales, of securities and other property for the LLC. Notwithstanding the herein certifications, any person with actual or apparent authority is authorized and empowered by the LLC to undertake any activity. All actions previously taken by any Member/Manager in connection with or related to the matters set forth in, or reasonably contemplated or implied by the herein certification is, and each of them hereby is, adopted, ratified, confirmed and approved in all respects as the acts and deeds of the LLC.

**FIFTH:** Members/Managers warrant and represent that the information above is accurate and complete. Members/Managers, jointly and severally, agree to indemnify and hold harmless JPMS, its agents, employees, representatives and affiliates, from and against any and all liabilities, judgments, claims, settlements, losses, damages, obligations, and expenses, including reasonable attorney fees, arising from or relating to this Certification and/or for effecting transactions for the Account in reliance thereon. If fewer than all Members/Managers sign, those signing certify that they are authorized to bind the LLC and all Members/Managers thereof to the terms of this Certification. Members/Managers agree to inform JPMS, in writing, of any changes in the identity of the Members/Managers listed above, any other amendments to the LLC and/or any other event that could alter the Certifications made herein including its revocation. Such written notice should be provided to JPMS at the following address: J.P. Morgan Securities LLC, Attention: Account Processing, IL-0291 4th Floor, 131 South Dearborn Street, Chicago, IL 60603-5506 or any other address that has been provided by JPMS specifically for such purpose. JPMS may rely on this Certification indefinitely or until written notice to the contrary is received by JPMS. Members/Managers agree that this release and discharge shall survive the revocation of this Certification with respect to transactions entered into prior to the effectiveness of such revocation.

\*Additional Documentation Required

**Member Signature(s)**

Authorized Members

All Members/Managers have signed below

Member Signature <b>X</b>	Date (mm/dd/yyyy) / /

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### Certification Regarding Municipal Advisor Rule

### Chase Investments

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#### Account Holder Information

Name of Account Owner ("Entity")

Waterview Aquisition LLC

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I am a knowledgeable official representative of the Entity, am authorized to sign this certificate, have access to the appropriate information or have direct knowledge of the source of the funds of the Entity that enables me to make these representations; and, if necessary, have consulted with legal counsel, in regard to these representations, warranties and certifications.

#### Certification Regarding Municipal Entity Status (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a Municipal Entity
- The Entity is not a Municipal Entity

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#### Certification Regarding Obligated Entity Status (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- The Entity is a Obligated Person
- The Entity is not a Obligated Person

The term "Obligated Person" means any person or entity, including an issuer of municipal securities, who is either generally or through an enterprise, fund or account of such person, committed by contract or other arrangement to support the payment of all, or a part of, the obligations on the municipal securities to be sold in an offering of municipal securities, except the term Obligated Person shall not include: (1) a person who provides municipal bond insurance, letters of credit or other liquidity facilities; or (2) a person whose financial information or operating data is not material to a municipal securities offering, without reference to any municipal bond insurance, letter of credit, liquidity facility or other credit enhancement.

#### Certification Regarding Proceeds with JPMS (select one)

Regarding the account(s) the Client has with, or will establish with, JPMS:

- Amounts to be invested in accounts established at JPMS for the entity may constitute Proceeds of Municipal Securities or Municipal Escrow Accounts
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The term "Municipal Escrow Investments" means proceeds of municipal securities and any other funds of a municipal entity or Obligated Person that are deposited in an escrow account to pay the principal of, premium, if any, and interest on one or more issues of municipal securities.

#### Signature

I hereby represent, warrant and certify to JPMS on behalf of the Entity, each of the foregoing and agree to notify JPMS immediately if circumstances change in a manner which makes any of the representations set forth on this certification untrue.

Authorized Signature	Date (mm/dd/yyyy)
X	/ /
Authorized Signer Name (please print)	
Mark Neuman	

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# EXHIBIT G

**HBL-SNF, LLC**  
**1280 Albany Post Road**  
**Croton-on-Hudson, NY 10520**

November 20, 2019

White Plains Healthcare Properties, I, LL  
West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William Nicholson

**Re: Letter of Intent**  
**Premises: 116-120 Church Street**  
**White Plains, New York**

Dear Mr. Nicholson

This Letter of Intent ("LOI") outlines our proposal for White Plains Health Care Properties, I, LLC (the "Contributor") to transfer the premises known as 116-120 Church Street, White Plains New York (the "Premises") to a Delaware Statutory Trust where we would jointly hold the beneficial interests in the Trust on the terms and conditions set forth below. The Building a skilled nursing home facility consisting of one hundred sixty (160) beds (the "Facility") had been constructed pursuant to a Development Agreement dated November 19<sup>th</sup>, 2015 and for which we had simultaneously entered into that certain operating lease by and between you as Landlord and us as Tenant/Operator, (the "Lease").

- 1) **Basic Transaction:** (the "Transaction"): Contributor shall contribute premises 116-120 Church Street White Plains, New York to a newly formed Delaware Statutory Trust (the "Trust") formed by the parties. This transaction shall be memorialized by a contribution agreement in substantially the form annexed hereto as Exhibit A. The Contribution shall be governed by IRC Sec. 721. The agreed upon cost and fair market basis shall be \$67,345,348.00
  - a) Lizer Jozefovic and Mark Neuman will acquire from the Trust by a Purchase Agreement 77.50 Percent of the Beneficial Interests in the Trust and redemption of a portion of the B Beneficiaries' interest for a purchase price of \$52,200,000.00 paid as follows;
    - i) By a down payment (the "Down Payment") not to be held in escrow, but to be made upon the execution and delivery of this LOI of \$2,200,000.00 by wire transfer to the account of White Plains Healthcare Properties I, LLC according to the wire instructions annexed hereto.
    - ii) By the Trust obtaining a new first mortgage of \$51,000,000.00 to pay the balance of the Purchase Price and cover closing costs to be used as follows;

- (1) To pay the first Mortgage held by Security Benefit Life Insurance in the approximate amount of \$39,226,253 plus accrued interest and fees.
  - (2) To pay the loan encumbering the membership interests of the Contributors by Bradford Allen in the approximate amount of \$9,770,963 plus accrued interest and fees;
  - (3) By the Trust making a non-refundable down payment of \$2,200,000.00
  - (4) To pay the costs of the financing.
- b) Lizer Jozefovic and Mark Neuman shall be the A Beneficiaries of the trust holding a 77.50% Beneficial interest, and the present members of the Contributor or their designees shall be the B Beneficiary with a 22.5% equity position.
  - c) The A Beneficiaries shall be the personal guarantors of the new financing in the amount of Fifty-One Million (\$51,000,000.00) Dollars. The Transaction is to close thirty (30) days after Buyer has received approval for the Financing set forth in paragraph 1(a) ii)). The Contribution Agreement shall call for a purchase price equal to Transferors cash basis in the property and shall not result in a taxable event for Contributor;
  - d) The Financing shall be an obligation of the Trust secured by a first mortgage loan on the Facility and the Premises.
  - e) Lizer Jozefovic and Mark Neuman shall act as the Personal Guarantors and shall be obligated if necessary, to secure additional personal guarantors to ensure that none of the B beneficiaries shall have any obligation to guarantee the Financing. Any additional guarantors on the Financing shall also execute and deliver a personal guaranty of Tenant's obligations to Landlord on the Lease. All guaranties on the Lease shall be full unlimited personal guarantees.
  - f) The Financing shall bear interest at a constant rate of no more than 7% per annum with Principal and Interest paid on an amortization schedule of 35 years and shall be subject to the reasonable approval of the Contributor, which consent shall not be unreasonably withheld or delivered without cost to the Tenant Borrower.
  - g) Formal Contracts: The Parties intend that additional agreements including the Contribution Agreement, Redemption Agreement and Trust Agreement (the Formal Contracts") shall be complete as of November 22nd, 2019, and absent execution of Formal Contracts this LOI shall govern provided the Down Payment is received in good funds by Contributor upon execution of this LOI, and in no event later than the end of business November 22, 2019. In the event Tenant defaults in the payment of rent on the Lease and such default continues for five (5) days, Contributor shall have the right to terminate this LOI and all Formal Contracts.
  - h) Closing: The Closing of the Transaction ("Closing") will occur at the offices of the First Mortgage Bank's counsel or such other location within the State of New York as may be agreed upon by the Parties thirty (30) days after receipt by the Trust of approval for

the Financing but no later than April 1st, 2020. If the Tenant has a commitment letter on April 1st, 2020 that is in the process of closing or if the closing is delayed by a title issue, the closing date shall be automatically extended for another Ninety-Days. If the closing does not occur by such date, time being of the essence, this LOI and the Formal Contracts shall be terminated and no party shall have any rights with respect thereto. The parties shall remain as Landlord and Tenant pursuant to the existing Lease until such time as the Transaction closes. The Lease may be amended as provided herein but only if and when such amendments are approved by Contributor's existing Lender.

- 2) **Structure of the Trust:** The Contributor and Tenant have agreed to create a Trust as a "statutory trust" in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. 3801 and enter into a Trust Agreement which shall constitute the "governing instrument" of the Trust. Each party will become a Beneficiary and will transfer certain sums of money and/or property to the Trust in exchange for a beneficial interest in the Trust as set forth above;
- a) The Trust shall be a special purpose entity which is being formed solely for the purpose of acquiring the Trust Property from the Contributor and maintaining, improving, building upon, and leasing the Trust Property for use as a skilled nursing facility and all and such other activities incident or appropriate to the preceding
  - b) Simultaneously upon the closing of the transaction, the existing lease shall be modified only as set forth herein.
  - c) The trust shall be permitted to have only the following liens on the Trust Property and no other:
    - i) A Mortgage in the amount of Fifty-One Million (\$51,000,000.00) Dollars (the "First Mortgage") the terms of which shall be acceptable to the Department of Health and the Contributor.
    - ii) The Trust will designate Howard Fensterman and William Nicholson as the Administrative Trustees of the B interests.
      - (1) The Trust Agreement shall provide that Howard Fensterman and William Nicholson as the B beneficiaries Administrative Trustees shall have the sole authority to all issues governing administering and enforcing the terms of the Lease including the collection and distribution of rent.
      - (2) Lizer Jozefovic shall be responsible as the overall Administrative Trustee for all other matters concerning the building including but not limited to repairs, maintenance, and operation of the building. Any Trustee may be removed for cause including misconduct, bad faith, fraud or gross negligence.
      - (3) Except as otherwise provided in a Trust Agreement to be executed and notwithstanding any provision of the Act that otherwise so empowers the Trust, neither the Beneficiaries nor any Trustees nor any other Person shall be authorized or empowered, nor shall they permit the Trust, to take any of the following actions

without the prior unanimous written consent of all of the Beneficiaries:

- (a) Make any arrangements to reduce, modify, or forebear on the payment of rent by the Tenant.
- (b) Guarantee any obligation of any Person, including any Affiliate;
- (c) engage, directly or indirectly, in any business other than the actions required or permitted to be performed hereunder;
- (d) incur, create or assume any indebtedness;
- (e) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person;
- (f) To the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of their Interests subject to obtaining any approvals required under this Trust Agreement other than a sale of the interests to qualified purchasers under a syndicated offering of the B interests. The cost of such syndication shall not be charged to the B Beneficiaries and all monies derived therefrom and due hereunder shall be net of the costs of the syndication.
- (g) allow any business to be conducted on the Property other than the operation of a skilled nursing facility and ancillary uses;
- (h) own any other property or engage in any business other than owning and leasing the Trust Property for use as a skilled nursing facility;
- (i) take any action to consolidate or merge the Trust with or into any Person;
- (j) sell all or any portion of or any interest in the Trust Property;
- (k) grant an option to lease all or any portion of the Trust Property for a term (with all extension periods) ending on or after the 45th Anniversary Date;
- (l) amend, terminate or waive any material provisions of any lease for all or any portion of the Trust Property;
- (m) enter into any agreement with any Person giving any Person any rights with respect to the Trust Property that extend beyond the 45th Anniversary Date or which are not terminable without penalty on less than 90 days' notice;
- (n) encumber the Trust Property with any mortgages or another lien, easement, covenant or restriction other than the First Mortgage, or a HUD Mortgage to refinance the debt contemplated by this Agreement, at such time as HUD regulations shall allow;
- (o) modify the Trust Agreement or the Trust's certificate of trust in any manner, issue additional interests in the Trust to any Person, or modify the rights and privileges of the Interest owners;
- (p) institute proceedings to have the Trust be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Trust or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequester (or other similar official) of the Trust or a substantial part of its property;
- (q) make any assignment for the benefit of creditors of the Trust;

- (r) admit in writing the Trust's inability to pay its debts generally as they become due;
  - (s) take action in furtherance of any of the foregoing actions; or dissolve or liquidate the Trust.
- iii) The 22.5% of the Trust Owned by the B Beneficiaries interest shall be subject to a Redemption Agreement where the B interests shall be sold to the A interests or their designees, assigns or transferees, over five years for a total price of \$19,800,000.00 in four tranches each representing interests of 5.625% each
- (1) Tranche one on or before August 1, 2020 in the amount of \$3,786,250.00
  - (2) Tranche two on or before August 1, 2021 in the amount of \$3,786,250.00
  - (3) Tranche three on or before August 1, 2022 in the amount of \$3,786,250.00
  - (4) Final Tranche by August 1, 2023 in the amount of \$8,441,250
- iv) Any purchase of the membership interests shall be a purchase of Beneficial Interests from the B Beneficiaries and shall reduce the Priority Return proportionate to the payments as a percentage of the total remaining price of \$19,800,000, which is the balance after payment of the non-refundable Down Payment.
- v) The A Beneficiaries shall prepare at their sole cost and expense of the A Beneficiaries a Private Placement Memorandum for the Sale of Membership interests in the Trust by a Broker Dealer who specializes in sales of marginal interests in Delaware Statutory Trusts to individuals and other entities who have to designate property as target property in connection with 1031 Exchanges of Property. The A Beneficiaries shall have the right to designate a portion of their membership interests as C interests for the purpose of selling them as part of the same syndication, provided that (1) there is no change in control of the A Beneficiaries or the Tenant entity.
- vi) The B Beneficiaries will be entitled to a priority return ( the "Priority Return") equal to all available rental and other income over and above the payment of the P&I on the New First Mortgage which shall in no event be less than \$2,000,000 per year (as adjusted by periodic redemptions) and shall be paid to the B Beneficiaries as a Priority Return until such time as they have been fully redeemed pursuant to the Redemption Agreement.
- vii) The Trustee shall deposit all rents and other funds collected from the operation of the Real Estate in the bank designated by the first mortgagee (the "Operating Account") which shall be subject to both a Deposit Account Control Agreement and Deposit Account Instruction Agreement. The Trust shall maintain books and records of the funds from the Real Estate deposited in such account, interest earned thereon, and withdrawals therefrom. The Trustee shall pay from the Operating Account the operating expenses of the Real Estate (other than those paid by a tenant of the Real Estate as set forth in its lease) and any other payments relative to the Real Estate as required by this the Trust Agreement.

- viii) The Trustee shall be responsible for receiving all cash from the Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust Agreement. The Trustees shall furnish quarterly and annual reports to each of the Beneficiaries as to the amounts of rent received from the Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficiaries.
- ix) To the extent permitted by the Internal Revenue Code depreciation, which shall be calculated on a straight-line depreciation method shall be allocated as follows: a) first to the B Beneficiary to the extent necessary to shelter the Priority return from taxes and b) second to the beneficiaries, pro rata, in accordance with the ownership interests.
- 3) **Condition of Property and Title:** Contributor shall give, and the Trust and the Trust shall accept, a good and marketable title which any National Title Insurance Company (the "Title Company"), will approve and insure at standard rates, free and clear of all liens, hypothecations, mortgages, easements, and encumbrances, except for the Permitted Exceptions.
- i) The Premises is being contributed subject to the following exceptions to the title (the "Permitted Exceptions"):
- (1) Zoning and building regulations, restrictions and ordinances now or hereafter adopted or imposed by any governmental or quasi-governmental body having or asserting jurisdiction over the Premises or any part thereof;
  - (2) Future Real Estate taxes, assessments, water charges, sewer rents or other charges not yet due and payable (subject to apportionment as provided herein) and certified, confirmed or ratified assessment liens and pending assessments, if any;
  - (3) The state of facts shown on an updated as built survey prepared originally prepared and revised to be an as built survey, (the "Survey") and such additional state of facts which said survey would show or reveal provided such additional state of facts do not render title unmarketable;
  - (4) Any state of facts a physical inspection of the Premises would reveal;
  - (5) Exceptions permitted by the Title Company (as defined herein) (the "Title Exceptions");
- 4) All payments made to purchase any portion of the B Beneficiaries 22.5% interest shall also act to proportionally reduce the amount of Priority Return paid to the B beneficiaries under the Trust and the proportionate difference shall be paid to the A Beneficiaries or whoever purchases the B Beneficiaries interests as the case may be.,
- a) Distributions: Provided that all required payments set forth herein have been made by the Tenant, During the interim period prior to the purchase of the premises Tenant may pay Management Fees so long as (i) the amount of such Management Fees paid in any twelve-month period shall not exceed five percent (5%) of Tenants' gross revenues for such period

and (ii) there shall not then exist, and/or the paying of such Management Fees shall not cause there to exist, a Default or Event of Default under the Lease the first mortgage on the property or the Tenant's Working Capital Loans, (iii) the Initial Payment, the payment of Rent, and all other payments set forth herein have been made by the Buyer/Tenant.. Upon the occurrence of an Event of Default, Tenant shall not pay Management Fees. The Tenant will make no distributions to its shareholders, officers, affiliates, or any related party unless the Down Payment, the payment of Rent is current, and.

- 5) **Confidentiality and Disclosure:** Tenant and Contributor shall each maintain the confidentiality of all confidential and non-public information supplied by the other. If this Transaction is not consummated, each party shall return all documents obtained to the other. Except as required by law, without the prior written consent of the other party, neither Tenant nor Contributor will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this Letter of Intent. If a party is required by law to make any such disclosure, the parties shall consult with each other and seek to agree upon appropriate language for such disclosure. The Tenant acknowledges that Contributor will be unable to furnish any patient health information unless such disclosure complies specifically and completely with all terms, conditions, regulations, and guidelines in HIPAA.
- 6) **Interim Operation:** Subject to the approval in writing of Contributor's existing Lender, the parties will enter into an amendment of the Lease as follows to allow for the operation of the facility before the closing.
  - a) **Commencement Date:**The Commencement Date according to the Lease shall be September 30, 2019.
  - b) **Rent:** An initial rent payment of \$509,000.00 has been paid receipt of which is on account toward the rental period from September 30, 2019 to October 31, 2019 (the "October 2019 Rent") leaving a balance of \$13,735 for October 2019 Rent. November 1, 2019, to November 30, 2019 (the "November 2019 Rent") shall be postponed until November 18, 2019 and shall be paid by Tenant on that date. The next rental payment shall be the December monthly rent amount outlined in the Lease - \$506,097 which shall be paid on December 5, 2019. Also, the Tenant will reimburse the Landlord for their municipal maintenance escrow and utility deposits of \$5,500 and \$60,356, respectively. Such reimbursement payment shall be made on or before December 5<sup>th</sup>, 2019. Upon receipt of the \$60,356 for the utility deposits from the Tenant, Landlord will direct any refund from the Utility companies to the Tenant, or otherwise pay such refund over to the Tenant forthwith provided Landlord has previously received those funds from the Tenant.
    - i) The following amounts are in dispute, and neither party will be obligated to waive their rights and positions by the signing of this agreement. The landlord has demanded the following sums due to their Lender.

- (1) Late and Default Interest costs of \$201,997.34 for September 2019 and October 2019,
  - (2) \$19,000 of Late Fees for November 2019,
  - (3) \$5,061 per day for Default Interest premium during November 2019.
- ii) The A Beneficiaries and the B Beneficiaries shall jointly negotiate with the Contributor's current Lenders to effectuate the best possible settlement of these late costs (the "Late Costs"). The amounts if any remaining after such joint negotiation will be paid by the 77.5% by the Buyer and 22.5% by the Contributor (provided the Initial Payment, the payment of Rent and all other payments set forth herein are made timely) from Financing proceeds. If not available from the Financing proceeds the Tenant shall pay all Late Costs. .
- c) Security Deposit/ Guaranty: Section 7.1(a)(i) the Lease shall be amended to provide that Tenant shall enter into a Deposit Account Control Agreement with Metropolitan National Bank which can only be revoked with the consent of both parties, which shall provide that each month, the Tenant's Lender shall draw on the loan amount first to pay rent to the Landlord, notwithstanding the adequacy of any accounts receivable borrowing base calculations. This Document shall be part of the Closing Documents on the Tenant's first initial Term Loan and shall be delivered in full effect by December 1, 2019.
  - d) Section 7.1(a)(ii) of the Lease shall be amended to provide that the obligation for the Security Deposit shall initially be reduced to 2,000,000 dollars.
    - i) The sum shall be paid by Tenant as follows: (a) Provided that the Contributor has obtained a permanent Certificate of Occupancy the Tenant shall draw the initial \$1,000,00.00 from its credit line on or no later than December 1, 2019. (b) Landlord shall obtain a release of the lien of its Lender on the FF&E, upon delivery of free and clear title to the FF&E the Tenant will enter into a reverse lease and obtain at least \$1,000,000.00 which shall be paid on account of the Security Deposit no later than April 1, 2020.
    - ii) Also, Tenant shall pay the sum of \$40,000 per month commencing January 1, 2020 to be treated as additional rent until there is a total \$3,700,000 posted as Security Deposit under 7.1(a)(i).
  - e) Section 7.1(a)(iii) of the Lease shall be amended to provide that instead of delivering the sum of \$1,600,000 in cash, the parties shall enter into a blocked account agreement wherein and whereby account number [REDACTED] in JP Morgan Chase Bank NA prohibiting any liquidation of that account until the Second Payment is paid. Such account shall be not be posted as collateral security to Landlord's Lender provided the Initial Payment has been made in full, and all payments of Rent are current and the Tenant is not otherwise in Default, except that the Landlord shall have a security interest in such account under a DAISA, which allows the Landlord to demand the liquidation of such account to pay any defaults under the lease.

- f) Working Capital: Section 7.7 of the Lease shall be amended to suspend the requirement for providing the working capital account. The Tenant shall be obtaining a single working capital line for \$8,000,000.00 no later than December 1, 2019.
- g) Right of First Refusal and Option to Purchase: The Tenant's rights with respect to the right of first refusal and option to purchase under Sections 3.7 and 3.7 of the Lease will be suspended pending payment in full of the Security Deposits required by Section 7.1(a)(i), 7.1(a)(ii) and 7.1(a)(iii) of the Lease as amended, the payment of the Initial Payment, the working capital required by Section 7.7 of the Lease and Tenant being in full compliance with the Lease.
- h) Insurance: Tenant shall obtain property insurance, effective as of September 30, 2019, and (2) provide the property insurance, and all other insurances required by the Lease by November 19, 2019, effective retroactively back to September 30, 2019.
- i) Real Estate Taxes: Real estate taxes shall be prorated as of September 30, 2019 and the Tenant's portion shall be paid to the Landlord no later than December 1, 2019, plus any late charges which the City of White Plains may impose.
- j) Utilities: Tenant shall pay actual costs of utilities incurred at the property covering the rental period from September 30, 2019 (pro-rated as the utility company billing periods may require) forthwith upon presentation of invoices for the same from the Landlord, no later than December 1, 2019.
- k) Punchlist: The punch list and all other developer obligations are deemed complete except for.
  - i) The White Plains Outstanding Punchlist November 5, 2019 (the Remaining Punchlist), the value of which is has been determined by the Architect and agreed herein to be \$3,800.
  - ii) The Electric Blinds in rooms (the "Suspended Work") the value of which is agreed herein to be \$35,000.
  - iii) Provided the Initial Payment is made by November 15, 2019 and provided there are no other Defaults by the Tenant, Landlord shall complete the Remaining Punchlist and the Suspended Work to the approval of the Architect, within 45 days from the date of the Contributor's receipt of the Initial Payment. Should Landlord not do so, then the Tenant may credit the agreed values of any uncompleted Punchlist or Suspended Work from the February, 2020 Rent payment, and the Landlord's Work under the Lease and Development Agreement shall be deemed complete.

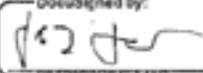
Security: Tenant shall assume all property security obligations as of November 11, 2019.

Upon the closing of the purchase of the premises by the Trust, the Trust shall take an assignment of the lease as amended above.

- 7) **Exclusivity**: In consideration of (1) the Initial Payment, (2) the payment of Rent as set forth herein, and (3) Tenant's efforts in pursuing the Transaction, Contributor agrees that (1) until the termination of this Letter of Intent, or execution of the Formal Contracts and (2) provided the payment of the Initial Payment and the payment of Rent as set forth herein is made, and (3) all other obligations of the Tenant set forth herein,, Contributor will not permit any of its affiliates to, and will not authorize or permit any officer, director, employee, counsel, agent, investment banker, accountant, or other representative of any of them, directly or indirectly, to: (a) initiate contact with any person in an effort to solicit any proposal (other than that contemplated by this Letter of Intent for the acquisition (directly or indirectly , by sale of stock or assets, or by merger or consolidation or otherwise) of the operation of the Real Estate, or any of the Assets, or any other business combination or financing transaction involving such business (a "Proposal"); (b) cooperate with, or furnish or cause to be furnished any non-public information concerning the operation of the Real Estate, to, any person in connection with any Proposal; (c) negotiate or enter into discussions with any person with respect to any Proposal; or (d) enter into any agreements or understanding with the intent to effect a Proposal. Contributor will immediately give written notice to Tenant of the details of any Proposal of which Contributor becomes aware. Contributor will, and will cause its officers, directors, affiliates, agents, and representative to, terminate all discussions regarding a Proposal, other than those with Tenant and its representatives concerning the Transaction, and represents that neither it nor any of its officers, directors, affiliates, agents, or representatives have entered into any executory agreements or accepted any commitments concerning any Proposal other than the Transaction provided that (1) this LOI or successor Formal Contracts has not terminated, and (2) the payment of the Initial Payment, the payment of Rent as set forth herein have all been paid and are current, and (3) all other obligations of the Tenant set forth herein are not in Default and are current.
- 8) **Waiver of Claims**: Except as set forth herein above, the Tenant waives any and all claims against the Landlord it has or every may have had for the following: (1) any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purposes (2) any claims for Punchlist or uncompleted Work, except for the Remaining Punchlist and the Suspended Work defined herein above, and the Warranties and Guarantees set forth in the Lease, (3) any claims related to the Cost Certification, except the Landlord shall complete the Final Cost Certification in the usual and ordinary course, upon the receipt of the Initial Payment, the Rent having been brought and remaining current, and all other obligations of the Tenant are paid as set forth herein above.
- 9) **Expenses**: Tenant and Contributor shall each be responsible for their respective accounting, legal, advisory, and other costs and expenses in connection with the Transaction. Tenant shall reimburse Contributor for its legal, advisory and other costs and expenses in connection with the Transaction and the Termination of the Lease. Reimbursement for such legal and transaction fees shall not to exceed \$125,000 and may be made from the proceeds of the Closing, provided the Closing occurs and the Contributor's existing 1<sup>st</sup> Mortgage Loan and Mezzanine Loan are paid off from the proceeds of the Financing by March 31, 2020, and (2) the Initial Payment is made as set forth herein above, and (3) the Tenant is not in default under this LOI or the successor Formal Contracts. Otherwise the \$125,000 cap shall expire and the Tenant shall pay the Contributor all such costs incurred after September 30, 2019.

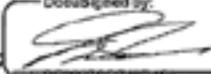
- 10) **Letter of Intent:** This LOI represents a statement of all of the terms, conditions, representations, warranties, indemnities, covenants, and other provisions that would be contained in the definitive documentation for the proposed transactions. This LOI shall constitute a binding agreement upon payment of the or any of their respective affiliates will have any legal obligation under this LOI unless and until one or more subsequent definitive written agreements are mutually executed and delivered by each of Contributor and Buyer. No past, present, or future action, course of conduct, or failure to act relating to the transactions referenced in this LOI or relating to the negotiation of the terms of such transactions will give rise to or serve as the basis for any obligation or other liability on the part of Contributor or Buyer or any of their respective affiliates.[ These changes should be rejected]
  
- 11) **Governing Law:** This Agreement shall be governed by and construed by the internal laws of the State of New York, Venue shall be in Westchester County without application of its conflicts of law rules. If you agree with the preceding, please sign and return one copy of this Letter of Intent.

HBL-SNF, LLC

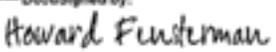
DocuSigned by:  
  
 Lizer Jozelovic

**ACKNOWLEDGED AND AGREED**

**WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Name: William A. Nicholson  
 Title: Manager

**Accepted and Agreed**

DocuSigned by:  
  
 Howard Fensterman

# EXHIBIT H

**WISE & WIEDERKEHR, LLP**

Alfred E. Donnellan  
Partner  
aed@ddw-law.com

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Connecticut Office  
1111 SUMMER STREET  
STAMFORD, CT 06905  
(203) 298-0000

January 7, 2020

BY EMAIL lizerj@watersedgeusa.com  
BY FEDERAL EXPRESS

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**NOTICE OF DEFAULT  
AND LANDLORD'S ELECTION TO TERMINATE LEASE AND  
ACCELERATE ALL RENTS DUE FOR THE BALANCE OF THE LEASE TERM**

**PREMISES: 116-120 Church Street, White Plains, New York ("the Leased Premises")**

Mr. Josefovic:

We are attorneys for your Landlord, White Plains Health Care Properties I, LLC.

**PLEASE TAKE NOTICE**, that HBL SNF, LLC ("HBL") is in material violation of the provisions of its November 19, 2015 Lease, for the above referenced premises ("the Lease"), and the November 20, 2019 Letter of Intent (the "LOI"), the terms of which are in full force and effect (the "LOI"), and is in **DEFAULT** thereof, as follows:

1. Lease Section 3.2, and LOI Para 6) d) ii) – Payment of Rent: HBL has failed or refused to pay the following Rent:
  - a. Rent due for Sept. 30, 2019 – Dec. 31, 2019, totaling \$10,831.79.
  - b. Additional Rent due for Jan. 01 - 31, 2020, due Jan. 1, 2020, totaling \$40,000.00.
  
2. Lease Section 4.2, and LOI Para 6) b) - Payment of Real Estate Taxes: HBL has failed to pay the following Real Estate Tax payments:
  - a. Real Estate Taxes for the period 07/01/19 - 12/31/19, specifically the Tenant's prorated portion thereof, (exclusive of late fees, costs, penalties and interest per municipal regulations and per the Lease), totaling \$61,456.39.
  - b. Real Estate Taxes for the period Jan. 01, 2020 – June 30, 2020 totaling \$121,587.12

Attn: Lizer Josefovici  
January 7, 2020  
Page 2

3. LOI Para 6) b), and Lease Section 5.2 – Payment of Utility Deposits and Municipal Maintenance Escrows: HBL has failed to pay the following Utility Deposits and Municipal Maintenance Escrows:
  - a. Utility Deposits totaling \$60,356.10
  - b. Municipal Maintenance Escrows totaling \$5,500.00
  
4. Lease Section 4.1, LOI Section 6) j) - Utility Charges: HBL has failed to pay the following Utility Charges:
  - a. ConEdison invoice paid by the Landlord to avoid power shutoff, in the amount of \$2,972.84.
  
5. Lease Article VI, including Section 6.2; LOI Para 6) h) – Delivery of Insurance Certificates.
  - a. HBL has failed to deliver certificates of insurance to Landlord in accordance with Article VI and Section 6.2 of the Lease.
  
6. Lease Section 7.4 (g) and (j) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility.
  - b. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider updated reimbursement rate sheets for the Facility.
  
7. Lease Section 7.4 (a) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required financial reporting required under the Lease.
  
8. Lease Section 7.4 (B) (vi) – Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required written reports providing an operational overview of significant events and circumstances at the Facility during each prior month of the Term of the Lease.
  
9. Lease Section 7.1(a)(ii), as amended by LOI Para 6) d) i) – Security Deposit.
  - a. HBL has failed or refused to deliver to the Landlord by December 1, 2019 the security deposit of \$1,000,000.00, to secure full and timely payment and performance of Tenant’s obligations under the Lease.
  
10. Lease Section 7.1(a)(iii), as amended by LOI Para 6) e) – Additional Security Deposit.
  - a. HBL has failed to deliver the blocked account agreement prohibiting any liquidation of the of \$1,600,000.00 held by JPMorgan Chase Bank, N.A. in the controlled account number 3379737272.
  
11. Lease Section 4.1, 3.2 (c), and 9.1 (b) – Payment of Late Fees and Costs
  - a. HBL has failed to pay late fees and costs related to the above failures to pay its obligations under the Lease and the LOI in the timeframes required thereunder, as set forth in the attached accounting, totaling \$23,425.09

HBL 24, LLC  
Attn: Lizer Josefovic  
January 7, 2020  
Page 3

A true and accurate accounting of the amounts due and owing under the Lease and the LOI is attached herewith.

By reason of the aforementioned material Defaults under the Lease and the LOI, the Landlord, hereby exercises its right under Section 16.1 of the Lease to terminate the Lease as well as Tenant's right of possession of the Leased Premises, effective January 13, 2020 at 5.00 PM NYC time.

**PLEASE TAKE FURTHER NOTICE**, that, in accordance with Section 16.1 of the Lease, all rent for the balance of the term of the Lease is accelerated, and pursuant to said lease provision, HBL is obligated to pay the Landlord \$84,073,989.91, being the present value of such accelerated rent, discounted at the rate of 6% *per annum*.

Landlord reserves all other rights and remedies at law or in equity as against the Tenant, all guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.

Landlord further reserves all rights arising from the Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 ("the Pledge"), including but not limited to all rights to enforce the Pledge through a private or public sale of the assignor's interest in Waterview Acquisition I, LLC or through a judicial foreclosure of the assignee's security interest therein.

Very truly yours,

ALFRED E. DONNELLAN

**AUTHORIZED AND APPROVED:**

White Plains Health Care Properties I, LLC

\_\_\_\_\_  
Joshua Roccapriore  
Authorized Representative

cc: By Email (lizerj@watersedgeusa.com) & Federal Express  
Lizer Josefovic, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

Attn: Lizer Josefovic  
January 7, 2020  
Page 4

By Email (markn@epicmgt.com) & Federal Express

Mark Neuman, Guarantor, Individually  
22 Lyncrest Drive  
Monsey, NY 10952

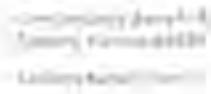
By Email (mzafrin@mrlip.com) & Federal Express

Michelman & Robinson  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
*Attn: Mark Zafrin, Esq.*

By Federal Express

Gerald Neuman, Individually  
c/o HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

# EXHIBIT I



April 15, 2020

VIA FEDEX DELIVERY and EMAIL [w Nicholson@congressconstruction.com](mailto:w Nicholson@congressconstruction.com)

White Plains Healthcare Properties I, LLC  
West Peabody Executive Center, Ste 200  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William A. Nicholson

Re Construction loan (the "Loan") evidenced by that certain Promissory Note dated August 18, 2017 (the "Note") in the original aggregate principal amount of \$38,500,000.00 made by White Plains Healthcare Properties I, LLC ("Borrower") to the order of Security Benefit Life Insurance Company ("Lender")

Dear Mr. Nicholson:

Reference is made to the Note and to the Loan Agreement dated August 18, 2017 by and between Borrower and Lender (the "Loan Agreement").

Borrower executed and delivered the Note to Lender. The Note evidences the obligation of Borrower to pay the Loan, including without limitation, the principal amount of the Note and all interest which accrued on the Note.

Borrower has failed to make, or cause to be made, the monthly payment of interest due under the Note and under Section 2.12 of the Loan Agreement on April 1, 2020, which failure constitutes an Event of Default under the Loan Agreement Section 5.1 (a) (Events of Default). In accordance with the terms and conditions of the Loan Agreement, for so long as any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by applicable law, overdue interest in respect of the Loan, shall each accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained in the Loan Agreement.

In addition, pursuant to Section 2.8 of the Loan Agreement, a late charge will be assessed.

Finally, despite repeated requests, Borrower has failed to establish the Cash Management Account as required under Section 8.1 of the Loan Agreement.

Security Benefit Life Insurance Company

White Plains Healthcare Properties I, LLC  
Attn: William A. Nicholson  
April 16, 2020  
Page Two

The foregoing does not constitute a waiver of any term, provision, condition, covenant or agreement contained in any of the Loan Documents (as defined in the Loan Agreement) or any instrument or agreement evidencing, related to or securing the Note, nor shall it (ij) operate as a waiver of any right, remedy, power or privilege thereunder, (ii) prejudice or preclude any other further exercise thereof or the exercise of any right or remedy provided by law or in equity, (iii) entitle Borrower to any other or further notice or demand whatsoever or (iv) in any way modify, change impair, affect, diminish or release any liability of Borrower under or pursuant to any of the Loan Documents.

Please contact Douglas Schneider (785-438-1642) with any questions regarding the content of this letter, or have your counsel contact me directly.

Very truly yours,  
Security Benefit Life Insurance Company

By   
Douglas Schneider  
Investment Analyst

Douglas Schneider (via email - douglas.schneider@securitybenefit.com)



One Security Benefit Place  
Topeka, Kansas 66636  
SecurityBenefit.com

May 22, 2020

**VIA FEDEX DELIVERY and  
EMAIL [wnicholson@congressconstruction.com](mailto:wnicholson@congressconstruction.com)**

White Plains Healthcare Properties I, LLC  
West Peabody Executive Center, Ste. 200  
2 Bourbon Street  
Peabody, MA 01960  
Attn: William A. Nicholson

Re: **Notice of Default** - Construction loan (the "Loan") evidenced by that certain Promissory Note dated August 18, 2017 (the "Note") in the original aggregate principal amount of \$38,500,000.00 made by White Plains Healthcare Properties I, LLC ("Borrower") to the order of Security Benefit Life Insurance Company ("Lender")

Dear Mr. Nicholson:

Reference is made to the Note and to the Loan Agreement dated August 18, 2017 by and between Borrower and Lender (the "Loan Agreement").

Borrower executed and delivered the Note to Lender. The Note evidences the obligation of Borrower to pay the Loan, including without limitation, the principal amount of the Note and all interest which accrued on the Note.

**Payment Default**

Borrower has failed to make, or cause to be made, the monthly payment of interest due under the Note and under Section 2.12 of the Loan Agreement on May 1, 2020, which failure constitutes an Event of Default under the Loan Agreement Section 5.1 (a) (Events of Default). In accordance with the terms and conditions of the Loan Agreement, for so long as any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by applicable law, overdue interest in respect of the Loan, shall each accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained in the Loan Agreement. In addition, pursuant to Section 2.8 of the Loan Agreement, a late charge will be assessed. Please note that the total principal amount currently due from Borrower, together with late charges and default interest due from Borrower, are shown on Exhibit A.

**Other Defaults**

1. Borrower has failed to establish the Cash Management Account as required under Section 8.1 of the Loan Agreement.

**Security Benefit Life Insurance Company**

White Plains Healthcare Properties I, LLC  
Attn: William A. Nicholson  
May 22, 2020  
Page Two

2. Borrower has failed to send a Tenant Direction Notice to direct the sole tenant, HBL SNF, LLC, to pay rent directly to Lender, as required by Section 8.1 of the Loan Agreement.

3. Borrower has failed to deposit all revenue generated by the Property into the Cash Management Account as required by Section 8.1 of the Loan Agreement. Among other things, we recently learned that the Tenant may have paid Borrower approximately \$2,200,000 in late 2019 or early 2020. Any such revenue should have been deposited with Lender.

4. Borrower has failed to supply the financial statements for Borrower required under Section 3.13 and Exhibit B of the Loan Agreement.

5. Borrower has failed to supply annual financial statements of each Guarantor as required under Section 3.13 and Exhibit B of the Loan Agreement.

**Other Issues**

We also call your attention to the following:

1. No Distributions. Section 3.27 of the Loan Agreement prohibits "any distribution" to "any owner of any direct or indirect equity interests of Borrower," with limited exceptions. Please confirm that no prohibited distributions have been made while the Loan has been outstanding.

2. No Termination of Lease. We understand Borrower may have sent a Notice of Termination to the tenant under the Operating Lease in late 2019 or early 2020. Please note that pursuant to Section 3.5 of the Loan Agreement, the Operating Lease cannot be terminated without the consent of Lender.

3. Recourse Liability. Under the Loan Agreement and the Guaranty Agreement, Borrower and each Guarantor are personally liable to Lender for the "misapplication, misappropriation or conversion by Borrower" of any "Rents" or other monetary collateral for the Loan. We also call to your attention that Borrower and each Guarantor are personally liable to Lender for certain "Losses" arising out of the "willful misconduct" of Borrower in connection with the Loan or Property.

4. Maturity Date. We remind you again of the maturity date of the Loan on August 1, 2020.

**Reservation of Rights**

The foregoing does not constitute a waiver of any term, provision, condition, covenant or agreement contained in any of the Loan Documents (as defined in the Loan Agreement) or any

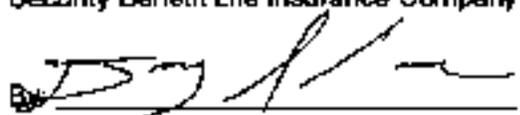
**Security Benefit Life Insurance Company**

**White Plains Healthcare Properties I, LLC**  
**Attn: William A. Nicholson**  
**May 22, 2020**  
**Page Three**

Instrument or agreement evidencing, related to or securing the Note, nor shall it (i) operate as a waiver of any right, remedy, power or privilege thereunder, (ii) prejudice or preclude any other further exercise thereof or the exercise of any right or remedy provided by law or in equity, (iii) entitle Borrower to any other or further notice or demand whatsoever or (iv) in any way modify, change impair, affect, diminish or release any liability of Borrower under or pursuant to any of the Loan Documents.

Please contact Douglas Schneider (785-438-1642) with any questions regarding the content of this letter, or have your counsel contact me directly.

Very truly yours,  
Security Benefit Life Insurance Company



Douglas Schneider  
Investment Analyst

- cc: Patrick Formalo (via e-mail)
- Howard Fensterman (via Federal Express)
- Matthew Barbera (via Federal Express)
- Paul Barbara (via Federal Express)

# EXHIBIT J

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----	X
SECURITY BENEFIT LIFE INSURANCE COMPANY,	:
SECURITY BENEFIT CORPORATION,	:
	:
<i>Plaintiffs,</i>	:
	:
-against-	:
	:
WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,	:
WILLIAM A. NICHOLSON, HOWARD FENSTERMAN,	:
MATTHEW BARBARA, PAUL BARBARA, NEW YORK	:
STATE DEPARTMENT OF TAXATION, CITY OF	:
WHITE PLAINS FINANCE DEPARTMENT, and	:
JOHN DOE NOS. 1-10,	:
	:
<i>Defendants.</i>	:
	:
The Names of the “John Doe” Defendants Being Fictitious	:
and Unknown to Plaintiffs, the Persons and Firms Intended	:
Being Those Who May Be in Possession of, or May Have	:
Possessory, Lien or Other Interests in, the Premises Herein	:
Described.	:
-----	X

Index No.

**VERIFIED COMPLAINT**

Plaintiffs Security Benefit Corporation (“Agent”), a Kansas corporation, and Security Benefit Life Insurance Company (“Security Benefit” and together with Agent, the “Lender”), a Kansas insurance company, by their attorneys, DLA Piper LLP (US), as for their Verified Complaint against the defendants, allege as follows:

**NATURE OF THE ACTION**

1. Lender brings this action to foreclose on real property and improvements in the County of Westchester and State of New York, known as Section 125.67, Block 3 Lot 1 in the City of White Plains and located at 120 Church Street (the “Mortgaged Property”). The Mortgaged Property secures a \$38.5 million loan made to Defendant White Plains Healthcare Properties I, LLC (“Borrower”). Borrower first defaulted on the loan in 2019, long before the COVID-19

pandemic and related government shutdown orders took effect, and failed to pay back all principal and outstanding interest due on the August 1, 2020 maturity date. Lender also sues the individual guarantors who promised to pay the amounts due and owing if Borrower failed to perform, and who promised to cover any deficiencies that arise after application of the proceeds from a public foreclosure auction of the Mortgaged Property.

**THE PARTIES**

2. Security Benefit Life Insurance Company is, and at all relevant times hereinafter mentioned was, an insurance company, organized and existing under the laws of the State of Kansas, with an address at One Security Benefit Place, Topeka, KS 66626-0001.

3. Agent is, and at all relevant times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Kansas, with an address at One Security Benefit Place, Topeka, KS 66626-0001.

4. Upon information and belief, Borrower is a limited liability company organized and existing under the laws of the State of Massachusetts, with an address at West Peabody Executive Center, Suite 200, 2 Bourbon Street, Peabody, MA 01960, and is the fee simple owner of the Mortgaged Property.

5. Upon information and belief, Defendant William A. Nicholson, an individual who at all times hereinafter mentioned was a resident of the State of Massachusetts, is named as a defendant because William A. Nicholson made certain promises and guarantees concerning Borrower's performance under the Loan Documents (as defined herein), as contained in the Guaranty Agreement dated August 18, 2017 (the "Guaranty").

6. Upon information and belief, Defendant Howard Fensterman is, and at all times hereinafter mentioned was, an individual and a resident of the State of New York, and is named as

a defendant because Howard Fensterman also made certain promises and guarantees concerning Borrower's performance under the Loan Documents, as defined herein, and as contained in the Guaranty.

7. Upon information and belief, Defendant Matthew Barbara is, and at all times hereinafter mentioned was, an individual and a resident of the State of New York, and is named as a defendant because Matthew Barbara also made certain promises and guarantees concerning Borrower's performance under the Loan Documents, as defined herein, and as contained in the Guaranty.

8. Upon information and belief, Defendant Paul Barbara (together with Defendant William A. Nicholson, Defendant Howard Fensterman, and Defendant Matthew Barbara, the "Guarantors") is, and at all times hereinafter mentioned was, an individual and a resident of the State of New York, and is named as a defendant because Paul Barbara also made certain promises and guarantees concerning Borrower's performance under the Loan Documents, as defined herein, and as contained in the Guaranty.

9. Upon information and belief, Defendant New York State Department of Taxation and Finance has a principal place of business located at the Office of Counsel, Building 9, W.A. Harriman Campus, Albany, New York 12227, and is made a defendant in this action because it has or may have an interest in or lien against the Mortgaged Property by virtue of any unpaid New York State Franchise taxes, license or maintenance fees which may be due and owing from Borrower.

10. Upon information and belief, Defendant City of White Plains Finance Department has a principal place of business located at 255 Main Street, Room 102, White Plains, New York 10601, and is made a defendant in this action because it has or may have an interest in or lien

against the Mortgaged Property by virtue of any unpaid City of White Plains taxes, license or maintenance fees which may be due and owing from Borrower.

11. Upon information and belief, the “John Doe” defendants constitute those persons or corporations or firms that may be in possession of, or may have contract, possessory, lien or other interests in, the Mortgaged Property.

**JURISDICTION AND VENUE**

12. The Court may exercise jurisdiction over Borrower because Borrower irrevocably submitted to the jurisdiction and venue of this Court in the Loan Documents, as defined herein.

13. The Court may exercise jurisdiction over the Guarantors because they irrevocably submitted to the jurisdiction and venue of the Court in the Guaranty. This Court may also exercise jurisdiction over Defendants Howard Fensterman, Matthew Barbara, and Paul Barbara pursuant to C.P.L.R. Section 301, and over Defendant William A. Nicholson pursuant to C.P.L.R. Section 302.

14. Lender’s collateral—among other things, the real property interest, improvements and personal property securing repayment of the \$38,500,000.00 loan described below—is located in the State of New York and, accordingly, pursuant to C.P.L.R. Section 301, and R.P.A.P.L. Article 1, Section 121, this Court has jurisdiction to grant the relief required by Lender in this Verified Complaint.

15. As to all Defendants, venue is proper in Westchester County pursuant to C.P.L.R. Sections 507 and 509.

**THE MORTGAGED PROPERTY**

16. The Mortgaged Property that is the subject of this action consists of one lot known as Section 125.67, Block 3 Lot 1 in the City of White Plains and located at 120 Church Street, with

appurtenances thereto and improvements thereon, all as more specifically described in Schedule A annexed hereto.

**THE LOAN DOCUMENTS**

17. On or about August 18, 2017, Borrower and Lender entered into a Construction Loan Agreement (the “Loan Agreement”), whereby Lender agreed to make a Building Loan to Borrower in the amount of \$30,293,625, in which all or a portion of the Building Loan Costs would be advanced to Borrower, consisting solely of costs and improvements as defined in Section 2 of the New York Lien Law (the “Building Loan”), and whereby Lender further agreed to make additional loan advances to Borrower for other costs with respect to the Project in the amount of \$8,206,375 (the “Project Loan”, collectively with the Building Loan referred to as the “Loan”) for a total indebtedness of \$38,500,000. The Loan Agreement was duly recorded in the County Clerk’s Office on August 25, 2017, at Control No. 5962984. A true and correct copy of the Loan Agreement is attached hereto as **Exhibit 1.**

18. On or about August 18, 2017, Borrower, for the purpose of evidencing its indebtedness to Lender of the sum of \$38,500,000, executed and delivered to Lender a promissory note dated August 18, 2017 (the “Note”), whereby Borrower was bound and promised to pay Lender such sum, with interest thereon, at the rate therein provided. A true and correct copy of the Note is attached hereto as **Exhibit 2.**

19. As collateral security for the payment of this indebtedness, Borrower simultaneously therewith executed, acknowledged, and delivered to Lender a mortgage dated August 18, 2017 (the “Mortgage”). The Mortgage was duly recorded in the County Clerk’s office on August 31, 2017, at Control No. 572363745 and the mortgage recording tax was then and there duly paid. A true and correct copy of the Mortgage is attached hereto as **Exhibit 3.**

20. The Mortgage granted Lender a security interest in the real property described in Schedule A, improvements, fixtures, equipment, personal property, and leases and rents, among other items described in Section 1.1 of the Mortgage, associated with the Mortgaged Property. (Mortgage § 1.1.)

21. On August 18, 2017, Borrower also executed, acknowledged, and delivered to Lender an Assignment of Leases and Rents dated August 18, 2017 (“Assignment,” and together with the Mortgage, the Note, the Loan Agreement, and all documents or instruments referenced in the definition of Loan Documents in the Mortgage and the Loan Agreement, and all other documents or instruments securing the repayment of the obligations of Borrower to Lender, the “Loan Documents”), as further collateral security for the payment of the indebtedness. The Assignment of Leases and Rents was duly recorded in the County Clerk’s office on August 31, 2017, at Control No. 572363749. A true and correct copy of the Assignment is attached hereto as **Exhibit 4**.

22. The Assignment absolutely and unconditionally assigned and granted to Lender’s Agent, for Lender’s benefit, among other things, all of Borrower’s right, title and interest in the all existing and future Leases of the Borrower affecting the use, enjoyment or occupancy of all or any portion of any space in that certain lot or piece of land, more particularly described in Schedule A annexed hereto, as well as all Rents, as defined in the Loan Agreement. (Assignment § 1.1.)

23. The Loan Documents were delivered to Lender in due course.

24. Lender is the owner and holder of the Loan Documents, and is authorized to exercise all of its rights with respect to the Loan Documents.

**THE GUARANTY**

25. On or about August 18, 2017, the Guarantors executed and delivered to Lender the Guaranty. A true and correct copy of the Guaranty is attached hereto as **Exhibit 5**.

26. Under the terms of the Guaranty, the Guarantors jointly and severally, unconditionally, absolutely and irrevocably guaranteed payment (and not merely collectability) of and agreed to pay, protect, defend and save harmless Lender for, from and against, and indemnify Lender for, from and against any and all liabilities, obligations, actual losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees), causes of action, suits, claims, demands, and judgment of any nature or description whatsoever, which may at any time be imposed upon, incurred by or awarded against Lender as a result of, among other things, misapplication, misappropriation or conversion by Borrower, Guarantor, or any Affiliate of any of them of any Rents. (Guaranty § 1(a)(vii).)

27. The Guarantors also agreed that the Guaranty was an absolute, irrevocable and unconditional guaranty of payment and performance, and each party Guarantor would be jointly and severally liable for the payment and performance of the Guaranteed Obligations, as defined in the Guaranty, as a primary obligor. (Guaranty § 4(a).)

28. The Guarantors further agreed that in the event of the occurrence of a Default under the Loan Documents, the Guaranteed Obligations would become immediately due and payable at the election of the Lender's Agent and the Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, would pay the amounts due to Agent or Lender, and pay all Losses that may arise in consequence of such Event of Default (including, without limitation, all reasonable attorneys' fees and expenses, investigation

costs, court costs, and any and all other costs and expenses actually incurred by Agent or Lender in connection with the collection and enforcement of the Guaranty). (Guaranty § 4(b).)

29. Under Section 4(c) of the Guaranty, the Guarantors specifically agreed that suit may be brought or demand may be made against Borrower or against any or all parties who have signed the Guaranty, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. (Guaranty § 4(c).)

**BORROWER'S OBLIGATIONS AND DEFAULTS**

**Borrower's Obligations under the Loan Documents**

30. Pursuant to Section 3.1(a) of the Mortgage, Borrower agreed to make due and punctual payment of the Secured Indebtedness, as defined under Section 2.2 of the Mortgage to include:

- (i) The Note;
- (ii) All indebtedness, liabilities, duties, covenants, promises and other obligations owed by Borrower to Mortgagee and/or Lender pursuant to the Loan Documents, expressly excluding, however, any obligations of Guarantor under any Guarantor Document and any obligations under any other guaranty executed by a third party, whether now existing or hereafter arising, and whether joint or several, direct or indirect, primary or secondary, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts; and
- (iii) All amounts that Lender may from time to time advance pursuant to the terms and conditions of this Security Instrument with respect to an obligation secured by a lien or encumbrance prior to the lien of this Security Instrument or for the protection of this Security Instrument, together with interest thereon.

(Mortgage §§ 2.2; 3.1(a).)

31. Under the Loan Agreement, Borrower agreed that all accrued and unpaid interest would be due and payable on the first day of each calendar month commencing on September 1, 2017 until the Maturity Date, *i.e.*, August 1, 2020, and that the entire principal balance of the Loan then unpaid and all accrued interest is due and payable in full on the Maturity Date. (Loan Agreement § 2.12.)

32. If Borrower failed to make any payment due under the terms of the Loan Agreement or the Note within five days after such payment was due, Borrower agreed to pay a late charge equal to 5% of such payment. (Loan Agreement §2.8.)

33. In addition to the monetary obligation described above, Borrower also agreed to fulfill certain other obligations under the Loan Documents, including, *inter alia*:

- To establish a Cash Management Account, not later than 60 days prior to the anticipated rent commencement date under the Operating Lease, in the name of Borrower for the sole and exclusive benefit of Agent (on behalf of Lender) into which Borrower shall deposit, or cause to be deposited, all revenue generated at the Mortgaged Property (Loan Agreement § 8.1(a));
- To send a Tenant Direction Notice to direct the sole tenant, HBL SNF, LLC, to pay rent directly into the Cash Management Account set up for Lender’s exclusive benefit (Loan Agreement § 8.1(b));
- To deposit all revenue generated by the Mortgaged Property and received by the Borrower into the Cash Management Account (Loan Agreement § 8.1(b));
- To deliver the Financial Statements and other statements and information at the times and for the periods described in Exhibit “B” attached to the Loan Agreement

and any other Loan Document, including the Financial Statements of Borrower and the annual Financial Statement of each Guarantor (Loan Agreement 3.13; Loan Agreement, Exhibit “B”).

**Events of Default and Borrower’s Defaults**

34. Section 5.1 of the Mortgage defines an Event of Default to include, the occurrence of “Default” as defined in the Loan Agreement. (Mortgage § 5.1.)

35. Under Section 5.1(a) of the Loan Agreement, a Default occurs when any of the indebtedness or any fees payable under the Note or the Loan Agreement are not paid when due, whether on the scheduled due date or upon acceleration, maturity or otherwise. (Loan Agreement § 5.1(a).)

36. Under Section 5.1(b) of the Loan Agreement, a Default occurs when any covenant, agreement of condition in the Loan Agreement or in any other Loan Document is not fully and timely performed, observed or kept by Borrower and if such failure continues unremedied for more than thirty days after notice is given to Borrower by Lender. (Loan Agreement §5.1(b).)

37. Borrower has failed to pay accrued and unpaid interest due on the first day of each calendar month fourteen (14) times, with four of these occasions pre-dating the COVID-19 pandemic and related government shutdown orders:

- (i) Borrower failed to pay accrued unpaid interest for the period beginning October 1, 2019 and ending November 1, 2019 in the amount of \$159,081.07. On October 16, 2019, Lender sent a letter notifying Borrower of its Default.
- (ii) In October 2019, Borrower failed to pay a late charge in the amount of \$12,642.24.

- (iii) Borrower failed to pay accrued and unpaid interest for the period beginning November 1, 2019 and ending December 2, 2019 in the amount of \$159,081.07. On November 5, 2019, Lender sent a letter notifying Borrower of its Default.
- (iv) In November 2019, Borrower failed to pay a late charge of \$22,388.29.
- (v) In December 2019, Borrower failed to pay a late charge of \$22,388.29.
- (vi) Borrower failed to pay accrued unpaid interest for the period beginning April 1, 2020 and ending May 1, 2020 in the amount of \$160,416.67. On April 16, 2020, Lender sent a letter notifying Borrower of its Default.
- (vii) In April 2020, Borrower failed to pay a late charge of \$13,765.56.
- (viii) Borrower failed to pay accrued unpaid interest for the period beginning May 1, 2020 and ending June 1, 2020 in the amount of \$165,763.89. On May 13, 2020, Lender sent a letter notifying Borrower of its Default.
- (ix) In May 2020, Borrower failed to pay a late charge of \$20,829.30.
- (x) Borrower failed to pay accrued unpaid interest for the period beginning June 1, 2020 and ending July 1, 2020 in the amount of \$160,416.67.
- (xi) In June 2020, Borrower failed to pay a late charge in the amount of \$20,505.21.
- (xii) Borrower failed to pay accrued unpaid interest for the period beginning July 1, 2020 and ending August 3, 2020 in the amount of \$176,458.33.
- (xiii) In July 2020, Borrower failed to pay a late charge in the amount of \$8,020.83.

(xiv) In August 2020, Borrower failed to pay a late charge in the amount of \$8,822.92.

38. Borrower has also defaulted on its obligations under the Loan Documents by failing to establish a Cash Management Account, failing to send a Tenant Direction Notice to the sole tenant to pay rent directly into the Cash Management Account, and failing to deposit all revenue generated by the Mortgaged Property into the Cash Management Account, as required under Section 8.1 of the Loan Agreement, as well as by failing to provide the necessary Financial Statements for Borrower and each of the Guarantors, as required by Section 3.13 and Exhibit B to the Loan Agreement. On May 22, 2020, Lender sent a letter to Borrower notifying it of these Defaults.

39. On August 1, 2020, Borrower defaulted on its obligation to repay in full the entire principal balance of the Loan then unpaid and all accrued interest by the Maturity Date.

40. As of September 1, 2021, the total payment due by Borrower, including late charges, attorneys' fees and costs is \$ 42,519,383.54 ("Payoff Statement"). A true and correct copy of the Payoff Statement is attached as Exhibit 6.

41. As of the time Lender commenced this action, Borrower had not cured any of its Defaults.

42. Upon information and belief, Lender may also be in breach of other terms of the Loan Documents, including, but not limited to, Section 3.27 of the Loan Agreement, which prohibits "any distribution" to "any owner of any direct or indirect equity interests of Borrower," with limited exceptions, and Section 3.5 of the Loan Agreement, which prohibits Borrower from terminating the Operating Lease without the consent of the Lender.

43. Upon information and belief, Borrower may have sent a Notice of Termination to the tenant under the Operating Lease in late 2019 or early 2020.

44. No prior action or proceeding has been commenced at law or otherwise for the recovery of the sums secured by the Mortgaged Property or any part thereof.

**COMPLIANCE WITH LAWS AND REGULATIONS**

45. Lender has complied with all state and federal statutes, Executive Orders, Administrative Orders, Acts and directives instituted as a result of the COVID-19 pandemic. On March 16, 2021, Lender provided notice to Borrower of its right to submit a hardship declaration under the COVID-19 Emergency Protect Our Small Businesses Act of 2021 (the “Act”). A true and correct copy of the March 16, 2021 notice to Borrower is attached hereto as **Exhibit 7**.

46. On March 22, 2021, Borrower provided Lender with notice of its declaration of COVID-19 related hardship, dated March 18, 2021 (the “Declaration”). A true and correct copy of the Declaration is attached hereto as **Exhibit 8**.

47. Upon information and belief, Borrower is not entitled to the protections of the Act because, *inter alia*, Borrower’s business employs more than fifty (50) individuals, that Borrower’s business is not independently owned and operated, and that Borrower is not a New York resident.

**AS AND FOR A FIRST CAUSE OF ACTION  
(Foreclosure of the Mortgage)**

48. Lender repeats and realleges the allegations contained in paragraphs “1” through “47” as though fully set forth herein.

49. Lender is the owner and holder of the Loan Documents and is authorized to commence a foreclosure action pursuant to the Loan Documents.

50. Pursuant to Section 6.1(c) of the Mortgage, upon the occurrence and continuance of a Default or in the case that the principal of the Note becomes due and payable, whether by

lapse of time or by acceleration, then and in every such case the Mortgagee (Lender) shall have the right to immediately proceed to foreclose the Mortgage lien against the property constituting the Mortgaged Property or any part thereof, in accordance with the laws of New York, including, without limitation, the provisions of Article 13 of the Real Property Actions and Proceedings Law of New York, as such provisions may be extended, renewed, modified or replaced from time to time, and may pursue any other remedy available to a commercial mortgage lender under the laws of New York, including all rights to judicial foreclosure under the laws of New York, and if authorized by the laws of the State of New York, all rights to nonjudicial foreclosure of mortgages. (Mortgage § 6.1(c).)

51. As described above, Borrower has failed to fulfill a number of its obligations under the Loan Documents, which constituted an Event of Default, including but not limited to its failure to repay the Loan in full when the balance became due on the Maturity Date of August 1, 2020.

52. By reason of the foregoing, Borrower is in Default under the Loan Documents.

53. Pursuant to Section 6.1(c) of the Mortgage, and in accordance with the other terms of the Loan Documents, based upon the failure by Borrower to pay all amounts due under the Note on its Maturity Date, Lender elects to foreclose upon the Mortgage and recover the current outstanding principal amount, that, as of September 1, 2021 is \$38,500,000, plus accrued interest, fees and legal fees for a total payoff amount of \$ 42,519,383.54, together with interest, late fees, and any other amounts to be added pursuant to the terms of the Loan Documents, including attorneys' fees (for which Borrower expressly agreed to be responsible, in accordance with Section 6.1(c) of the Mortgage), exclusive of any tax reserves, interest reserves, insurance reserves, or other cash reserves to be applied to the indebtedness.

54. In order to protect its security interest in the Mortgaged Property, Lender, as it is entitled to do under the Loan Documents, may be compelled to pay, during the pendency of this action, local taxes, assessments, water rates, insurance premiums, ground lease rent, and other charges affecting the Mortgaged Property, and any sums thus paid by Lender for such purposes, together with late payments due thereon, should be added to the sums otherwise due and deemed secured by the Mortgage and adjudged a lien.

55. Lender shall not be deemed to have waived, altered, released or changed the election hereinafter made by reason of any payment after the date of commencement of this action of any or all of the defaults mentioned herein, and such election shall continue and remain effective until the costs and disbursements of this action, and any and all future defaults under the Loan Documents and occurring prior to the discontinuance of this action, are fully paid.

56. Lender has complied with all the terms and provisions of the Loan Documents and, pursuant to R.P.A.P.L. 1301(2), no proceeding other than this action has been commenced to recover any part of the debt secured by the Mortgage owed to Lender.

57. Lender states further that the Mortgaged Property is not a borrower-occupied one to four family dwelling or condominium unit, nor is the Mortgaged Property a high cost or subprime home loan as defined by Sections 6-1 and 6-m of the New York Banking Law. Lender has or will comply with the notice provisions of R.P.A.PL. 1303(1)(b).

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Attorneys' Fees, Costs and Expenses)**

58. Lender repeats and realleges the allegations contained in paragraphs "1" through "57" as though fully set forth herein.

59. Under the terms of the Loan Documents, Borrower agreed to pay all out-of-pocket costs and expenses of the holder of the Note which may be incurred unless Borrower is the sole

prevailing party in an action to enforce or protect the rights or interests of such holder, including attorneys' fees and expenses (including the market value of services of in-house counsel), investigation costs and all court costs, whether before or after the Maturity Date defined in the Loan Agreement, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other Person primarily or secondarily liable. (Note § 3(c).)

60. Additionally, under Section 6.1(c) of the Mortgage, Mortgagor (Borrower) agreed to pay, in connection with any foreclosure of the lien or any action to enforce any other remedy of Mortgagee under the Security Instrument, the Note or any other Loan Document, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee including, without limitation, attorneys' fees and disbursements, court costs, appraiser's fees, outlays for documentary and expert evidence, stenographers' chargers, publication costs, and costs of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of title to or the value of the Mortgaged Property, and the right to such fees and expenses shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. (Mortgage § 6.1(c).)

61. Lender has incurred costs and fees in connection with foreclosing the Loan, including attorneys' fees.

62. By reason of the foregoing, Borrower is liable for expenses, including reasonable attorneys' fees, arising from Lender's incurred costs in connection with the foreclosure.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Recovery Under the Guaranty)**

63. Lender repeats and realleges the allegations contained in paragraphs “1” through “62” as though fully set forth herein.

64. Pursuant to the Guaranty, the Guarantors jointly and severally, unconditionally, absolutely and irrevocably guaranteed payment (and not merely collectability) of and agreed to pay, protect, defend and save harmless Lender for, from and against, and indemnify Lender for, from and against any and all liabilities, obligations, actual losses, damages, costs and expenses (including, without limitation, reasonable attorneys’ fees), causes of action, suits, claims, demands, and judgment of any nature or description whatsoever, which may at any time be imposed upon, incurred by or awarded against Lender as a result of, among other things, misapplication, misappropriation or conversion by Borrower, Guarantor, or any Affiliate of any of them of any Rents. (Guaranty § 1(a)(vii).)

65. Borrower defaulted on the Loan Documents and Lender has incurred costs and fees in connection with foreclosing the Loan, including attorneys’ fees.

66. Upon information and belief, Borrower and/or the Guarantors have misapplied, misappropriated or converted Rents collected by them in connection with the Mortgaged Property.

67. By reason of the foregoing, the Guarantors are liable for all liabilities, obligations, actual losses, damages, costs and expenses (including, without limitation, reasonable attorneys’ fees), causes of actions, suits, claims, demands, and judgment of any nature which were incurred in connection with the enforcement of Lender’s rights, remedies or recourse under the Loan Documents due to any misapplication, misappropriation or conversion by Borrower, Guarantor, or any Affiliate of any Rents.

68. Pursuant to the Guaranty, the Guarantors also agreed that the Guaranty was an absolute, irrevocable and unconditional guaranty of payment and performance, and each party comprising Guarantor would be jointly and severally liable for the payment and performance of the Guaranteed Obligations as a primary obligor. (Guaranty § 4(a).)

69. The Guarantors further agreed that in the event of the occurrence of a Default under the Loan Documents, the Guaranteed Obligations would become immediately due and payable at the election of the Lender's Agent and the Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, would pay the amounts due to Agent or Lender, and pay all Losses that may arise in consequence of such Event of Default (including, without limitation, all reasonable attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses actually incurred by Agent or Lender in connection with the collection and enforcement of the Guaranty). (Guaranty § 4(b).)

70. In the event of foreclosure, the Guarantors agreed that only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note and Security Instrument, and the Lender shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment or enforcement. (Guaranty § 4(b).)

71. Borrower is in Default under the Loan Documents.

72. By reason of the foregoing, the Guarantors are liable for all amounts due to Lender by Borrower, including all Losses that arose as a result of Borrower's Default (including, without limitation, all reasonable attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses actually incurred by Agent or Lender in connection with the

collection and enforcement of the Guaranty), and the Guarantors are liable for any deficiency due under the Loan Documents after application of the proceeds in the manner specified by the Court.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Deficiency Judgment)**

73. Lender repeats and realleges the allegations contained in paragraphs “1” through “72” as though fully set forth herein.

74. By virtue of the Loan Documents, as defined herein, Borrower and Guarantors are liable to pay Lender for any deficiency which may remain after applying all of said sales proceeds, together with interest thereon and other charges, in accordance with the Loan Documents. Such indebtedness will continue to accrue and, therefore, the precise amount due from Borrower and Guarantors to Lender through the date of Judgment herein should be determined by the Court.

**WHEREFORE**, Lender demands judgment as follows:

A. That Defendants, or any of them, and persons claiming under them or any of them, and all persons claiming any interest in the Mortgaged Property with all of its fixtures, equipment and personal property thereon, subsequent to the commencement of this action and the filing of the notice of pendency of this action be forever barred and foreclosed of and from all estate, right, title, interest, claim, lien and equity of redemption in and to the Mortgaged Property and each and every part thereof;

B. That the Mortgaged Property be sold to obtain the greatest return of sale, whether sold jointly as a single parcel or sold separately as two or more parcels;

C. That the Mortgaged Property should be sold “As Is” subject to: (i) any state of fact that an inspection of the Mortgaged Property would disclose; (ii) any state of fact that an accurate survey of the Mortgaged Property would show; (iii) covenants, restrictions, conditions; reservations; easements; rights of way and public utility agreements of record, if any; (iv) building

restrictions and zoning ordinances of the municipality in which the Mortgaged Property is located and possible violations of same; (v) any violations, orders, changes or notices now or hereafter found on the Mortgaged Property, or filed in or issued by any governmental authority having jurisdiction over the Mortgaged Property; (vi) existing leases of the Mortgaged Property or any part thereof or rights of tenants in possession other than those tenants and lessees who are party defendants herein at the time of sale; (vii) prior liens of record, if any, and (viii) any equity of redemption of the United States of America to redeem the Mortgaged Property within 120 days from the date of sale;

D. That the amount due to Lender under the Loan Documents be adjudged;

E. That the proceeds of any foreclosure sale of Borrower's interest in the Mortgaged Property be distributed and applied in the following order of priority, as specified in Section 6.1(c) of the Mortgage: (i) first, to payment of all costs and expenses incident to the foreclosure proceedings; (ii) second, to the cost of any search and/or other evidence of title procured in connection therewith and the transfer tax on any deed or conveyance; (iii) third, to all sums expended under the terms hereof, not then repaid with accrued interest at the rate provided herein; (iv) fourth, to payment of all remaining Secured Indebtedness, in such order as Mortgagee may determine in its sole and absolute discretion; and (v) fifth, the remainder, if any to the person or persons legally entitled thereto.

F. That Borrower be adjudged liable for the payment of any costs and fees incurred in connection with foreclosing the Loan, including attorneys' fees;

G. That the Guarantors be adjudged liable under the Guaranty for liabilities, obligations, actual losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees), causes of actions, suits, claims, demands, and judgment of any nature which were

incurred in connection with the enforcement of Lender's rights, remedies or recourse under the Loan Documents due to any misapplication, misappropriation or conversion by Borrower, Guarantor, or any Affiliate of any Rents;

H. That the Guarantors be adjudged liable for the prompt and unconditional payment of all obligations and liabilities of Borrower pursuant to the Loan Documents, and all Losses that arose in consequence of Borrower's Default (including, without limitation, all reasonable attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses actually incurred by Agent or Lender in connection with the collection and enforcement of the Guaranty);

I. That the Guarantors, to the extent the Guarantors have liability under the Guaranty, be adjudged to pay the amount of any deficiency due under the Loan Documents, or any or all of them, or so much thereof as the Court may determine to be just and equitable, of the debt remaining unsatisfied after a sale of the Mortgaged Property and the application of the proceeds pursuant to the directions contained in such judgment, the amount thereof to be determined by the Court, as provided in R.P.A.P.L. section 1371, together with reasonable attorneys' fees, disbursements and court costs incurred in connection with enforcement of their and Borrower' respective obligations under the Loan Documents;

J. That in the event the proceeds from such sale be insufficient to pay the Lender the entire amount due pursuant to the Loan Documents as described above, then Lender shall have a judgment against Borrower and Guarantors for the amount of any such deficiency; and

K. That Lender have such other and further relief as the Court deems just and proper.

Dated: September 1, 2021  
New York, New York

**DLA PIPER LLP (US)**

By: /s/ Christopher M. Strongosky  
Christopher M. Strongosky  
Neal F. Kronley  
Michele Korkhov  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501

*Attorneys for Plaintiffs Security Benefit Life  
Insurance Company and Security Benefit  
Corporation*

# VERIFICATION

STATE OF KANSAS

ss

COUNTY SHAWNEE

Douglas Schneider, being duly sworn, deposes and states:

I am an employee with Security Benefit Life Insurance Company and Security Benefit Corporation, the plaintiff in this action. Security Benefit Life Insurance Company is an insurance company duly organized and existing under the laws of the State of Kansas, with its principal place of business in Kansas, and Security Benefit Corporation is a corporation duly organized and existing under the laws of the State of Kansas. I have read the attached complaint and its factual contents are true to my personal knowledge, except as to the matters alleged on information and belief, and as to those matters, I believe them to be true.

Declarant: August 31, 2021

  
Douglas Schneider

Subscribed before me  
this 31st day of August, 2021  
  
Trina M. Tyler



**SCHEDULE A**

**LAND**

Real property in the City of White Plains, County of Westchester, State of New York, described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE< LYING AND BEING IN THE CITY OF WHITE PLAINS, COUNTY OF WESTCHESTER AND STATE OF NEW YORK, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EASTERLY LINE OF CHURCH STREET WHERE THE SAME IS INTERSECTED BY THE SOUTHERLY LINE OF BARKER AVENUE;

RUNNING THENCE FROM SAID POINT NORTH 70° 40' 10" EAST A DISTANCE OF 173.57 FEET ALONG THE SOUTHERLY LINE OF BARKER AVENUE TO A POINT WHERE THE SAME IS INTERSECTED BY THE DIVISION LINE HEREIN DESCRIBED PARCEL ON THE WEST AND LANDS NOW OR FORMERLY OF KOEPPEL & MOHR EQUITIES ON THE EAST;

THENCE FROM SAID POINT AND ALONG SAID DIVISION LINE SOUTH 17° 59' 50" EAST A DISTANCE OF 200.51 FEET TO A POINT IN THE DIVISION LINE BETWEEN THE HEREIN DESCRIBED PARCEL ON THE NORTH AND LANDS NOW OR FORMERLY OF HAMILTON PLAZA COMPANY, INC. ON THE SOUTH;

THENCE FROM SAID POINT AND ALONG SAID LINE SOUTH 71° 01' 50" WEST A DISTANCE OF 173.24 FEET TO THE EASTERLY LINE OF CHURCH STREET;

THENCE FROM SAID POINT AND ALONG SAID LINE NORTH 18° 05' 04" WEST A DISTANCE OF 199.41 FEET TO THE POINT AND PLACE OF BEGINNING.

# EXHIBIT K

Wire Inquiry

Wire Number:	184428	IMAD:	20191118GMQFMP01022367
Transfer Start Date:	Nov 18, 2019	OMAD:	20191118MMQFMPAD00004111181744FT03
Effective Date:	Nov 18, 2019	Amount:	\$509,000.00
FED Acceptance Date:		From Account:	199010366
FED Acceptance Time:		Account Type:	DDA
Transfer Status:	Complete		
<b>Beneficiary</b>			
Identification Type:	DDA Account Number	Message To Beneficiary:	Purpose:
Identification Number:	0741019033		
Name:	White Plains Health Care Properties		<i>December</i>
Address:	2 Bourbon Street Peabody MA 01960	Beneficiary Reference:	
<b>Beneficiary Institution</b>			
Identification Type:	Fed Routing Number	Name:	EAST BOSTON SAVINGS BANK
Identification Number:	211070120	Address:	PEABODY MA
<b>Receiving Institution</b>			
Routing/Transit number:	211070120		
Institution Name:	EAST BOSTON SVG		

Done

Wire Inquiry

Wire Number:	192236	IMAD:	20200102GHQFMP01012386
Transfer Start Date:	Jan 02, 2020	DMAD:	20200102HMQFMPAD00003901021415FT01
Effective Date:	Jan 02, 2020	Amount:	\$506,096.50
FED Acceptance Date:		From Account:	199011389
FED Acceptance Time:		Account Type:	DDA
Transfer Status:	Complete		
<b>Beneficiary</b>			
Identification Type:	DDA Account Number	Message To Beneficiary:	Purpose:
Identification Number:	0741019033		
Name:	White Plains Health Care Properties		January
Address:	7 Bourbon Street Peabody MA 01960	Beneficiary Reference:	
<b>Beneficiary Institution</b>			
Identification Type:	Fed Routing Number	Name:	EAST BOSTON SAVINGS BANK
Identification Number:	211070120	Address:	PEABODY MA
<b>Receiving Institution</b>			
Routing/Transit number:	211070120		
Institution Name:	EAST BOSTON SVG		

Done

Wire Inquiry

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Page 1 of 1

Wire Number:	197240	IMAD:	20200131GMQFMP01007812
Transfer Start Date:	Jan 31, 2020	OMAD:	20200131HMQFMPAD00002601311112FT01
Effective Date:	Jan 31, 2020	Amount:	\$506,096.50
FED Acceptance Date:		From Account:	199011389
FED Acceptance Time:		Account Type:	DDA
Transfer Status:	Complete		
<b>Beneficiary</b>			
Identification Type:	DDA Account Number	Message To Beneficiary:	Purpose:
Identification Number:	0741019033		
Name:	White Plains Health Care Properties		February
Address:	2 Bourbon Street Peabody MA 01960	Beneficiary Reference:	
<b>Beneficiary Institution</b>			
Identification Type:	Fed Routing Number	Name:	EAST BOSTON SAVINGS BANK
Identification Number:	211070120	Address:	PEABODY MA
<b>Receiving Institution</b>			
Routing/Transit number:	211070120		
Institution Name:	EAST BOSTON SVG		

Done

Wire Inquiry

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Page 1 of 1

Wire Number:	202815	DMAD:	20200302GMQFMPD1025087
Transfer Start Date:	Mar 02, 2020	DMAD:	20200302MMQFMPAD00006103021704PT01
Effective Date:	Mar 02, 2020	Amount:	\$506,096.50
FED Acceptance Date:		From Account:	199011389
FED Acceptance Time:		Account Type:	DDA
Transfer Status:	Complete		
<b>Beneficiary</b>			
Identification Type:	DDA Account Number	Message To Beneficiary:	Purpose:
Identification Number:	0741019033		MARCT
Name:	White Plains Health Care Properties		
Address:	2 Bourbon Street Peabody MA 01960	Beneficiary Reference:	
<b>Beneficiary Institution</b>			
Identification Type:	Fed Routing Number	Name:	EAST BOSTON SAVINGS BANK
Identification Number:	211070120	Address:	PEABODY MA
<b>Receiving Institution</b>			
Routing/Transit number:	211070120		
Institution Name:	EAST BOSTON SVG		

Done

Wire Inquiry

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Page 1 of 1

Wire Number:	212939	INAD:	20200506GMQFMP01023318
Transfer Start Date:	May 06, 2020	DMAD:	20200506MMQFMPAD00005205061722FT03
Effective Date:	May 05, 2020	Amount:	\$506,096.50
FED Acceptance Date:		From Account:	199011389
FED Acceptance Time:		Account Type:	DDA
Transfer Status:	Complete		
<b>Beneficiary</b>			
Identification Type:	DDA Account Number	Message To Beneficiary:	April 2020 Rent
Identification Number:	0741019033		
Name:	White Plains Health Care Properties		
Address:	2 Bourbon Street Peabody MA 01960	Beneficiary Reference:	
<b>Beneficiary Institution</b>			
Identification Type:	Fed Routing Number	Name:	EAST BOSTON SAVINGS BANK
Identification Number:	211070120	Address:	PEABODY MA
<b>Receiving Institution</b>			
Routing/Transit number:	211070120		
Institution Name:	EAST BOSTON SVG		

Done

APR 1

Wire Inquiry

Wire Number:	215906	IMAD:	20200526GMQ/MP01020575
Transfer Start Date:	May 26, 2020	OHAD:	20200526MMQFHPAD00003905261501FT03
Effective Date:	May 26, 2020	Amount:	\$506,036.50
FED Acceptance Date:		From Account:	179011389
FED Acceptance Time:		Account Type:	DDA
Transfer Status:	Complete		
<b>Beneficiary</b>			
Identification Type:	DDA Account Number	Message To Beneficiary:	April 2020 Rent
Identification Number:	0741019033		<i>May</i>
Name:	White Plains Health Care Properties		
Address:	2 Bourdon Street Peabody MA 01950	Beneficiary Reference:	
<b>Beneficiary Institution</b>			
Identification Type:	Fed Routing Number	Name:	EAST BOSTON SAVINGS BANK
Identification Number:	211070120	Address:	PEABODY MA
<b>Receiving Institution</b>			
Routing/Transit number:	211070120		
Institution Name:	EAST BOSTON SVG		

Done

Wire Inquiry

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Page 1 of 1

<b>Domestic Wire - White Plains Health Care Prop</b>			
Wire Number:	217245	IMAD:	20200602GMQFHP01023677
Transfer Start Date:	Jun 02, 2020	OMAD:	20200602MMQFMPAD00003606021658FT03
Effective Date:	Jun 02, 2020	Amount:	\$506,096.50
FED Acceptance Date:		From Account:	199011389
FED Acceptance Time:		Account Type:	DCA
Transfer Status:	Complete		
<b>Beneficiary</b>			
Identification Type:	DCA Account Number	Message To Beneficiary:	April 2020 Rent
Identification Number:	0741019033		
Name:	White Plains Health Care Properties		JUNE
Address:	2 Bourbon Street Peabody MA 01960	Beneficiary Reference:	
<b>Beneficiary Institution</b>			
Identification Type:	Fed Routing Number	Name:	EAST BOSTON SAVINGS BANK
Identification Number:	211070120	Address:	PEABODY MA
<b>Receiving Institution</b>			
Routing/Transit number:	211070120		
Institution Name:	EAST BOSTON SVG		
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Wire Inquiry

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Page 1 of 1

<b>Domestic Wire - White Plains Health Care Prop</b>			
Wire Number:	222448	IMAD:	20200701GMQFMP01010549
Transfer Start Date:	Jul 01, 2020	OMAD:	20200701MMQFMPAD00004207011149FT03
Effective Date:	Jul 01, 2020	Amount:	\$506,096.50
FED Acceptance Date:		From Account:	199011399
FED Acceptance Time:		Account Type:	DDA
Transfer Status:	Complete		
<b>Beneficiary</b>			
Identification Type:	DDA Account Number	Message To Beneficiary:	April 2020 Rent
Identification Number:	0741019033		July
Name:	White Plains Health Care Properties		
Address:	2 Bourbon Street Peabody MA 01960	Beneficiary Reference:	
<b>Beneficiary Institution</b>			
Identification Type:	Fed Routing Number	Name:	EAST BOSTON SAVINGS BANK
Identification Number:	211070120	Address:	PEABODY MA
<b>Receiving Institution</b>			
Routing/Transit number:	211070120		
Institution Name:	EAST BOSTON SVG		
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Wire Inquiry

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<b>Domestic Wire - White Plains Health Care Prop</b>			
Wire Number:	229532	IMAD:	20200807GMQFMP01001307
Transfer Start Date:	Aug 07, 2020	OMAD:	20200807MHQFMPAD00000708070857FT03
Effective Date:	Aug 07, 2020	Amount:	\$506,096.50
FED Acceptance Date:		From Account:	199011389
FED Acceptance Time:		Account Type:	DDA
Transfer Status:	Complete		
<b>Beneficiary</b>			
Identification Type:	DDA Account Number	Message To Beneficiary:	April 2020 Rent
Identification Number:	0741019033		<i>August</i>
Name:	White Plains Health Care Properties		
Address:	2 Bourbon Street Peabody MA 01960	Beneficiary Reference:	
<b>Beneficiary Institution</b>			
Identification Type:	Fed Routing Number	Name:	EAST BOSTON SAVINGS BANK
Identification Number:	211070120	Address:	PEABODY MA
<b>Receiving Institution</b>			
Routing/Transit number:	211070120		
Institution Name:	EAST BOSTON SVG		
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Wire Inquiry

<b>Domestic Wire - White Plains Health Care Prop</b>			
Wire Number:	234797	IMAD:	20200904GHQFMP01006974
Transfer Start Date:	Sep 04, 2020	DMAD:	20200904HHQFMPAD00001109041058FT03
Effective Date:	Sep 04, 2020	Amount:	\$506,096.50
FED Acceptance Date:		From Account:	199011389
FED Acceptance Time:		Account Type:	DDA
Transfer Status:	Complete		
<b>Beneficiary</b>			
Identification Type:	DDA Account Number	Message To Beneficiary:	April 2020 Rent
Identification Number:	0741019033		<i>Sept 2020</i>
Name:	White Plains Health Care Properties		
Address:	2 Bourbon Street Peabody MA 01960	Beneficiary Reference:	
<b>Beneficiary Institution</b>			
Identification Type:	Fed Routing Number	Name:	EAST BOSTON SAVINGS BANK
Identification Number:	211070120	Address:	PEABODY MA
<b>Receiving Institution</b>			
Routing/Transit number:	211070120		
Institution Name:	EAST BOSTON SVG		
	<input type="button" value="Done"/>		

# EXHIBIT L

HBL SNF, LLC

1308

DBA EPIC REHABILITATION AND NURSING AT WHITE PLAINS CITY OF WHITE PLAINS-TAX BILL

1308

Deluxe Corporation 1-800-328-0304 or www.deluxe.com/shop

188132	125.67-3-1 07/01/20	353999.10	0.00	0.00	353999.10
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*ups  
0.29.20*

Acct:  
10112000

Check Date 07/28/20

Total

353999.10





**CITY OF WHITE PLAINS - TAX BILL**

255 Main Street, Room 102  
 White Plains, NY 10601  
 Phone: 914-422-1248  
 www.whiteplainsny.gov

**FISCAL YEAR 2021**

**1st INSTALLMENT DUE**

WHITE PLAINS HEALTHCARE  
 PROPERTIES 1, LLC  
 2 BOURBON ST  
 SUITE 200  
 PEABODY, MA 01960

<b>LIEN DATE:</b>	July 01, 2020
<b>PAYABLE BY:</b>	July 31, 2020
<b>ACCOUNT NUMBER:</b>	125.67-3-1
<b>BILL NUMBER:</b>	188132
<b>TAX AMOUNT PAYABLE</b>	<b>\$353,999.10</b>

**PROPERTY LOCATION:** 120 CHURCH ST  
**PROPERTY DESCRIPTION:** SBL 125.67-3-1  
**PROPERTY CLASS:** 642 ALL OTHER HEALTH FAC  
**TAX WARRANT DATE:** June 01, 2020  
**ESTIMATED STATE AID:** CITY 5,463,256 SCHL 27,869,477  
**NYS SCHOOL DISTRICT CODE:** 699

**IMPORTANT: PLEASE READ THE INFORMATION ON THE BACK OF THIS BILL**

LEVY DESCRIPTION	ASSESSED VALUE	TAXABLE VALUE	TAX RATE	TOTAL TAX AMOUNT	PAYMENT DUE
CITY TAX	780,000	780,000	224.5200	175,125.80	
SCHOOL TAX	780,000	780,000	683.1700	532,872.60	
Leas: STAR SAVINGS				.00	
<b>TOTAL DUE AFTER STAR</b>				<b>707,998.20</b>	<b>\$353,999.10</b>

THIS BILL COVERS THE PERIOD 07/01/2020 TO 12/31/2020

LEVY DESCRIPTION	TOTAL TAX LEVY	% CHANGE FROM PRIOR YEAR
CITY TAX	\$63,879,523	3.9800
SCHOOL TAX	\$182,720,711	4.0900

**ESTIMATED FULL MARKET VALUE OF PARCEL:** 29,433,962  
**UNIFORM PERCENTAGE OF VALUE:** 2.65%  
**TOTAL ASSESSED VALUE:** 780,000

YOUR TAX SAVINGS RESULTING FROM THE NYS SCHOOL TAX RELIEF (STAR) PROGRAM IS: .00  
 This year's STAR exemption benefit cannot exceed last year's benefit.

CODE 8440-1800	AMT 353,999.10
CODE	AMT
CODE	AMT
ENTERED 7/7/2020	
PAYDATE	CK#



VIEW AND PAY YOUR PROPERTY TAXES ONLINE AT: [www.whiteplainsny.gov](http://www.whiteplainsny.gov)

REMITTANCE COPY - TO ENSURE PROPER CREDIT; PLEASE RETURN THIS PORTION OF THE BILL WITH YOUR PAYMENT

**STATEMENT OF TAXES - FISCAL YEAR 2021**

<b>DATE PAYMENT DUE:</b>	July 31, 2020
Account Number:	125.67-3-1
Bill Number:	188132
<b>TAX AMOUNT PAYABLE</b>	<b>\$353,999.10</b>
Make checks payable to: <b>CITY OF WHITE PLAINS</b>	
Payment Amount Enclosed	\$

CITY OF WHITE PLAINS  
 PO BOX 5086  
 WHITE PLAINS, NY 10602

PROPERTY LOCATION: 120 CHURCH ST  
 2021 CITY 175,125.80  
 2021 SCHL 532,872.60

WHITE PLAINS HEALTHCARE  
 PROPERTIES 1, LLC  
 2 BOURBON ST  
 SUITE 200  
 PEABODY, MA 01960

CITY OF WHITE PLAINS  
 PO BOX 5086  
 WHITE PLAINS, NY 10602-5086

208202140018813250070799620900353999105



**THE CONGRESS COMPANIES**

West Peabody Executive Center, 2 Bourbon Street, Suite 200, Peabody MA, 01960

Phone: 978.535.6700 Fax: 978.535.6701

**Transmittal Cover Sheet**

<b>WHITE PLAINS HEALTHCARE</b>	Project # 415	<b>White Plains Healthcare Properties I, LLC</b>
120 Church Street White Plains, NY 10601	Tel: 978.535.6700 Fax: 978.535.6701	

<b>Date: 07/06/2020</b>	<b>Reference Number: 261</b>
-------------------------	------------------------------

<b>Transmitted To</b>	<b>Transmitted By</b>
Lizer Josefovich Water's Edge Rehabilitation & Healthcare 512 Union Street Trenton, NJ 08611 Tel: 609.393.8622 Fax: 609.393.9655	Kim Jackson White Plains Healthcare Properties I, LLC 2 Bourbon Street Peabody, MA 01960 Tel: 978.535.6700 ext. 125 Fax: 978.535.6701

<b>Package Transmitted For Information</b>	<b>Delivered Via Email Delivery</b>
--	-------------------------------------

**Cc:**  
Edward Tabor, White Plains Healthcare Properties I, LLC  
Danielle Feminella, Water's Edge Rehabilitation & Healthcare

**Remarks**

Enclosed for your use and information, please see attached the following document:

\* City of White Plains, NY - Tax Bill - Fiscal Year2021 1st Installment - 120 Church St., White Plains, NY 10601

Please submit payment directly to the City of White Plains, NY and send a copy of such to White Plains Healthcare Properties for our own records.

Thank you.

encl.

# EXHIBIT M



Working for you 24/7

**Amount Due : \$265.00**  
**Pay Immediately**

120 CHURCH ST ENT 55-5547-9695-0001-5 December 16, 2019

A deposit of \$265.00 is required as security on your account. In lieu of a cash payment, we are able to accept bank letters of credit or surety bonds, which provide a level of security equivalent to cash.

The deposit is equal to the cost of twice your average monthly usage. Where usage varies widely due to space heating to cooling or in the case of certain manufacturing and industrial processors, the deposit will not exceed the cost of twice the monthly usage during the peak season.

The deposit may be increased or decreased on subsequent billing. At any time, you may request a review of the deposit amount to ensure it is appropriate. We also review the deposit amount once a year and notify you if a change is required, If our review shows a deposit reduction is appropriate, we will refund the excessive portion of the deposit, with interest, within 30 calendar days.

As long as we hold your deposit, we pay interest - currently 2.45% per year. Interest on the deposit is applied to your account each year and when you close your account.

Your account will be reviewed after the deposit has been held for three years. The deposit would be eligible for refund within 30 days provided: no late payments were made during the most recent 12 month period; there were no instances of any meter tampering; and, financial reports do not indicate the potential for default. If the deposit is not eligible for refund at that time, the account will be reviewed each year to determine if a refund can be made.

Please make your payment or submit a letter of credit or surety bond within seven days.

Credit Operations

- Contact us 24 hours a day, 7 days a week
- Self-service [conEd.com](http://conEd.com)
- Report a problem 1-800-75-CONED (1-800-752-6633)
- Pay your bill 1-888-925-5016
- Get information 1-212-243-1900 1-800-75-CONED 1-800-752-6633
- Con Edison Cooper Station PO Box 138 New York, NY 10276-0138

CDA

Tear or Cut here ..... Wondering if you can get a better deal on your energy needs? Explore your choices at [www.PowerYourWay.com](http://www.PowerYourWay.com). Page 1 of 2



**Payment slip**  
Please make checks payable to Con Edison

Your account number: 55-5547-9695-0001-5

**Total Amount Due: \$265.00**

Amount enclosed:

EPIC REHABILITATION  
NURSING ATWHITEPLAIN  
KAREN CAPPARELLI  
1280 ALBANY POST RD  
CROTON ON HUDSON NY 10520-1570

JAF STATION  
P.O. BOX 1702  
NEW YORK, NY 10116-1702

555547969500015 0000000000 90000026500

**Ways To Pay Your Bill**

**1. Direct Payment** — Pay your bill automatically from your checking or savings account at no charge. Enroll at [conEd.com/myaccount](http://conEd.com/myaccount) or call **1-212-243-1900**.

**2. Internet** — Pay online at [conEd.com/myaccount](http://conEd.com/myaccount). There is no fee for payments from a checking or savings account, but our payment agent charges a small fee for debit/credit card transactions.

**3. Phone** — Pay by phone at **1-888-925-5016**. There is no fee for payments from a checking or savings account, but our payment agent charges a small fee for debit/credit card transactions.

**4. In-Person Authorized Payment Agents** — Visit [conEd.com/paymentagents](http://conEd.com/paymentagents) or call **1-212-243-1900** for the nearest agents in your area.

Our walk-in centers are open Monday to Friday, 8:30 a.m. to 5 p.m.

**Manhattan** - 122 East 124th Street

**Queens** - @National Grid - 89-67 162nd Street

**Staten Island**- 1140 Richmond Terrace (exact pay only)

**Bronx** - 1775 Grand Concourse

**Brooklyn** - @National Grid - 345 Jay Street

**Westchester** - @Food Bazaar - 1 Bogopa Plaza, Mt. Vernon

**5. Mail** - Make check or money order payable to Con Edison and mail it in the window envelope provided with your bill. Do not send cash.

**Mail to: Con Edison, JAF Station, PO Box 1702, New York, NY 10116-1702**

Check processing notice: When you provide a check as payment, you authorize us to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check. You will not receive your check back from your financial institution.

**Address Change?** -- If you are moving or changing your mailing address, call **1-800-752-6633** and let us know.

For more information, call **1-800-75-CONED (1-800-752-6633)**.



Working for you 24/7

**Amount Due : \$420.00**  
**Pay Immediately**

120 CHURCH ST ENT 55-5547-9697-0001-1 December 17, 2019

A deposit of \$420.00 is required as security on your account. In lieu of a cash payment, we are able to accept bank letters of credit or surety bonds, which provide a level of security equivalent to cash.

The deposit is equal to the cost of twice your average monthly usage. Where usage varies widely due to space heating to cooling or in the case of certain manufacturing and industrial processors, the deposit will not exceed the cost of twice the monthly usage during the peak season.

The deposit may be increased or decreased on subsequent billing. At any time, you may request a review of the deposit amount to ensure it is appropriate. We also review the deposit amount once a year and notify you if a change is required, If our review shows a deposit reduction is appropriate, we will refund the excessive portion of the deposit, with interest, within 30 calendar days.

As long as we hold your deposit, we pay interest - currently 2.45% per year. Interest on the deposit is applied to your account each year and when you close your account.

Your account will be reviewed after the deposit has been held for three years. The deposit would be eligible for refund within 30 days provided: no late payments were made during the most recent 12 month period; there were no instances of any meter tampering; and, financial reports do not indicate the potential for default. If the deposit is not eligible for refund at that time, the account will be reviewed each year to determine if a refund can be made.

Please make your payment or submit a letter of credit or surety bond within seven days.

Credit Operations

- Contact us 24 hours a day, 7 days a week
- Self-service [conEd.com](http://conEd.com)
- Report a problem 1-800-75-CONED (1-800-752-6633)
- Pay your bill 1-888-925-5016
- Get information 1-212-243-1900 1-800-75-CONED 1-800-752-6633
- Con Edison Cooper Station PO Box 138 New York, NY 10276-0138

CDA

Tear or Cut here ..... Wondering if you can get a better deal on your energy needs? Explore your choices at [www.PowerYourWay.com](http://www.PowerYourWay.com). Page 1 of 2



**Payment slip**  
Please make checks payable to Con Edison

Your account number: 55-5547-9697-0001-1

**Total Amount Due: \$420.00**

Amount enclosed:

EPIC REHABILITATION A  
ND NURSING AT WP  
1280 ALBANY POST RD  
CROTON ON HUDSON NY 10520-1570

JAF STATION  
P.O. BOX 1702  
NEW YORK, NY 10116-1702

555547969700011 0000000000 00000042000

**Ways To Pay Your Bill**

**1. Direct Payment** — Pay your bill automatically from your checking or savings account at no charge. Enroll at [conEd.com/myaccount](http://conEd.com/myaccount) or call **1-212-243-1900**.

**2. Internet** — Pay online at [conEd.com/myaccount](http://conEd.com/myaccount) There is no fee for payments from a checking or savings account, but our payment agent charges a small fee for debit/credit card transactions.

**3. Phone** — Pay by phone at **1-888-925-5016**. There is no fee for payments from a checking or savings account, but our payment agent charges a small fee for debit/credit card transactions.

**4. In-Person Authorized Payment Agents** — Visit [conEd.com/paymentagents](http://conEd.com/paymentagents) or call **1-212-243-1900** for the nearest agents in your area.  
Our walk-in centers are open Monday to Friday, 8:30 a.m. to 5 p.m.

- Manhattan** - 122 East 124th Street
- Queens** - @National Grid - 89-67 162nd Street
- Staten Island**- 1140 Richmond Terrace (exact pay only)
- Bronx** - 1775 Grand Concourse
- Brooklyn** - @National Grid - 345 Jay Street
- Westchester** - @Food Bazaar - 1 Bogopa Plaza, Mt. Vernon

**5. Mail** - Make check or money order payable to Con Edison and mail it in the window envelope provided with your bill. Do not send cash.

**Mail to: Con Edison, JAF Station, PO Box 1702, New York, NY 10116-1702**  
Check processing notice: When you provide a check as payment, you authorize us to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check. You will not receive your check back from your financial institution.

**Address Change?** -- If you are moving or changing your mailing address, call **1-800-752-6633** and let us know.

For more information, call **1-800-75-CONED (1-800-752-6633)**.

# EXHIBIT O

eMedNY  
PO Box 4614  
Rensselaer, NY 12144-8614

##0000000002

HBL SNF LLC  
120 CHURCH ST  
WHITE PLAINS, NY 10601-1209

Notice: This communication and any attachments may contain information that is PRIVILEGED and CONFIDENTIAL under State and Federal law and is intended only for the use of the specific individual(s) to whom it is addressed. This information may only be used or disclosed in accordance with law, and you may be subject to penalties under law for improper use or further disclosure of the information in this communication and any attachments. If you have received this communication in error, please immediately notify NYHIPAADESK@CSRA.COM or call 1-800-541-2831. Providers who do not have access to e-mail should contact 1-800-343-9000.



# Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**LISA J. PINO, M.A., J.D.**  
Executive Deputy Commissioner

HBL SNF LLC  
120 CHURCH ST  
WHITE PLAINS, NY 10601-1209

Date: 12/17/2020  
NPI: 1528622495  
Provider ID: 05993971  
Provider Type: 038

Dear Provider:

Your application for an additional category of service 0381, LTC: SKILLED NURSING FACILITY has been approved and is effective with date of service 11/14/2019 for Medicaid billing purposes.

If your category of service effective date listed above is or will soon be 90 days old, this letter will serve as authorization to submit delayed claims for 30 days from the date of this letter using delay reason code 4 - Delay in Certifying Provider. If you submit claims on paper, you should attach a copy of this letter with your completed Delay Reason Code Form.

Providers should direct their questions regarding their enrollment in the New York State Medicaid Program and billing/claims submission to eMedNY at (800) 343-9000.

eMedNY  
Provider Enrollment  
PO Box 4603  
Rensselaer, New York 12144



# Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**LISA J. PINO, M.A., J.D.**  
Executive Deputy Commissioner

HBL SNF LLC  
ADMINISTRATOR  
120 CHURCH ST  
WHITE PLAINS, NY 10601-1209

Date: 12/17/2020  
NPI: 1528622495  
Provider ID: 05993971

Dear Provider:

Welcome! Your application for enrollment in the New York State Medicaid Program has been approved effective **NOVEMBER 14, 2019** for the following Category(s) of Service:

**0381 LTC: SKILLED NURSING FACILITY**

Your first step as an enrolled provider is to familiarize yourself with the compilation of the Title 18NYCRR, Part 504 rules and regulations established by the State of New York (NYCRR), which is available at the Department of Health's website, [www.health.ny.gov](http://www.health.ny.gov), in the Laws & Regulations section.

Please review this correspondence in its entirety as it contains critical information about specific rules governing the provision of your care and service to Medicaid beneficiaries. It also identifies resources you should routinely review to keep current on the Medicaid Program, as well as specific instructions on how to submit a claim for rendered services.

CSRA State and Local Solutions LLC (CSRA) is Medicaid's fiscal agent. CSRA maintains Medicaid's website, [www.eMedNY.org](http://www.eMedNY.org). This website is used to notify providers of current issues affecting Medicaid systems and transactions. Please visit [www.eMedNY.org](http://www.eMedNY.org) and review the Provider Manual(s) associated with your new enrollment. Provider Manuals can be downloaded or can be sent to you via regular mail.

The Medicaid Update, the monthly newsletter published by the NYS Department of Health, contains important policy and regulatory guidelines to assist you in caring for Medicaid beneficiaries. Please refer to the enclosure, *Important Information for Medicaid Providers*, for more information on receiving the newsletter.

Unless you will be using an enrolled service bureau/billing agent to submit your claims and other transactions, as a new provider in the Medicaid program you will need to obtain an Electronic/Paper Transmitter Identification Number (ETIN) in order to submit claims or other transactions (including paper claim forms).

Institutional providers (only) must include a Medicaid rate code on their claims. If you are an institutional provider, you will receive a rate code letter under separate cover.

Please familiarize yourself with the provider disclosure requirements found in Title 18NYCRR, Part 502 available at the Department of Health's website. Additionally, provider ownership changes must be reported to the Medicaid Program. Whenever you undergo an ownership change or recognize the need to submit a new disclosure notification, please contact the Medicaid Program for more information.

On the following page you will find addresses that are associated with this enrollment. It is critical that location of service is accurately reported on all claims. Therefore, if the service address(es) listed above are not correct, we ask that you please contact the Medicaid Program immediately. Requests to change your correspondence, pay-to or corporate addresses must be submitted in writing. Please print the appropriate change of address form (i.e., fee-for-service/professional-practitioner OR rate-based/institutional) from the Medicaid website and follow form instructions.

If you have any questions, please see the contact information on the enclosed document. We look forward to a successful partnership for the benefit of New York State Medicaid beneficiaries.

Sincerely,  
*Susan Zelezniak*

Susan Zelezniak, Director  
Bureau of Provider Enrollment  
Division of Health Plan Contracting and Oversight  
Office of Health Insurance Programs

Enclosure

Notice part 2 Pg 61 of 81

**CORRESPONDENCE ADDRESS**

ADMINISTRATOR  
120 CHURCH ST  
WHITE PLAINS, NY 10601-1209

**PAY-TO ADDRESS**

(checks & remittance address for non-EFT providers)

ACCOUNTING  
120 CHURCH ST  
WHITE PLAINS, NY 10601-1209

**CORPORATE ADDRESS**

(for corporate-level correspondence and annual tax documents)

LIZER JOZEFOVIC  
1280 ALBANY POST RD  
CROTON ON HUDSON, NY 10520-1570

**SERVICE ADDRESS**

ADMINISTRATOR  
120 CHURCH ST  
WHITE PLAINS, NY 10601-1209

New York State Department of Health  
 Bureau of Long Term Care Reimbursement  
 07/01/2021 Statewide Pricing Rate Computation Sheet

Opcert: 590231910  
 Name: EPIC Rehabilitation and Nursing at White Plains  
 WEF Region: WESTCHESTER  
 Peer Group: -300 Beds NF Beds: 0  
 Nursing Home Statewide Price Summary Sheet

	Medicaid Rate	Medicaid Rate for Part B Eligible Patients	Medicaid Rate for Part D Eligible Patients	Medicaid Rate for Part B&D Eligible Patients
Nursing Home Price Calculation				
1 Facility Specific Non Comp Price	11.84	11.84	11.84	11.84
2 Statewide Direct Price	115.29	113.68	115.29	113.68
3 WEF Adjustment	1.0671	1.0671	1.0671	1.0671
4 Facility Case Mix Adjustment (Schedule 4)	1.6088	1.6088	1.6088	1.6088
5 WEF and Case Mix Adjusted Price	197.92	195.16	197.92	195.16
6 Statewide Indirect Price	57.18	57.18	57.18	57.18
7 WEF Adjustment	1.0356	1.0356	1.0356	1.0356
8 WEF Adjusted Indirect Price	59.22	59.22	59.22	59.22
9 Total Operating Component	268.98	266.22	268.98	266.22
10 DEM, BMI, TBI Per Diem Add Ons				
11 Transition Adjustment				
12 Quality Adjustment (Schedule 5)				
13 Misc. Per Diem Adjustments				
14 Adj Per PHL Section 2808(25)(C)				
15 Adjustment to Cap Case Mix 5.0%				
16 Total Price	268.98	266.22	268.98	266.22
17 Capital Per Diem	65.77	65.77	65.77	65.77
18 Total Price + Capital Per Diem	334.75	331.99	334.75	331.99

Notice part 2 Pg 63 of 81

New York State Department of Health  
Bureau of Long Term Care Reimbursement  
07/01/2021 Statewide Pricing Rate Computation Sheet

Opcert: 590231910

Name: EPIC Rehabilitation and Nursing at White Plains

WEF Region: WESTCHESTER

Peer Group: -300 Beds NF Beds: 0

Current Medicaid Only Case Mix Calculation  
Schedule 4

Current MDS Case Mix Total 83.37  
Current MDS Case Mix Patients 57

-----  
Facility Specific Case Mix 1.46

50% Peer Group/50% Statewide Case Mix 0.907504

Facility Case Mix Adjustment 1.6088

Notice part 2 Pg 64 of 81

New York State Department of Health  
Bureau of Long Term Care Reimbursement  
07/01/2021 Statewide Pricing Rate Computation Sheet

Opcert: 590231910

Name: EPIC Rehabilitation and Nursing at White Plains

WEF Region: WESTCHESTER

Peer Group: -300 Beds NF Beds: 0

Quality Adjustment  
Schedule 5

Adjustment to Fund Quality Pool 0.00

Quality Pool Award 0.00

-----  
Total Quality Adjustment 0.00

# EXHIBIT P

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF WESTCHESTER

-----X  
 WHITE PLAINS HEALTHCARE PROPERTIES I, :  
 LLC, :  
 : Index No. 60278/2020  
 Plaintiff, :  
 :  
 -against- :  
 :  
 HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
 JOZOFOVIC, and MARK NEUMAN, :  
 :  
 Defendants and Third-Party Plaintiffs, :  
 :  
 -against- :  
 :  
 CCC EQUITIES, LLC, PROJECT EQUITY :  
 CONSULTING, THE CONGRESS COMPANIES, :  
 HOWARD FENSTERMAN, and WILLIAM :  
 NICHOLSON, :  
 Third-Party Defendants :  
 -----X

**FIRST AMENDED REQUEST FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO PLAINTIFF WHITE PLAINS HEALTHCARE PROPERTIES I, LLC**

**PLEASE TAKE NOTICE** that, pursuant to Article 31 of the CPLR, Defendants and Third-Party Plaintiffs HBL SNF, LLC, Lizer Jozefovic, and Mark Neuman, by their attorneys, Michelman & Robinson, LLP, hereby demand that Plaintiff White Plains Healthcare Properties I, LLC, Third-Party Defendant CCC Equities, LLC, Third-Party Defendant Project Equity Consulting, Third-Party Defendant The Congress Companies, Third-Party Defendant Howard Fensterman, and Third-Party Defendant William Nicholson produce for copying and inspection the originals of the following documents and things identified and listed below, in accordance with the following instructions and definitions, by February 26, 2021, as set forth in the Preliminary Conference Order, dated November 13, 2020 [NYSCEF Doc. No. 36], at the offices of Michelman & Robinson, LLP, located at 800 Third Avenue, 24<sup>th</sup> Floor, New York, New York 10022.

**DEFINITIONS**

1. “Bank Accounts” shall refer to Chase Account ending in xxxx-xxx-xxxx-7272, Chase account ending in xxxx-xxx-xxxx-0885, and/or any other account used to store security deposits.

2. “CCCE” shall refer to Third-Party Defendant CCC Equities, LLC, including its owners, members, shareholders, parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, independent contractors, assigns, successors, attorneys, accountants or anyone acting on its behalf.

3. “Communication” means any disclosure, transfer, exchange of information or opinion, however made, including, without limitation, any and all inquiries, discussions, conferences, conversations, negotiations, agreements, meetings, interviews, telephone conversations, letters correspondence, notes, telegrams, facsimiles, electronic mail (email), memoranda, documents, writings, or other forms of communications, including but not limited to both oral and written communications.

4. “Complaint” refers to the Verified Complaint filed in this action on September 18, 2020.

5. “Congress” shall refer to Third-Party Defendant The Congress Companies, including its owners, members, shareholders, parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, independent contractors, assigns, successors, attorneys, accountants or anyone acting on its behalf.

6. “Defendants” shall refer to Defendant HBL SNF, LLC, Defendant Lizer Jozefovic, and Defendant Mark Neuman.

7. “Development Agreement” shall refer to the contract between Defendant HBL SNF, LLC and Plaintiff White Plains Healthcare Properties I, LLC, dated November 15, 2015.

8. “Document” is defined in the broadest sense permissible under applicable laws and/or the CPLR, and shall include, but not be limited to, any type of written, typewritten, printed, recorded, computer-generated or graphic materials, however produced or stored, and includes reports, memoranda, file communications, transmissions of ESI (defined herein) through Electronic Media (defined herein), correspondence, studies, minutes, bulletins, instructions, literature, calendars, charges, checks, computer files, emails, facsimile transmissions, graphs, journals, letters, notes, notebooks, diaries, photographs or other graphic matter, data sheets, work sheets, recordings, drawings, graphs, indices, charts, projections, spreadsheets, summaries or records of telephone or in-person communications, term sheets, voice mails and all other media of electronic storage and communication. A draft or non-identical copy or copy with marginalia, notes, comments, or annotations of any kind is a separate document within the meaning of this term.

9. “Electronic Media” means any magnetic, optical, or other storage media device used to record ESI. Electronic Media devices may include, but are not limited to, computer memories, hard disks, floppy disks, hard drives, memory sticks, CDs, CD-ROMs, DVDs, personal digital assistance devices (e.g., Palm, Blackberry, iPhone, iPad or other “smart phones” or tablet computers), magnetic tapes of all types or any other means for digital storage and/or transmittal.

10. “Entity” or “Entities” shall refer to any natural person, individual, proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, group or natural persons or other entity.

11. “ESI” means any original and any non-identical copies resulting from the use of any software program (e.g., word processing documents, spreadsheets, worksheets, database files, charts, graphs, slides, and outlines), electronic mail, PDF files or ASCII files, regardless of the Electronic Media on which they reside and regardless of whether the ESI consists of an active file, backup file, deleted file, or file fragment. ESI also includes, without limitation, any items stored on Electronic Media in files, folder tabs, or containers and labels appended to or associated with any physical storage device associated with each original and each copy. ESI also includes audio data, including voicemails, recorded telephone lines, and recorded intercom systems.

12. “Facility” shall refer to the 160-bed skilled nursing facility on Church Street in White Plains, New York.

13. “Fensterman” shall refer to Third-Party Defendant Howard Fensterman, Esq., and/or Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, and his or its representatives or agents (including, without limitation, employees, attorneys, accountants, and advisors), and all other persons occupying similar positions or performing similar functions or acting, purporting to act or authorized to act on his or its behalf.

14. “FF&E” shall refer to furniture, fixtures, and equipment.

15. “HBL SNF” shall refer to Defendant HBL SNF, LLC, including its owners, members, shareholders, parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, independent contractors, assigns, successors, attorneys, accountants or anyone acting on its behalf.

16. “HUD” shall refer to the U.S. Department of Housing and Urban Development, its representatives or agents (including, without limitation, employees, attorneys, accountants, and

advisors), and all other persons occupying similar positions or performing similar functions or acting, purporting to act or authorized to act on its behalf.

17. “Jozefovic” shall refer to Defendant Lizer Jozefovic, his representatives or agents (including, without limitation, his attorneys, accountants, and advisors), and all other persons occupying similar positions or performing similar functions or acting, purporting to act or authorized to act on his behalf.

18. “Lease” shall refer to the operating lease between Defendant HBL SNF, LLC and Plaintiff White Plains Healthcare Properties I, LLC, dated November 19, 2015.

19. “LOI” shall refer to letter of intent between Defendant HBL SNF, LLC and Plaintiff White Plains Healthcare Properties I, LLC, dated November 20, 2019.

20. “Neuman” shall refer to Defendant Mark Neuman, his representatives or agents (including, without limitation, his attorneys, accountants, and advisors), and all other persons occupying similar positions or performing similar functions or acting, purporting to act or authorized to act on his behalf.

21. “Nicholson” shall refer to Third-Party Defendant William Nicholson, his representatives or agents (including, without limitation, his attorneys, accountants, and advisors), and all other persons occupying similar positions or performing similar functions or acting, purporting to act or authorized to act on his behalf.

22. “NYSDOH” shall refer to the New York State Department of Health, its representatives or agents (including, without limitation, employees, attorneys, accountants, and advisors), and all other persons occupying similar positions or performing similar functions or acting, purporting to act or authorized to act on its behalf.

23. “PEC” shall refer to Third-Party Defendant Project Equity Consulting, including its owners, members, shareholders, parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, independent contractors, assigns, successors, attorneys, accountants or anyone acting on its behalf.

24. “Project” shall refer to all aspects of development of the Facility including construction and financing.

25. “Security Benefit” shall refer to Security Benefit Life Insurance Company, including its owners, members, shareholders, parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, independent contractors, assigns, successors, attorneys, accountants or anyone acting on its behalf.

26. “Term Sheet” shall refer to any all term sheets including, but not limited, to the term sheets dated April 2015, October 14, 2015, and November 20, 2015.

27. “White Plains” shall refer to Plaintiff White Plains Healthcare Properties I, LLC, including its owners, members, shareholders, parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, independent contractors, assigns, successors, attorneys, accountants or anyone acting on its behalf.

28. “You” or “Your” shall refer to Plaintiff White Plains Healthcare Properties I, LLC; Third-Party Defendant CCC Equities, LLC; Third-Party Defendant Project Equity Consulting; Third-Party Defendant The Congress Companies; Third-Party Defendant Howard Fensterman; and/or Third-Party Defendant William Nicholson, individually or collectively.

**INSTRUCTIONS**

29. The Document requests cover Documents created on or after January 1, 2012, up to and including the date of production.

30. You should respond separately to each numbered demand for production below by: (1) providing a statement that you have complied (inclusive of Bates ranges) or will comply with the particular demand; or (2) providing a statement that you lack the ability to comply with the particular demand; or (3) providing any objection to the particular demand; or (4) stating to the best of your knowledge, upon inquiry, that you have never had, and do not now have, responsive documents within your custody or control.

31. If you object to a request for production contained herein, state the basis for your objection with particularity. If you object to part of a request for production contained herein, specify the part to which you object and the basis for your objection with particularity, and answer the unobjectionable part of the request.

32. In producing any Documents requested herein, please furnish all Documents in your possession, custody, or control. "Possession, custody, or control" refers to all Documents, data compilations, tangible things, and other information obtainable by your order or direction, including those you have access to through others from whom you are entitled to receive the information, such as accountants, attorneys, consultants, investigators and any of your other agents, representatives, servants, or employees, or others engaged in any joint enterprise or partnership with you.

33. Every Document produced in response to the requests herein shall be produced in its entirety, without abbreviation, and shall include all attachments and matters affixed thereto, along with any and all drafts of the Document.

34. If you consider any Document falling within any of these requests to be privileged from discovery, you are directed to file and serve at the time you answer these requests for production a privilege log of all Documents withheld from production, identifying each Document as follows: (a) the type of Document; (b) its date; (c) addressor's or author's name, title and address; (d) addressee's name, title and address; (e) the name and address of each other Person to whom a copy of the Document was sent or shown; (f) a description of the Document, including its general nature or character; (g) the number of pages, the number of attachments or appendices, if any; (h) the present custodian of the Document; and (i) the basis on which the Document is considered to be privileged from discovery. Where a requested Document contains allegedly privileged information, you are requested to produce those portions of the Document for which no privilege is claimed and to specifically identify on each such Document where material has been deleted or redacted.

35. If any Document responsive to any of these requests was, but is no longer, in your possession or subject to your custody or control, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred, voluntarily or involuntarily to others, or (d) has been otherwise disposed of, and in each instance explain the circumstances surrounding such disposition thereof and state the date or approximate date thereof.

36. These requests for production are deemed continuing. If any information or Documents sought by the requests are not located or identified, or do not become available until after the requests are answered, or if the answers for any reason should later become incomplete or incorrect, there shall be a continuing duty on your part to supplement or change answers previously submitted pursuant to CPLR 3101(h).

37. Documents shall be produced as they are kept in the usual course of business or the Documents shall be organized and labeled to correspond to the categories in these requests. In the case of Documents that were already produced pursuant to federal, state, local government, or administrative requests, investigations, or subpoenas, those Documents should be produced in the same manner as they were previously produced by You.

38. Documents shall be produced in such fashion as to identify the department, branch or office in whose possession it was located and, where applicable, the natural person in whose possession it was found and the business address of each Document's custodian(s).

39. You are required to produce the original of each Document requested together with all non-identical copies and drafts of each Document. If the original of any Document cannot be located and/or produced, provide a copy in lieu thereof, which shall be legible and bound or stapled in the same manner as the original, and produce all other non-identical copies that differ from the original and from the other copies produced for any reason, including without limitation, the making of notes thereon.

40. Documents attached to each other in their original form should not be separated when produced. Any attachments to email messages should be produced with, and linked to, the attaching email.

41. All Documents shall be Bates stamped and include the following metadata (to the extent applicable):

- a. Document Date;
- b. Document Created Date;
- c. Document Modified Dates;
- d. Time Sent;
- e. To;
- f. From;
- g. Cc;
- h. Bcc;

- i. Subject;
- j. File name;
- k. Doc type;
- i. Beg Bates;
- m. End Bates; and
- n. Identifier (i.e., a unique production identifier of the item).

27. All spreadsheets, including, without limitation, documents produced using Microsoft Excel, shall be produced in native format.

28. Documents not otherwise responsive to these requests shall be produced if such documents mention, discuss, refer to, or explain the Documents that are called for by these requests, or if such documents are attached to Documents called for by the requests and constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar materials.

**DOCUMENTS REQUESTED**

1. All Documents and Communications regarding the ownership of White Plains, CCCE, PEC, and Congress.
2. All Documents and Communications regarding the financing of the Project, including, but not limited to, the provision of equity and capital.
3. All Documents and Communications regarding a HUD-insured mortgage and financing for the Project.
4. All Documents and Communications regarding the Project’s feasibility forecast.
5. All Documents and Communications exchanged between You and NYSDOH regarding the Facility, including, but not limited to, Term Sheets, Letters of Interest, and/or Commitment Letters presented to NYSOH regarding requests for approval of the Project.
6. All Documents and Communications regarding the projected Medicaid Reimbursement.
7. All Documents and Communications regarding payments to Congress, Fensterman, and Nicholson for the Project, including, but not limited to, funds advanced by Defendants to Nicholson and Congress.
8. All Documents and Communications regarding any funds obtained from Defendants which were used for projects in Wisconsin or New Jersey.
9. All Documents and Communications regarding the Development Agreement.
10. All Documents and Communications regarding Your obligation to provide a “turn-key” Facility, *i.e.*, that the Facility would be fully constructed and authorized to operate as a skilled nursing facility with permanent financing.
11. All Documents and Communications regarding the Term Sheet.

12. All Documents and Communications regarding Defendants' capital contributions to the Project.
13. All Documents and Communications regarding FF&E for the Project.
14. All Documents and Communications regarding Your obligation to provide Defendants with future credits against Lease payments.
15. All Documents and Communications regarding Your representations that the Facility would be completed within twenty-two months, or before September 2017.
16. All Documents and Communications regarding the actual completion date of the Facility in December 2019.
17. All Documents and Communications regarding loans of \$1,500,000 which were to be repaid to Defendants.
18. All Documents and Communications regarding the Development Agreement.
19. All Documents and Communications regarding the performance bond which was to be provided by Congress.
20. All Documents and Communications regarding financial contributions from Entities who contributed capital to CCCE to meet equity requirements.
21. All Documents and Communications regarding payments or distributions which have been made or will be made to investors in CCCE.
22. All Documents and Communications regarding certification, registration, and other licensing requirements from NYSDOH and other Entities for the Project and Facility, including, but not limited to, the Certificate of Need from NYSDOH.
23. All Documents and Communications regarding the Certificate of Occupancy for the Facility which was obtained on August 22, 2019, as alleged in paragraph 12 of the Complaint.

24. All Documents and Communications regarding the Facility commencing operations on or about September 30, 2019, as alleged in paragraph 13 of the Complaint.

25. All Documents and Communications regarding the calculation and payment of Fixed Rent and Additional Rent, as alleged in paragraphs 15, 16, and 39 of the Complaint.

26. All Documents and Communications regarding the calculation and payment of utilities, real estate taxes, assessments, utility charges, municipal maintenance escrows, and other taxes, as alleged in paragraphs 17, 18, 40, 41, 42, and 43 of the Complaint.

27. All Documents and Communications regarding the Jozefovic Guaranty, as alleged in paragraphs 23 and 24 of the Complaint.

28. All Documents and Communications regarding the Neuman Guaranty, as alleged in paragraphs 25 and 26 of the Complaint.

29. All Documents and Communications regarding the provision of lines of credit, unconditional letters of credit, and a working capital account as alleged in paragraphs 27, 28, 31, 50, 51, and 59 of the Complaint.

30. All Documents and Communications regarding security deposits, as alleged in paragraphs 29 and 49 of the Complaint.

31. All Documents and Communications regarding certificates of insurance, as alleged in paragraph 44 of the Complaint.

32. All Documents and Communications regarding Medicare, Medicaid, and other provider agreements and reimbursement rate sheets for the Facility, as alleged in paragraphs 45 and 46 of the Complaint.

33. All Documents and Communications regarding required financial reports and written reports, as alleged in paragraphs 47 and 48 of the Complaint.

34. All Documents and Communications regarding late fees and costs, as alleged in paragraph 52 of the Complaint.

35. All Documents and Communications regarding the LOI.

36. All Documents and Communications regarding a Deposit Account Control Agreement, as alleged in paragraph 56 of the Complaint.

37. All Documents and Communications regarding amendments to the Lease which reduced and required payment of the security deposit, as alleged in paragraph 57 of the Complaint.

38. All Documents and Communications regarding the certificate of occupancy for the Facility.

39. All Documents and Communications regarding the provision of an additional \$1,600,000 in security and an agreement with JPMorgan Chase Bank prohibiting liquidation of the security, as alleged in paragraph 58 of the Complaint.

40. All Documents and Communications regarding the Delaware Statutory Trust.

41. All Documents and Communications regarding the Notice of Default.

42. All Documents and Communications regarding the calculation of damages alleged in paragraph 72 of the Complaint, including, but not limited to: (a) \$7,096,182.79 for holdover rent and rent; (b) \$26,725.35 for municipal and utility deposits; (c) \$9,800,000.00 for working capital deposits; (d) \$1,948,653.00 for late fees, default fees, costs and professional fees; and (e) \$94,961,326.40 for accelerated rent.

43. All Documents and Communications regarding Your Loan Agreement with Security Benefit, dated August 18 2017.

44. All Documents and Communications regarding a Cash Management Account and a Tenant Direction Notice for Security Benefit.

- 45. All Documents and Communications regarding the Term Sheets dated April 21, 2015.
- 46. All Documents and Communications regarding the assignment of mortgages on property owned by Waterview Acquisition I, LLC to Defendants.
- 47. All Documents and Communications regarding the Bank Accounts.
- 48. All Documents and Communications regarding the first Amendment to the Development Agreement, dated July 12, 2017.
- 49. All Documents and Communications regarding the Collateral Assignment and Pledge of Membership Interest and Security Agreement, dated August 11, 2017.
- 50. All Documents and Communications regarding the UCC Financing Statement filed by Waterview Acquisition I, LLC, dated September 15, 2020.

Dated: New York, New York  
May 7, 2021

MICHELMAN & ROBINSON, LLP

By: /s/ John Giardino  
John Giardino  
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*Attorneys for Defendants and Third-Party  
Plaintiffs HBL SNF, LLC, Lizer Jozefovic,  
and Mark Neuman*

TO: DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP  
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White Plains, NY 10601  
Tel.: 914-681-0200  
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**State Court Docket Entries that Cannot Be Filed on ECF Due to Size or Damage to File**

Docket Entry No.: 33 – Attachment to Joint Statement of Facts Copy of Complaint with Exhibits and Verified Answer

Docket Entry No.: 53 – Exhibit A to Donnellan Aff. - Complaint with Exhibits

Docket Entry No.: 55 – Exhibit C to Donnellan Aff. - Amended Compliant with exhibits

Docket Entry No.: 64 – Exhibit A to Donnellan Aff.

Docket Entry No.: 87 – Amended and Restated Lease

Docket Entry No.: 100 – Exhibit 1 to Notice to Admit

Docket Entry No.: 109 – Exhibit B- Second Notification of Disposition of Collateral, 6.9.21

Docket Entry No.: 143 – Exhibit G to Nicholson Aff. - Construction Loan Agreement

Docket Entry No.: 145 – Exhibit I to Nicholson Aff. - Mortgage

Docket Entry No.: 155 – Exhibit S to Nicholson Aff. - Bankruptcy Court Order

Docket Entry No.: 165 – Exhibit B to Donnellan Aff. - Amended and Restated Operating Agreement of Waterview

Docket Entry No.: 179 – Affidavit of Brett Bandazian in Partial Support of Plaintiff's Motion, By Order to Show Cause, for Among Other Things, A Temporary Restraining Order

Docket Entry No.: 180 – State Court Docket File Damaged

Docket Entry No.: 195 – Exhibit 11 - Notice to Admit with exhibits

Docket Entry No.: 197 – Exhibit 12 – Exhibit 1 to Amended Verified Complaint

Docket Entry No.: 206 – Exhibit 21 - NYSDOH email 2019.10.01

Docket Entry No.: 217 – Exhibit 28 – Summary of Professional Fees

Docket Entry No.: 239 - Amended and Restated Lease

Docket Entry No.: 242 – Exhibit F – Construction Loan Agreement

Docket Entry No.: 250 – Exhibit N - Certificates of Insurance

Docket Entry No.: 259 – Exhibit B - Letter re auction

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,	:	
	:	
	:	CIVIL ACTION NO.: 21-9048
Plaintiff,	:	
	:	Removed from:
-against-	:	
	:	Supreme Court of the State of
HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER JOZOFOVIC, and MARK NEUMAN,	:	New York, Westchester County
	:	
	:	
Defendants and Third-Party Plaintiffs,	:	
	:	
-against-	:	
	:	
CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING, THE CONGRESS COMPANIES, HOWARD FENSTERMAN, WILLIAM NICHOLSON, and METROPOLITAN COMMERCIAL BANK	:	
	:	
	:	
Third-Party Defendants	:	
	:	
-----X		

**NOTICE OF REMOVAL**

TO: THE JUDGES OF THIS UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

HBL SNF, LLC (the “Removing Defendant”), gives notice of removal of the entirety of the above-captioned lawsuit (“State Court Action”) from the Supreme Court of the State of New York, County of Westchester, to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §§ 1334(b) and 1452. As grounds for removal, Removing Defendant states as follows:

## **BACKGROUND**

1. In or around November 2015, the Removing Defendant entered into certain agreements with White Plains Healthcare Properties I, LLC (“WPHCP”) for the construction and finance of the Removing Defendant’s care facility. The Removing Defendant executed that certain Development Agreement (as amended or modified from time to time, the “Development Agreement”), dated as of November 19, 2015, between the Removing Defendant, as operator/tenant, and WPHCP, as developer which was subject to the prior approval of the New York State Department of Health

2. In connection therewith, the Removing Defendant additionally entered into that certain Amended and Restated Operating Lease (as amended or modified from time to time, the “Lease” and, together with the Development Agreement, the “Development and Lease Agreements”), dated November 19, 2015, by and between the Removing Defendant, as tenant, and WPHCP, as Landlord. The Lease provides that it commences upon the date WPHCP’s work is sufficiently complete to accept patients as determined by the New York State Department of Health (the “NYSDOH”) and the issuance of a Certificate of Occupancy.

3. Pursuant to the Development and Lease Agreements, WPHCP agreed to provide the necessary financing and construction management, and to obtain the necessary NYSDOH authorizations and approvals of its plans, specifications and construction and mortgage financing, in order to deliver to the Removing Defendant a “turn-key” facility for operation by the Removing Defendant as a skilled nursing and rehabilitation facility. The Removing Defendant, as tenant and operator of the completed facility, agreed to pay, among other things, monthly fixed rent in the amount of \$506,096.50 for an annual amount of fixed rent of \$6,073,158, to WPHCP, as landlord, over the thirty-year term of the Lease.

4. The Lease provides that the Removing Defendant's obligations to WPHCP under the Lease are secured by, among other things, a first priority security interest and lien granted to WPHCP upon all of the Removing Defendant's assets, including personal property, equipment, and accounts receivable, and certificates of need and other authorizations of the Removing Defendant with respect to operation of the facility as a skilled nursing facility. The Lease provides that WPHCP agrees to subordinate its lien on accounts receivable in favor of an accounts receivable lender to the Removing Defendant upon certain conditions set forth therein.

5. As of the Petition Date, there is no enforceable UCC-1 Financing Statement of record filed against the Removing Defendant by or on behalf of WPHCP.

6. In furtherance of its obligation to secure financing for the project, WPHCP entered into that certain Construction Loan Agreement (as amended or modified from time to time, the "Loan Agreement"), dated as of August 18, 2017, by and among WPHCP, as borrower, Security Benefit Life Insurance Company, as lender ("Security Benefit Lender"), and Security Benefit Corporation (together with Security Benefit Lender, "Security Benefit"), as agent, whereby Security Benefit Lender would make loans to WPHCP in an aggregate amount of up to \$38,500,000, to be used to refinance an existing mortgage on the Real Property, pay the costs of construction and development of the facility, pay the costs of the beds, furniture, fixtures, personal property and equipment to be used at the facility, pay utilities fees and charges, and pay interest, taxes and other budgeted operating costs.

7. WPHCP's obligations under the Loan Agreement are secured by, among other things, that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage"), recorded August 31, 2017, granted by WPHCP to Security Benefit, and an Assignment of Leases and Rents (the "Assignment of Rents"), dated as of August 18, 2017, assigning all rents in

and under all leases with respect to the Real Property. The Mortgage provides that WPHCP's obligations are secured by liens on real and personal property and all other rights and interests of WPHCP in the Real Property. However, property of the Removing Defendant is expressly excluded from Security Benefit's Mortgage, which provides that "all property of tenants under any Lease...is excluded from the scope of this Security Instrument."

8. In connection with the financing, WPHCP, Security Benefit and the Removing Defendant, as operator, entered into that certain Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of July 2017 (the "Security Agreement"), which provides for the Removing Defendant's grant of a security interest in favor of Security Benefit in all of its assets constituting Collateral Property (as defined therein) as security for the payment and performance of, among other things, WPHCP's obligations under the Loan Agreement. With respect to the Removing Defendant's accounts receivable, Security Benefit's liens were granted "to the extent, but only to the extent, they are used in connection with or arise from the operation of the Collateral Property that are or will be subject to an Intercreditor Agreement with the [Removing Defendant's] AR Lender."

9. Security Benefit filed a UCC-1 Financing Statement perfecting this security interest against the Removing Defendant on September 19, 2017. The Removing Defendant is not a party to the Loan Agreement and does not owe any amounts thereunder to Security Benefit. To the best of the Removing Defendant's knowledge, the balance owed by WPHCP to Security Benefit under the Loan Agreement was approximately \$41,742,537.06 as of May 1, 2021.

10. After developmental and financing delays necessitating additional capital infusions, WPHCP obtained approval from the New York State Department of Health for the opening of the facility on December 2, 2019, two years later than contemplated under the Development Agreement.

Despite this and other disputes concerning the Development and Lease Agreements, the Removing Defendant made all rent payments of over \$506,000 per month as required under the Lease, commencing on October 30, 2019 (even before the opening of the facility and commencement of the Lease), totaling over \$10,500,000 as of the Petition Date, which WPHCP accepted.

11. Despite the fact that the Removing Defendant did not default under the Lease, WPHCP defaulted under its Loan Agreement with Security Benefit. Security Benefit issued multiple notices of default to WPHCP, commencing on October 16, 2019, for defaults including failures to establish a cash management account, make monthly interest payments, forward payments received from the Removing Defendant, provide financial statements, and other defaults.

12. Security Benefit commenced litigation against WPHCP attempting to foreclose against the Real Property, but these actions were discontinued as a result of a New York State moratoriums on such actions, which has been extended through January 2022. *See Security Benefit Life Insurance Company, Security Benefit Corporation v. White Plains Healthcare Properties I, LLC, et al.*, Index No. 55883/2021 (Sup. Ct. N.Y. 2021); *Security Benefit Life Insurance Company, Security Benefit Corporation v. White Plains Healthcare Properties I, LLC, et al.*, Index No. 621099/2021 (Sup. Ct. N.Y. 2021).

13. On January 7, 2020, attorneys for WPHCP sent the Removing Defendant a letter alleging that the Removing Defendant defaulted under the Development and Lease Agreements, purporting to terminate the Lease effective January 13, 2020, and seeking accelerated obligations allegedly due in the amount of \$84,073,989.91. The Removing Defendant disputes these alleged defaults and the effectiveness of the letter to terminate the Lease. As of the Petition Date, the Removing Defendant was in substantial compliance with the Lease and has made all outstanding rental payments to WPHCP.

14. On September 18, 2020, WPHCP filed a complaint against the Removing Defendant, Lizer Jozefovic, and Mark Neuman in the Supreme Court of the State of New York, County of Westchester (the “Complaint”), captioned as *White Plains Healthcare Properties I, LLC v. HBL SNF, LLC, et al.*, Index No. 60278-20 (N.Y. Sup. Ct. 2020) (the “State Court Action”), containing various frivolous allegations regarding purported defaults by the Removing Defendant under the Lease, seeking termination of the Lease and seeking recovery from the Removing Defendant and co-defendants for over \$84 million in alleged damages. WPHCP subsequently amended its Complaint.

15. The Removing Defendant and co-defendants filed an answer to the amended Complaint and asserted counterclaims and third-party claims against WPHCP, among others, seeking a declaratory judgment as well as an accounting, and money damages based upon fraud, fraud in the inducement, breach of contract, bad faith.

16. On August 19, 2021, WPHCP filed a motion seeking entry of summary judgment against the Removing Defendant, among others. As of the Petition Date, the Removing Defendant had filed its opposition to WPHCP’s summary judgment motion, but WPHCP had not yet filed its reply brief. WPHCP’s motion has not yet been deemed to be fully submitted and remains *sub judice*.

17. Removal of the State Court Action is appropriate because this Court maintains “arising under” and “related to” bankruptcy jurisdiction pursuant to 28 U.S.C. §§ 1334(b) and 1452(a).

### **Bankruptcy Jurisdiction**

18. On November 1, 2021, the Removing Defendant filed a voluntary petition for relief under Subchapter V of Chapter 11 of the United State Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. The case number for the Removing

Defendant's chapter 11 case is Chapter 11 Case No. 21-22623-SHL (the "Chapter 11 Case"). The Chapter 11 Case is pending before the Honorable Sean H. Lane, United States Bankruptcy Judge.

19. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1334(b), which provides that United States district courts shall have jurisdiction over all civil proceedings, "arising under" or "related" to cases under title 11 of the United States Code (the "Bankruptcy Code").

20. The causes of actions asserted by in the State Court Action are "core proceedings" within the meaning of, inter alia, 28 U.S.C §157(b)(2)(B), (C), (E), and (O) in that the State Court Action concerns, inter alia, (i) allowance or disallowance of claims against the Removing Defendant's bankruptcy estates; (ii) counterclaims by the Removing Defendant against Plaintiffs who hold claims against the Removing Defendant's bankruptcy estates; (iii) third party claims by the Removing Defendant; (iv) termination of the Removing Defendant's Lease, and (v) other matters pertaining to the liquidation of the assets of the estate and the adjustment of the debtor-creditor relationship.

21. Alternatively, the causes of action in the State Court Action are "related to" the Chapter 11 Cases because:

- a. Plaintiff seeks a judgment against the Removing Defendant, which "could conceivably have" an effect on the Removing Defendants' bankruptcy estates;
- b. Plaintiff seeks to terminate Removing Defendant's Lease which "could conceivably have" an effect on the Removing Defendants' bankruptcy estates;
- c. Plaintiff seeks judgment against non-debtor defendants and individuals based upon guaranties of certain of Removing Defendant's obligations under the Lease. As a result, non-Removing Defendants may seek contribution or indemnification from

Removing Defendant, which “could conceivably have” an effect on the Removing Defendant’s bankruptcy estate; and

- d. Plaintiff seeks judgment against non-debtor defendants under certain guaranties of the Debtor’s obligations under the Lease. Judgments entered against and amounts collected from non-debtor defendants could have the effect of fixing the amounts owed, if any, by Removing Defendant under the Lease, or otherwise determining the Removing Defendant’s liability for alleged defaults under the Lease. As a result, a judgment against the non-debtor defendants “could conceivably have” an effect on the Removing Defendant’s bankruptcy estate.

*See In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 114 (2d Cir. 1992) (“The test ... is whether [the litigation’s] outcome might have any conceivable effect on the bankrupt estate.”). An action is “related to” a bankruptcy proceeding even when the claims are between third parties. *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995)(resolving a circuit split by holding that a dispute between parties other than the debtor may be “related to” bankruptcy although the debtor has no interest in the property over which the parties are in dispute).

22. Courts have regularly held that third party proceedings are “related to” bankruptcy proceedings when the defendants have a claim for indemnification or contribution against the debtor estate even where the rights are contingent. *See In re Worldcom, Inc. Sees. Litig.*, 293 B.R. 308, 321 (S.D.N.Y. 2003)(“Because the effect of contribution claims on the bankruptcy estate is at the very least conceivable, the ... action is related to the bankruptcy and subject to the jurisdiction of this Court.”), *see also In re Masterwear Corp.*, 241 B.R. 511, 516-17 (Bankr. S.D.N.Y. 1999) (holding that “related to” jurisdiction existed where defendants “may ultimately be entitled to recover some or all of their legal fees and expenses from [the bankrupt corporation] under [its] bylaws).

23. For any claims or parties not subject to jurisdiction under 28 U.S.C. § 1334, supplemental jurisdiction lies under 28 U.S.C. § 1367 because all claims against all parties in this case form part of the same case or controversy.

**Compliance With Procedural Requirements**

24. Pursuant to Fed. R. Bankr. P. Rule 9027: (a) this Notice of Removal is being filed with the clerk for the district and division within which the State Court Action is pending; (b) this Notice of Removal is signed pursuant to Fed. R. Bankr. P. Rule 9011; (c) Removing Defendant states that the State Court Action is a core proceeding, but if it is determined to be non-core, Removing Defendant consents to entry of final orders or judgment by the Bankruptcy Court; (d) this Notice of Removal is being timely filed; (e) this Notice of Removal is accompanied by a copy of all process and pleadings filed to date in the State Court Action, (f) Removing Defendant has contemporaneously filed a copy of this notice with the Clerk of the Supreme Court of the State of New York, County of Westchester and shall promptly serve a copy of this Notice of Removal upon Plaintiff's counsel.

25. Removing Defendant expressly reserves the right to raise all defenses in this action after it is removed.

WHEREFORE, the Removing Defendant removes the State Court Action in its entirety from the Supreme Court of the State of New York, Westchester County to the United States District Court for the Southern District of New York and respectfully submits that the matter should be referred to the United States Bankruptcy Court for the Southern District of New York.

Dated: New York, New York  
November 3, 2021

Klestadt Winters Jureller Southard &  
Stevens, LLP

By: /s/ Tracy L. Klestadt

Tracy L. Klestadt

Brendan M. Scott

200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor

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*Attorneys for HBL SNF, LLC*

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

**PLAINTIFFS**  
 Plaintiff - White Plains Healthcare Properties I, LLC  
 Third Party Plaintiffs - HBL SNF, LLC, Lizer Jozefovic, Mark Neuman

**DEFENDANTS**  
 Defendants, HBL SNF, LLC, Lizer Jozefovic, Mark Neuman, Metropolitan Commercial Bank  
 Third Party Defendants - CCC equities LLC, Project Equity Consulting  
**ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**  
 Delbello Donnellan Weingarten Wise & Wiederkehr, LLP, 1 N Lexington Ave #11, White Plains, NY 10601

**ATTORNEYS (IF KNOWN)**  
 For HBL SNF LLC - Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, NY, NY 10036 - 212-972-3000

**CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)**  
 (DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S. Code sec. 1334 and 1452 - Removal of core bankruptcy proceeding or related proceeding

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No  Yes  Judge Previously Assigned

If yes, was this case Vol.  Invol.  Dismissed. No  Yes  If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

**IS THIS AN INTERNATIONAL ARBITRATION CASE?** No  Yes

(PLACE AN [x] IN ONE BOX ONLY)

**NATURE OF SUIT**

TORTS		ACTIONS UNDER STATUTES			
<b>CONTRACT</b>	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
[ ] 110 INSURANCE	[ ] 310 AIRPLANE	[ ] 367 HEALTHCARE/	[ ] 625 DRUG RELATED	[ ] 422 APPEAL	[ ] 375 FALSE CLAIMS
[ ] 120 MARINE	[ ] 315 AIRPLANE PRODUCT LIABILITY	PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY	[ ] 625 DRUG RELATED SEIZURE OF PROPERTY	28 USC 158	[ ] 376 QUI TAM
[ ] 130 MILLER ACT	[ ] 320 ASSAULT, LIBEL & SLANDER	[ ] 365 PERSONAL INJURY PRODUCT LIABILITY	21 USC 881	[ ] 423 WITHDRAWAL	[ ] 400 STATE REAPPORTIONMENT
[ ] 140 NEGOTIABLE INSTRUMENT	[ ] 330 FEDERAL EMPLOYERS' LIABILITY	[ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	[ ] 690 OTHER	28 USC 157	[ ] 410 ANTI TRUST
[ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	[ ] 340 MARINE	<b>PERSONAL PROPERTY</b>	<b>PROPERTY RIGHTS</b>	[ ] 820 COPYRIGHTS	[ ] 430 BANKS & BANKING
[ ] 151 MEDICARE ACT	[ ] 345 MARINE PRODUCT LIABILITY	[ ] 370 OTHER FRAUD	[ ] 830 PATENT	[ ] 830 PATENT	[ ] 450 COMMERCE
[ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)	[ ] 350 MOTOR VEHICLE	[ ] 371 TRUTH IN LENDING	[ ] 835 PATENT-ABBREVIATED NEW DRUG APPLICATION	[ ] 840 TRADEMARK	[ ] 460 DEPORTATION
[ ] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS	[ ] 355 MOTOR VEHICLE PRODUCT LIABILITY	[ ] 380 OTHER PERSONAL PROPERTY DAMAGE	[ ] 840 TRADEMARK	<b>SOCIAL SECURITY</b>	[ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
[ ] 160 STOCKHOLDERS SUITS	[ ] 360 OTHER PERSONAL INJURY	[ ] 385 PROPERTY DAMAGE PRODUCT LIABILITY	<b>LABOR</b>	[ ] 861 HIA (1395ff)	[ ] 480 CONSUMER CREDIT
[x] 190 OTHER CONTRACT	[ ] 362 PERSONAL INJURY - MED MALPRACTICE	<b>PRISONER PETITIONS</b>	[ ] 710 FAIR LABOR STANDARDS ACT	[ ] 862 BLACK LUNG (923)	[ ] 485 TELEPHONE CONSUMER PROTECTION ACT
[ ] 195 CONTRACT PRODUCT LIABILITY	<b>ACTIONS UNDER STATUTES</b>	[ ] 463 ALIEN DETAINEE	[ ] 720 LABOR/MGMT RELATIONS	[ ] 863 DIWC/DIWW (405(g))	[ ] 490 CABLE/SATELLITE TV
[ ] 196 FRANCHISE	<b>CIVIL RIGHTS</b>	[ ] 510 MOTIONS TO VACATE SENTENCE	[ ] 740 RAILWAY LABOR ACT	[ ] 864 SSID TITLE XVI	[ ] 490 CABLE/SATELLITE TV
	[ ] 440 OTHER CIVIL RIGHTS (Non-Prisoner)	28 USC 2255	[ ] 751 FAMILY MEDICAL LEAVE ACT (FMLA)	[ ] 865 RSI (405(g))	[ ] 850 SECURITIES/COMMODITIES/EXCHANGE
<b>REAL PROPERTY</b>	[ ] 441 VOTING	[ ] 530 HABEAS CORPUS	[ ] 751 FAMILY MEDICAL LEAVE ACT (FMLA)	<b>FEDERAL TAX SUITS</b>	[ ] 890 OTHER STATUTORY ACTIONS
[ ] 210 LAND CONDEMNATION	[ ] 442 EMPLOYMENT	[ ] 535 DEATH PENALTY	[ ] 790 OTHER LABOR LITIGATION	[ ] 870 TAXES (U.S. Plaintiff or Defendant)	[ ] 891 AGRICULTURAL ACTS
[ ] 220 FORECLOSURE	[ ] 443 HOUSING/ ACCOMMODATIONS	[ ] 540 MANDAMUS & OTHER	[ ] 791 EMPL RET INC SECURITY ACT (ERISA)	[ ] 871 IRS-THIRD PARTY	[ ] 893 ENVIRONMENTAL MATTERS
[ ] 230 RENT LEASE & EJECTMENT	[ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT	<b>PRISONER CIVIL RIGHTS</b>	<b>IMMIGRATION</b>	26 USC 7609	[ ] 895 FREEDOM OF INFORMATION ACT
[ ] 240 TORTS TO LAND	[ ] 446 AMERICANS WITH DISABILITIES -OTHER	[ ] 550 CIVIL RIGHTS	[ ] 462 NATURALIZATION APPLICATION		[ ] 896 ARBITRATION
[ ] 245 TORT PRODUCT LIABILITY	[ ] 448 EDUCATION	[ ] 555 PRISON CONDITION	[ ] 465 OTHER IMMIGRATION ACTIONS		[ ] 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
[ ] 290 ALL OTHER REAL PROPERTY		[ ] 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT			[ ] 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
 JURY DEMAND:  YES  NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

ORIGIN

(PLACE AN x IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation (Transferred)
- 7 Appeal to District Judge from Magistrate Judge
- 8 Multidistrict Litigation (Direct File)
- a. all parties represented
- b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

- 1 U.S. PLAINTIFF
  - 2 U.S. DEFENDANT
  - 3 FEDERAL QUESTION
  - 4 DIVERSITY
- (U.S. NOT A PARTY)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [ ] 1	DEF [ ] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [ ] 3 [ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] 5 [ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2	[ ] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4 [ ] 4	FOREIGN NATION	[ ] 6 [ ] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

White Plains Healthcare Properties I, LLC - 2 Bourbon Street, Suite 200, Peabody, MA 01960

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

HBL SNF LLC - 116-120 Church Street, White Plains, NY 10601

Lizer Jozefovic - 53 Mariner Way, Monsey, NY 10952

Mark Neuman - 22 Lyncrest Drive, Monsey, NY 10952

CCC Equities, LLC - 3 Dakota Drive, Suite 300, Lake Success, NY 11042

DEFENDANT(S) ADDRESS UNKNOWN

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

COURTHOUSE ASSIGNMENT

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  WHITE PLAINS  MANHATTAN

DATE 11/04/2021 /s/ Brendan M. Scott  
SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT  
[ ] NO  
[ ] YES (DATE ADMITTED Mo. 06 Yr. 2006 )  
Attorney Bar Code #

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

AD-9581 (Rev. 10-1-19) Appearance of Counsel

**UNITED STATES DISTRICT COURT**

for the

Southern District of New York

White Plains Healthcare Properties I, LLC,                     )  
    *Plaintiff*   )  
    v.   )  
HBL SNF, LLC, et al.,   )  
    *Defendant*   )

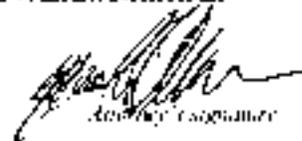
Case No. 21-9048

**APPEARANCE OF COUNSEL**

To: The clerk of court and all parties of record

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for Plaintiff White Plains Healthcare Properties I, LLC and Third-Party Defendants CCC Equities, LLC Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson.

Date: 11/05/2021



Alfred E. Donnellan (AD7092)  
*Printed name and bar number*

De'Bello Donnellan Weingarten,  
Wise & Wiederkehr, LLP  
One North Lexington Avenue, 11th Floor  
White Plains, New York 10601  
*Address*

aed@ddw-law.com  
*E-mail address*

(914) 681-0200  
*Telephone number*

(914) 684-0200  
*FAX number*

AO 438 (Rev. 05/09) Appearance of Counsel

**UNITED STATES DISTRICT COURT**

for the

Southern District of New York



White Plains Healthcare Properties I, LLC, )  
*Plaintiff* )  
v. )  
HBL SNF, LLC, et al. )  
*Defendant* )

Case No. 21-9048 (PMH)

**APPEARANCE OF COUNSEL**

To: The clerk of court and all parties of record

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for:  
Plaintiff White Plains Healthcare Properties I, LLC and Third-Party Defendants CCC Equities, LLC  
Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson

Date: 11/05/2021

*Attorney's signature*

Robert A. Spolzing RS7206

*Printed name and bar number*

Abrams, Fensterman, Fensterman, Eisman, Formato,  
Ferrara, Wolf & Carone, LLP  
81 Main Street, Suite 306  
White Plains, NY 10601

*Address*

rspolzing@abramslaw.com

*E-mail address*

(914) 607-7010

*Telephone number*

*FAX number*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WHITE PLAINS HEALTHCARE PROPERTIES I,  
LLC,

Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

– against –

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Removed from the Supreme  
Court of the State of New York,  
Westchester County

21 Civ. 9048 (PMH)

**DISCLOSURE STATEMENT  
PURSUANT TO FRCP 7.1**

PLEASE TAKE NOTICE that corporate plaintiff WHITE PLAINS HEALTHCARE PROPERTIES I, LLC and third-party defendants CCC EQUITIES, LLC, PROJECT EQUITY CONSULTING and THE CONGRESS COMPANIES, by and through their counsel DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, hereby respectfully disclose pursuant to FRCP 7.1 that each of them is a private non-governmental party, and no publicly held corporation owns ten percent (10%) or more of the stock of any of them.

Dated: White Plains, New York  
November 5, 2021

DelBello Donnellan Weingarten  
Wise & Wiederkehr, LLP  
Attorneys for Plaintiff and Third Party Defendants

By: /s/ Alfred E. Donnellan  
Alfred E. Donnellan, Esq.  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

against

HBI, SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZEFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON.

Third-Party Defendants.

Removed from the Supreme  
Court of the State of New York,  
Westchester County

21 Civ. 9048 (PMH)

**REPLY DECLARATION OF  
ALFRED E. DONNELLAN**

Pursuant to 28 U.S.C. § 1746, Alfred E. Donnellan declares as follows:

1. I am a member of the law firm of DeBello Donnellan Weingarten Wise & Wiederkehr, LLP, lead counsel for plaintiff White Plains Healthcare Properties I, LLC ("WPH Properties") and third-party defendants, CCC Equities, LLC, Project Equity Consulting, The Congress Companies, Howard Fensterman and William Nicholson (collectively, "third-party defendants").

2. I submit this reply declaration in further support of the motion of WPH Properties and third-party defendants for an order granting summary judgment in favor of WPH Properties for the relief demanded in the complaint and dismissing the counterclaims and third-party claims asserted by defendants/third-party plaintiffs, HBI, SNF, LLC ("HBI"), Lizer Jozefovic ("Jozefovic") and Mark Neuman (collectively, "defendants").

3. The defendants' assert in their brief in opposition to summary judgment that the

January 7, 2020 notice of default signed by me -- as well as by Joshua Roccapiore as authorized agent of WPH Properties -- is a nullity. A copy of the fully executed notice of default including delivery receipts is attached as exhibit A. I separately emailed copies of the notice of default to Jozefovic and Mark Zafrin ("Zafrin"), who was then counsel to HBL and Jozefovic.

4. The defendants claim that I was "an unauthorized and unknown attorney" at the time of the notice of default. Memorandum of law in opposition to motion for summary judgment and in support of motion to strike dated October 25, 2021, at 17. This is false.

5. In fact, Jozefovic and HBL knew prior to January 7, 2020 that I was counsel to WPH Properties and was authorized to act as counsel in matters concerning the Lease. In my capacity as counsel to WPH Properties, I had extensive dealing with Zafrin and his client Jozefovic prior to January 7, 2020. I negotiated with them the November 20, 2019 letter of intent between HBL and WPH Properties, which set forth the terms of an attempted amicable resolution of HBL's defaults under the Lease.

6. As counsel to WPH Properties, I attended a number of meetings with Zafrin and Jozefovic in the conference room at my law firm to negotiate the letter of intent during the Fall of 2019. During that same time period, I had numerous phone calls and exchanged emails with Zafrin concerning the letter of intent. And on behalf of WPH Properties, I worked with Zafrin and Jozefovic to finalize and have signed the letter of intent. Attached as exhibit B is select correspondence between Zafrin and myself in November 2019 concerning the letter of intent, the Lease and other issues.

7. I also negotiated with Zafrin a "pre-negotiation agreement" dated October 25, 2019 between HBL and WPH Properties to facilitate discussions between the parties concerning a possible resolution of differences between them with respect to their rights and obligations under

the Lease. Those discussions culminated in the letter of intent. A copy of the pre-negotiation agreement is attached as exhibit C.

WHEREFORE, I respectfully request that this Court grant summary judgment for liability and damages in favor of WPH Properties and against HBL, Jozefovic and Neuman in the amount of \$111,420,213.50 and dismiss the defendants' counterclaims and third-party claims.

Dated: White Plains, New York  
November 5, 2021



Alfred E. Donnellan

# Exhibit A to Donnellan Reply Declaration

ORIGIN MESA (P4) 681-4200  
MARISA WARSZAW  
DR: BILLO DONNELLAN WEIN GARTEN WISE  
1 LEXINGTON AVE

SHIP DATE: 08 JAN 20  
ACT WGT: 9.19 LB  
CAD: 114875786RWS03400

WHITE PLAINS, NY 10601  
UNITED STATES US

RE: SEADER

TO: MR. MARK NEUMAN  
MR. MARK NEUMAN  
22 LYNCREST DR

502 JAN 08 2020

MONSEY NY 10952

(P4) 681-4200 REF: 0151960 001 004 11/08/20  
RTZ  
PS



WED - 08 JAN 8:00P

STANDARD OVERNIGHT

TRK# 7794 9844 8443  
(3201)

RES

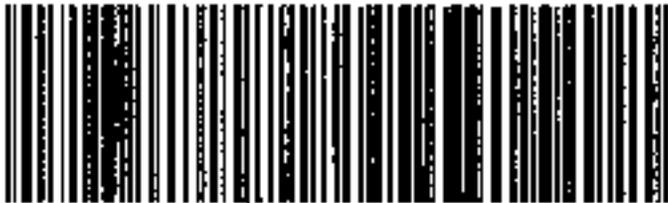
10952

EH PSBA

NY-US

SWF

COPY



**Marisa Warshaw**

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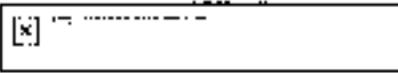
**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 1:37 PM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498448443 Delivered

**Your package has been delivered**

Tracking # 779498448443

Ship date:  
Tue, 1/7/2020

Marisa Warshaw  
DellBull Computer Warginton  
Wigt  
White Plains, NY 10601  
US

[X]   
**Delivered**

Delivery date:  
Wed, 1/8/2020 1:34 pm

Mr. Mark Neuman  
Mr. Mark Neuman  
22 LYONSLETON  
MONSEY, NY 10952  
US

**Shipment Facts**

Our records indicate that the following package has been delivered.

**Tracking number:** 779498448443  
**Status:** Delivered 01/08/2020 1:34 PM  
Signed for by: Signature not required  
**Reference:** 0151250-004 MW 1/7/2020  
**Signed for by:** Signature not required  
**Delivery location:** MONSEY, NY  
**Delivered to:** Residency  
**Service type:** FedEx Standard Overnight®  
**Packaging type:** FedEx Envelope  
**Number of pieces:** 1  
**Weight:** 0.50 lbs.  
**Special handling/Services:** Deliver Weekday  
Residential Delivery  
**Standard Transit:** 1-8-2020 by 8:00 am

ORIGIN ID: NESA (514) 681-0200  
MARISA MORGAN  
DELBELLO DONNELLAN WEINDARTEN PSE  
1 IN LEXINGTON AVE

SHIP DATE: 07JAN20  
ACT WGT: 0.19 LB  
CACY: 1146/5JBMWSX2000

WHITE PLAINS, NY 10601  
UNITED STATES US

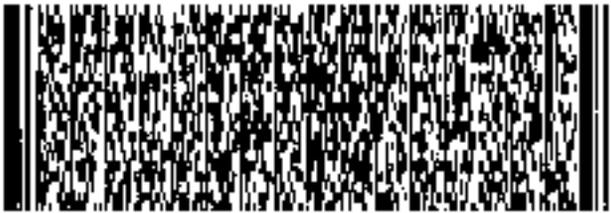
BILL SENDER

TO MR. LZER JOSEFOVIC, GUARANTOR, IND  
MR. LZER JOSEFOVIC, GUARANTOR, IND  
53 MARINER WAY

5572310755

MONSEY NY 10952

(994) 57-0200 REF: 01U-053-001 RW 1-7220  
SA  
NY



WED - 08 JAN 8:00P

STANDARD OVERNIGHT

TRK# 7794 9836 3223  
0221

RES

10952

NY-US

SWF

EH PSBA



COPY

**Marisa Warshaw**

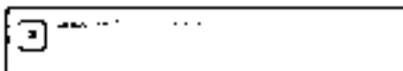
**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 10:37 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498363223 Delivered

# Your package has been delivered

Tracking # 779498363223

Ship date:  
Tue, 1/7/2020

Marisa Warshaw  
Do Bo Lo Donnellan Wegarten  
Wise  
White Plains, NY 10607  
US



Delivered

Delivery date:  
Wed, 1/8/2020 10:35  
am

Mr. Lizer Josefovic,  
Guarantor, Ind  
Mr. Lizer Josefovic, Guarantor,  
Ind  
53 Manor Way  
MONSEY, NY 10982  
US

## Shipment Facts

Our records indicate that the following package has been delivered:

<b>Tracking number:</b>	<u>779498363223</u>
<b>Status:</b>	Delivered: 01/08/2020 10:35 AM Signed for By: Signature not required
<b>Reference:</b>	0181960 001 MW 1/7/2020
<b>Signed for by:</b>	Signature not required
<b>Delivery location:</b>	Monsey, NY
<b>Delivered to:</b>	Residence
<b>Service type:</b>	FedEx Standard Overnight®
<b>Packaging type:</b>	FedEx® Envelope
<b>Number of pieces:</b>	1
<b>Weight:</b>	0.60 lb.
<b>Special handling/Services:</b>	Deliver Weekday Residential Delivery
<b>Standard transit:</b>	1/8/2020 by 8:00 pm

ORIGIN: NESA (914) 681-8200  
MARISA WARSZAWY  
DELBELLO DONNELLAN WEINGARTEN WISE  
1 WILKINGTON AVE

SHIP DATE: 07 JAN 20  
ACTWGT: 0.18 LB  
CARD: 114575285W5103400

WHITE PLAINS, NY 10601  
UNITED STATES US

BL. SENDER

TO MR. LIZER JOSEFOVIC  
HBL SNF, LLC  
1230 ALBANY POST RD

557 221 98 06 12

CROTON ON HUDSON NY 10520

(914) 681-2202 REF: 011980 001 MA 170220  
FU



WED - 08 JAN 3:00P

STANDARD OVERNIGHT

TRKA (5201) 7794 9823 5404

EH ANIA

10520  
NY-US SWF



COPY

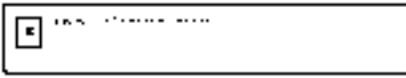
**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:33 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498235404 Delivered

## Your package has been delivered

Tracking # 779498235404

Ship date: Tue, 1/7/2020	Delivery date: Wed, 1/8/2020 9:27 am
Marisa Warshaw	Mr. Uzer Josefovic
DelBelt, Donaldson Wengator Wise White Plains, NY 10601 US	1280 ALBANY POST RD CROTON ON HUDSON, NY 10520 US



Delivered

### Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	779498235404
Status:	Delivered: 01/08/2020 09:27 AM Signed for By: Signature Release on file
Reference:	9181960-001 MW 1/7/2020
Signed for by:	Signature Release on file
Delivery location:	CROTON ON HUDSON, NY
Service type:	FedEx Standard Overnight®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	0.60 Lb.
Special handling/Services:	Deliver Weekday
Standard transit:	1/8/2020 by 5:00 pm

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approximately 9:32 AM CST on 01/08/2020.

All weights are approximate.

ORIGIN: NYESA (314) 881-0700  
MARISA WYRSHAW  
DEL BELL O DONNELLAN WIRKINGARTEN WISE  
1 N LEXINGTON AVE  
WHITE PLAINS, NY 10601  
UNITED STATES US

SHIP DATE: 07 JAN 23  
ACTWT: 0.19 LB  
CAO: 1.6625.780VYSX2140  
BILL SENDER

TO: MR. GERALD NEUMAN  
C/O HBL SNF, LLC  
1280 ALBANY POST RD

NY 10601-0001

CROTON ON HUDSON NY 10520

(314) 881-0200 REF: 015.980-001 NY 10520



WED - 08 JAN 3:00P  
STANDARD OVERNIGHT

7794 9862 7521

HANA 10520



COPY

**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498627521 Delivered

## Your package has been delivered

Tracking # 779498627521

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 9:27 am
Marisa Warshaw	Mr. Gerald Neuman
DelBello Donna Lm Weingarten	SAHB SNF LLC
Miss	1782 ALBANY POST RD
White Plains, NY 10601	CROTON ON HUDSON, NY
US	10500
	US

**Delivered**

### Shipment Facts

Our records indicate that the following package has been delivered.

<b>Tracking number:</b>	779498627521
<b>Status:</b>	Delivered: 01/08/2020 09:27 AM Signed for By: Signature Release on file
<b>Reference:</b>	0181980-001 MW 1/7/2020
<b>Signed for by:</b>	Signature Release on file
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<b>Service type:</b>	FedEx Standard Overnight®
<b>Packaging type:</b>	FedEx® Envelope
<b>Number of pieces:</b>	1
<b>Weight:</b>	0.50 lb
<b>Special handling/Services:</b>	Deliver Weekday
<b>Standard transit:</b>	1:00 PM to 3:00 PM

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All weights are estimates.



**Marisa Warshaw**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, January 8, 2020 9:32 AM  
**To:** Marisa Warshaw  
**Subject:** FedEx Shipment 779498539658 Delivered

**Your package has been delivered**

**Tracking # 779498539658**

<b>Ship date:</b> Tue, 1/7/2020	<b>Delivery date:</b> Wed, 1/8/2020 9:27 am
<b>Marisa Warshaw</b>	<b>Mark Zafrin, Esq.</b>
Dulbels Dominican Weingarten Wise White Plains, NY 10607 US	Atmadaman & Robinson 4th floor 800 W 10th Ave New York, NY 10022 US

**Delivered**

**Shipment Facts**

Our records indicate that the following package has been delivered:

**Tracking number:** 779498539658  
**Status:** Delivered: 01/08/2020 09:27 AM Signed for by: E.L.AINE  
**Reference:** 2181860-001 MW 1/7/2020  
**Signed for by:** E.ELAINE  
**Delivery location:** NEW YORK, NY  
**Delivered to:** Atmadaman & Robinson  
**Service type:** FedEx Standard Overnight®  
**Packaging type:** FedEx Freight®  
**Number of pieces:** 1  
**Weight:** 3.50 lb  
**Special handling/Services:** Deliver Weekday  
**Standard transit:** 1:00:00 by 3:00 pm

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**DEL BELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP**

**Alfred E. Donnellan**  
Partner  
aed@ddw-law.com

CONSELLORS A FIRM  
THE GATEWAY BUILDING  
ONE NORTH LEXINGTON AVENUE  
WHITE PLAINS, NEW YORK 10607  
(914) 811-0210  
FACSIMILE: (914) 654-0268

Commercial Office  
1110 Newell Street  
Stamford, CT 06906  
(203) 254-1299

January 7, 2020

BY EMAIL [lizerj@watersedgeusa.com](mailto:lizerj@watersedgeusa.com)  
BY FEDERAL EXPRESS

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**NOTICE OF DEFAULT  
AND LANDLORD'S ELECTION TO TERMINATE LEASE AND  
ACCELERATE ALL RENTS DUE FOR THE BALANCE OF THE LEASE TERM**

**PREMISES: 116-120 Church Street, White Plains, New York ("the Leased Premises")**

Mr. Josefovic:

We are attorneys for your Landlord, White Plains Health Care Properties I, LLC.

**PLEASE TAKE NOTICE**, that HBL SNF, LLC ("HBL") is in material violation of the provisions of its November 19, 2015 Lease, for the above referenced premises ("the Lease"), and the November 20, 2019 Letter of Intent (the "LOI"), the terms of which are in full force and effect (the "LOI"), and is in **DEFAULT** thereof, as follows:

1. Lease Section 3.2, and LOI Para. 6) d) ii: **Payment of Rent**: HBL has failed or refused to pay the following Rent:
  - a. Rent due for Sept. 30, 2019 - Dec. 31, 2019, totaling \$10,831.79.
  - b. Additional Rent due for Jan. 01 - 31, 2020, due Jan. 1, 2020, totaling \$40,000.00.
2. Lease Section 4.2, and LOI Para. 6) h: **Payment of Real Estate Taxes**: HBL has failed to pay the following Real Estate Tax payments:
  - a. Real Estate Taxes for the period 07/01/19 - 12/31/19, specifically the Tenant's prorated portion thereof, (exclusive of late fees, costs, penalties and interest per municipal regulations and per the Lease), totaling \$61,456.39.
  - b. Real Estate Taxes for the period Jan. 01, 2020 - June 30, 2020 totaling \$121,587.12

HBL SNF, LLC  
Attn: Lizer Josefovic  
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3. LOI Para 6) b) and Lease Section 5.2 - Payment of Utility Deposits and Municipal Maintenance Escrows: HBL has failed to pay the following Utility Deposits and Municipal Maintenance Escrows:
  - a. Utility Deposits totaling \$60,356.10
  - b. Municipal Maintenance Escrows totaling \$5,500.00
4. Lease Section 4.1, LOI Section 6) j) - Utility Charges: HBL has failed to pay the following Utility Charges:
  - a. ConEdison invoice paid by the Landlord to avoid power shutoff, at the amount of \$2,972.84.
5. Lease Article VI, including Section 6.2; LOI Para 6) h) - Delivery of Insurance Certificates:
  - a. HBL has failed to deliver certificates of insurance to Landlord in accordance with Article VI and Section 6.2 of the Lease.
6. Lease Section 7.4 (g) and (j) - Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider agreements and reimbursement rate sheets for the Facility.
  - b. HBL has failed or refused to deliver to the Landlord all Medicare, Medicaid and other provider updated reimbursement rate sheets for the Facility.
7. Lease Section 7.4 (a) - Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required financial reporting required under the Lease.
8. Lease Section 7.4 (B) (vi) - Reporting and other Obligations:
  - a. HBL has failed or refused to deliver to the Landlord the required written reports providing an operational overview of significant events and circumstances at the Facility during each prior month of the Term of the Lease.
9. Lease Section 7.1(a)(ii), as amended by LOI Para 6) d) i) - Security Deposit:
  - a. HBL has failed or refused to deliver to the Landlord by December 1, 2019 the security deposit of \$1,000,000.00, to secure full and timely payment and performance of Tenant's obligations under the Lease.
10. Lease Section 7.1(a)(iii), as amended by LOI Para 6) e) - Additional Security Deposit:
  - a. HBL has failed to deliver the blocked account agreement prohibiting any liquidation of the of \$1,600,000.00 held by JPMorgan Chase Bank, N.A. in the controlled account number [REDACTED] 7272.
11. Lease Section 4.1, 3.2 (c), and 9.1 (b) - Payment of Late Fees and Costs:
  - a. HBL has failed to pay late fees and costs related to the above failures to pay its obligations under the Lease and the LOI in the timeframes required thereunder, as set forth in the attached accounting, totaling \$23,425.09

HBL SNF, LLC  
Attn: Lizer Josefovic  
January 7, 2020  
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A true and accurate accounting of the amounts due and owing under the Lease and the I.OI is attached herewith.

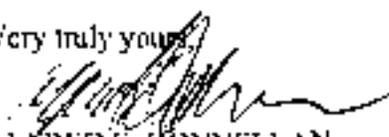
By reason of the aforementioned material Defaults under the Lease and the I.OI, the Landlord, hereby exercises its right under Section 16.1 of the Lease to terminate the Lease as well as Tenant's right of possession of the Leased Premises, effective January 13, 2020 at 5.00 PM NYC time.

**PLEASE TAKE FURTHER NOTICE**, that, in accordance with Section 16.1 of the Lease, all rent for the balance of the term of the Lease is accelerated, and pursuant to said lease provision, HBL is obligated to pay the Landlord \$84,073,989.91, being the present value of such accelerated rent, discounted at the rate of 6% *per annum*.

Landlord reserves all other rights and remedies at law or in equity as against the Tenant, all guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.

Landlord further reserves all rights arising from the Collateral Assignment and Pledge of Membership Interest and Security Agreement dated August 11, 2017 ("the Pledge"), including but not limited to all rights to enforce the Pledge through a private or public sale of the assignor's interest in Waterview Acquisition I, LLC or through a judicial foreclosure of the assignee's security interest therein.

Very truly yours,

  
ALFRED E. DONNELLAN

**AUTHORIZED AND APPROVED:**

White Plains Health Care Properties I, LLC

  
Joshua Roccapriore  
Authorized Representative

cc: By Email (lizerj@watersedgeusa.com) & Federal Express  
Lizer Josefovic, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

HBL SNF, LLC

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Attn: Lizer Josefovic

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By Email (markn@epieng.com) & Federal Express  
Mark Neuman, Guarantor, Individually  
22 Lyncrest Drive  
Monsey, NY 10952

By Email (mzafrin@amllp.com) & Federal Express  
Michelman & Robinson  
300 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022  
*Attn: Mark Zafrin, Esq.*

By Federal Express  
Gerald Neuman, Individually  
c/o HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

**WHITE PLAINS HEALTH CARE PROPERTIES I, L.L.C.**

by THE CONGRESS COMPANIES  
General Contractors, Construction Managers, Property Managers, Development Services  
100 W. 10th Street  
New York, NY 10011  
Tel: 212-512-5000  
Fax: 212-512-5000

7-Jan-19

**NOTICE OF AMOUNTS AND DELIVERABLES DUE UNDER LEASE & LOI of 11/20/19**

Gentlemen: Pursuant to the Lease and the LOI dated November 29, 2019, the following are due:

	<u>AMOUNTS PAYABLE</u>	<u>Due Date</u>	<u>Amt Due</u>	<u>Amounts Paid</u>	<u>Amt Past Due</u>
1	Rent January, 2020 (See Note 1 Below)	01/01/20	\$ 546,096.50	\$ 506,096.50	\$ 40,000.00
2	Rent 9/30/19 - 11/30/19	12/01/19	\$ 10,831.79	\$ -	\$ 10,831.79
	<b>SUBTOTAL RENT AND ADDITIONAL RENT:</b>		<b>\$ 556,928.29</b>	<b>\$ 506,096.50</b>	<b>\$ 50,831.79</b>
3	RE Taxes 7/1/19-12/31/19, Tenant portion: 09/30/19-12/31/19	12/01/19	\$ 61,456.38	\$ -	\$ 61,456.38
4	RE Taxes for the period 1/1/20 - 6/30/20	12/01/19	\$ 121,587.12	\$ -	\$ 121,587.12
	<b>SUBTOTAL REAL ESTATE TAXES</b>		<b>\$ 183,043.51</b>	<b>\$ -</b>	<b>\$ 183,043.51</b>
5	Utility Deposits	12/01/19	\$ 60,356.10	\$ -	\$ 60,356.10
6	Municipal Deposits	12/01/19	\$ 5,500.00	\$ -	\$ 5,500.00
7	Con Edison Electric Invoice	12/17/19	\$ 2,972.84	\$ -	\$ 2,972.84
	<b>Subtotal</b>		<b>\$ 68,828.94</b>	<b>\$ -</b>	<b>\$ 68,828.94</b>
	<b>TOTAL RENT, RE TAXES, &amp; OTHER</b>		<b>\$ 808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 302,704.24</b>
8	Security Deposit: 1st payment	12/01/19	\$ 1,000,000.00	\$ -	\$ 1,000,000.00
	<b>TOTAL AMTS DUE EXCLUDING LATE FEES &amp; COSTS</b>		<b>\$ 1,808,800.74</b>	<b>\$ 506,096.50</b>	<b>\$ 1,302,704.24</b>
9	Interest on past due real estate taxes on a per-diem basis	12/15/19	\$ 3,339.68	\$ -	\$ 3,339.68
10	Late Fees of 5% on items 1,2,3,5,6,7	12/15/19	\$ 8,055.86	\$ -	\$ 8,055.86
11	Interest on Items 1,2,3,5 & 6 at the Overdue Rate (Prime+5%)	12/15/19	\$ 11,329.55	\$ -	\$ 11,329.55
	<b>TOTAL LATE FEES AND COSTS</b>		<b>\$ 23,425.09</b>	<b>\$ -</b>	<b>\$ 23,425.09</b>
	<b>TOTAL AMOUNTS DUE</b>		<b>\$ 1,832,225.83</b>	<b>\$ 506,096.50</b>	<b>\$ 1,326,129.33</b>

**ADDITIONAL NOTICE OF ITEMS DUE:** As required per the Lease and LOI, please provide the following:

- 1 Notice is hereby made to that Jan 2020 & all subsequent Rent shall be due in the amount of \$546,096.50, calculated as \$506,096.50 rent plus \$40,000.00 additional rent 2nd Notice
- 2 Notice is hereby made to provide all Medicare and Medicaid provider Agreements and rates. 2nd Notice
- 3 Notice is hereby made to provide Annual Budget, Capital Expenditures, Operating Budget, Annual Financial Reporting, monthly financial reporting Financial Reporting, Variance Reporting, Unaudited Financial Reports
- 4 Notice is hereby made to provide per a written report of significant events at the facility including: Copies of all documents, reports, licenses and certificates from NY DOH pertaining to the Operations of the Facility 2nd Notice
- 5 Notice is hereby made to provide Evidence of Insurance, including all required coverages under the lease, and all additional insureds 2nd Notice

**Exhibit B to  
Donnellan Reply Declaration**

**WISE & WIEDERKEHR, LLP**

COUNSELLORS AT LAW

THE GATEWAY BUILDING  
ONE NORTH LYNINGTON AVENUE  
WHITE PLAINS, NEW YORK 10601

(914) 681-0200  
FACSIMILE (914) 684-0288

Corporation Office  
111 SUMMIT STREET  
NEW YORK, NY 10038  
(212) 213-6900

Alfred E. Donnellan  
Partner  
ald@tdw-law.com

November 7, 2019

Mark Zafrin, Esq.  
Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, New York 10022

*Re: White Plains Healthcare Properties with HBL-SNF, LLC ("HBL")*

Dear Mark:

This is in response to your November 5, 2019 letter. With respect to certain statements contained therein, please be advised as follows:

1. As to your statement: *"We are trying to find a way to pay rent to your client, however at this time due to the inability of the Landlord to obtain a permanent CO the conditions under which my client could rationally pay rent or even be obligated to pay rent do not exist."*

The plain words of the Lease are clear, the Commencement Date is conditioned upon only "(i) the date of issuance of a permanent or temporary Certificate of Occupancy for the Facility and (ii) the date that New York State Department of Health (hereinafter sometimes, "DOH") determines that the Landlord's Work is sufficiently complete as constructed (but not necessarily the Tenant's operations) to accept patients...". The landlord delivered a temporary C of O on August 22, 2019. There is no requirement for Permanent C of O in the Lease. Apparently DOH now wants this for the Tenant's operations which are explicitly excluded from the Landlord's obligations under the lease and as to the Date of Commencement.

2. *"At this point the Department of Health ("DOH") has determined that the Landlord's Work is not "sufficiently complete as constructed to accept patients" Annexed hereto is the final email from Chris Chow where he states that he cannot issue an operating certificate until the DOH receives a copy of the permanent CO. The DOH has taken the position that as soon as they get the CO, everything will start falling into place."*

This is simply not true. The Department was clear that the building was "sufficiently complete as constructed (but not necessarily the Tenant's operations)" (Lease Section 3.1 (g)) on 09/30/19, as per Chris Chow's email of that date, and as per the Architect's Certification.

It was Tenant who, in bad faith, withheld the certification to DOH until October 23, 2019. He did so, as he told Mr. Nicholson on October 3, to try to avoid the payment of Rent. The permanent C of O is required for the Tenant's operations (the Tenant's Operating Certificate), as per Chow's email of 09/30/19.

Further, the email string that you provided clearly shows that neither your client's DOH consultant Andrew Blatt of Pinnacle, nor even Chris Chow of DOH knew that the TCO would not now suffice for your client's operations. Mr. Blatt did not even know what provisional approval was (a term that is nowhere referenced in the Lease). The email that you provided clearly display the Tenant and its consultants not knowing what they needed to get their own operations approved by DOH. This is on the Tenant not the Landlord.

No one knew that DOH decided to ask for a Permanent C of O (vs a TCO). It is not required in the Lease. Neither your client and nor its professionals were aware of this apparent change in DOH's procedures. However, since it impacts "the Tenant's operations" (Lease Section 3.1 (a)) your client is desperately attempting to shift this responsibility to the Landlord.

3. As to the statement: *"Mr. Nicholson told my client that your partner Mark Weingarten will be at the Building Department today and should give us some clarity as to when the permanent CO will be issued. Should the CO be issued today and given to the DOH we have told you on more than one occasion that we will be in position to pay rent and start admitting patients in December."*

This is not true. Mr. Nicholson did not tell you client that "Mark Weingarten will be at the Building Department today". Mr. Nicholson told your client that that Mr. Weingarten would reach out to the people at City Hall to try to help expedite the Permanent C of O, for your client's operations needs.

Further, Mr. Nicholson was clear with your client that he should review the Lease which in plain terms says "(but not necessarily the Tenant's operations)" as to the criteria for the Commencement Date and payment of Rent.

Mr. Nicholson offered to help your client accomplish what was needed for its operations with DOH; but was clear at all times that the Landlord's criteria under the Lease Commencement had been met. And Mr. Nicholson demanded the November rent.

4. As to your request for the costs of the project:

Your October 31, 2019 4:22 PM email requested "The final cost certification".

Your November 1, 2019 5:29 PM email clarified that it was not in fact "the final cost certification" but rather "a statement to show what was the total cost of the building, land, hard construction debt service etc.". We are working on this now and will forward that to you within 24 hours.

5. As to "a series of emails and attachments which demonstrate that the punch list is far from complete and that there are clearly numerous loose ends to be tied up by our respective clients and the building needs to become truly ready for occupancy under the punch list.", and as to the numerous punchlist attached to your November 5, 2019 12:52 PM email:

This attempt to create the illusion that the building is not fit for occupancy is futile, for the following reasons: The documents you transmitted, while voluminous are virtually all irrelevant and outdated. Your client's physical plant and management personnel are well aware of this. Specifically:

- You transmitted the following punchlists
  - o May 5, 2019 Floor 2 patient rooms Backpunch
  - o May 5, 2019 Floor 3 Patient Rooms Backpunch
  - o May 5, 2019 Floor 5 Common and Staff Areas Backpunch
  - o May 5, 2019 Floor 3-4 Common and Staff Areas Backpunch

These punchlists are long completed, as your client's staff is fully aware. The futility of transmitting what your client knows were really rolling Pre-punch tracking lists compiled as far back as May 2019, which have long been completed and which we were patent enough to share with your Client's personnel, is transparent.

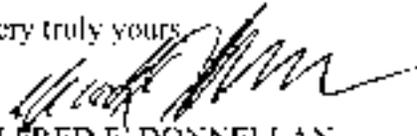
A Con Ed notice your file "white plains 11052019". This is the result of Con Ed's equipment mis- functioning. It has nothing to do with the Landlord's work. We are addressing this, notwithstanding that we have no obligation to do so under the Lease, since the Lease has commenced and we delivered the keys to the Tenant. Notwithstanding, we had ConEd complete the repair/replacement of their gas regulators today for you. We then performed bleeding the gas lines and restarting all equip with our licensed plumbers and HVAC techs, including gas boilers and hot water heater. This is not covered under your warranties, since the Work we performed for you it is the result of your utility provider's equipment. We will send you an invoice for the costs of this building maintenance once the costs are compiled.

- Punchlist printed on November 1, 2019 at 08:35 am EDT with approximately 30 items: 11 are Subcontractor warranties, none of which the Landlord owes to the Tenant under the Lease (you will note that all manufacturers warranties were previously provided), but will be provided as a courtesy to your client, since it is usual and customary in the industry. The remainder of the items are all immaterial, and having no bearing upon occupancy, and most are since completed.
- The Date of Substantial Completion per the AIA G704 is September 30, 2019. Had any of the punchlist items been material enough to preclude occupancy, at

that point neither the Architect nor DOH would have determined that the Landlord's work was sufficiently complete.

- White Plains Mmetized Punchlist dated 10/16/219, transmitted internally, shows a list of approximately 22 items all either warranties from subs which have since been provided, or cosmetic, immaterial cleaning or otherwise insignificant items, most of which were since completed.
- The most recent status of the punchlist is attached to the LOI. It is minimal, its value is a mere \$3,800, and it has no impact whatsoever upon occupancy or suitability of the building for its intended purpose. Both the Architect and DOH have so determined.
- White plains additional Punchlist Items document:
  - As to the Blinds: This is a valid obligation which the Landlord will deliver if and when the Tenant is no longer in Default. We suspended this work when we observed the Tenant failing or refusing to deliver the deposits and working capital set forth in the Lease 7.1, and 7.7, and other obligations under the Lease.
  - The Cable issue for CATV is a red herring. There is no specification in the Landlord's contract with the Tenant as to which wire is required for the CATV. The Landlord acknowledges its obligation to deliver functional CATV. It is the Landlord's obligation to insure proper performance. The Landlord has done so. The work as installed is performing as required, and has been completed, and fully tested. The Engineering calculations are attached.
- This is all a school of red herrings. The Architect's decision is final on all construction matters in any event (per the Development Agreement, p. 8, Article XI). The Architect signed both (1) the AIA G704 determining that the building was sufficiently constructed for its intended use on September 30, 2019, and (2) signed the DOH Completed Construction Certification Letter on 06/18/19.

Very truly yours,

  
ALFRED E. DONNELLAN

**PRE-NEGOTIATION AGREEMENT**

AGREEMENT made this 25<sup>th</sup> day of October 2019, by and between White Plains Health Care Properties I, LLC ("White Plains Health") and HBL SNE, LLC ("HBL") (together "the Parties").

WHEREAS, White Plains Health and HBL, were parties to a certain lease dated November 19, 2015 ("Lease") concerning the premises at 116-120 Church Street, White Plains, New York ("the Premises");

WHEREAS, on October 17, 2019, White Plains Health served HBL with a certain Notice of Default and Landlord's Election to Terminate Lease and Accelerate All Rents Due for the Balance of the Lease Term dated October 17, 2019 ("the Notice");

WHEREAS, the Parties desire to enter into discussions (the "Discussions") concerning a possible resolution of differences between them with respect to their rights and obligations under the Lease and the Notice. The Parties have agreed to enter into the Discussions on the terms and conditions set forth in this Pre-Negotiation Agreement (the "Agreement") which: (a) when executed and delivered by the Parties will constitute a binding agreement between the Parties with respect to the Discussions; and (b) will not be modified except by a written agreement executed and delivered by the Parties.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and provisions contained herein, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Discussions. The Parties have commenced or intend to commence the Discussions concerning the potential resolution of issues between them arising under the Lease and the Notice on terms agreeable to the Parties. The Parties agree that they may each terminate the Discussions at any time, in such Party's absolute discretion, for any reason or for no reason, and without liability of any kind.
2. No Obligation/No Waiver. The Parties agree that neither party will incur any obligation or liability or waive any rights, remedies, claims and/or defenses by virtue of the commencement, continuance or termination of the Discussions, or the passage of time associated with the Discussions unless and until a Settlement Agreement is executed and delivered by the Parties, and then only to the extent provided in the Settlement Agreement.
3. The Discussions are Deemed Confidential and Not Admissible in Judicial or Quasi-Judicial Proceedings. The parties agree that the Discussions shall be deemed to be "Confidential Information", and shall not be (i) filed with any court; or (ii) otherwise made public or disclosed to any individual or entity other than those specified herein without prior written consent of all Parties. Confidential Information shall not be disclosed in any way to any person or entity other than: on behalf of a Party, any of

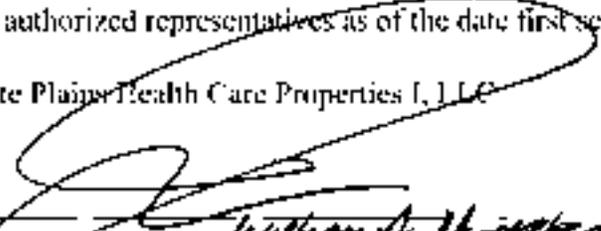
their members, directors, officers, employees, advisors, or other agents who need to know such information solely for the purpose of evaluating or negotiating any aspect of the potential settlement and counsel for the Parties. The Parties agree that they will ensure that each of their representatives to whom the Confidential Information is disclosed shall be aware of the confidentiality obligations under this agreement.

4. Advice of Counsel. Each Party hereby acknowledges that this is a legally binding agreement that might affect such Party's rights. Each represents to the other that it has received legal advice from independent, competent counsel of its choice regarding the meaning and legal significance of this Agreement.
5. Judicial Interpretation. This Agreement will be governed by and construed in accordance with the law of the State of New York. No presumption that the terms of a document will be more strictly construed against the party who prepared the same will be applied in construing this Agreement.
6. Construction. Paragraph headings used in this Agreement are for convenience only and will not be used to interpret any term of this Agreement.
7. Authority. Each Party executing this Agreement represents that such Party has the full authority and legal power to do so.
8. Survival. The provisions of this Agreement will survive the termination of the Discussions.
9. Non-Waiver/No Tolling. Notwithstanding anything to the contrary contained in this Agreement, nothing herein shall be deemed to waive or diminish any of the Parties' claims or defenses, or to toll any dates, deadlines or time periods contained in the Notice.
10. Modifications. This Agreement may be changed, waived, modified or terminated only by written and executed instrument signed by all Parties.

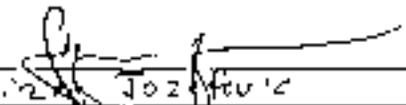


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

White Plains Health Care Properties I, LLC

By:   
Name: William A. Minicci  
Title: Manager

HBL SNF, LLC

By:   
Name: Lizeta Jozefovic  
Title: Manager

**Exhibit C to  
Donnellan Reply Declaration**

**PRE-NEGOTIATION AGREEMENT**

AGREEMENT made this 25<sup>th</sup> day of October 2019, by and between White Plains Health Care Properties I, LLC ("White Plains Health") and HBL SNE, LLC ("HBL") (together "the Parties").

WHEREAS, White Plains Health and HBL, were parties to a certain lease dated November 19, 2015 ("Lease") concerning the premises at 116-120 Church Street, White Plains, New York ("the Premises");

WHEREAS, on October 17, 2019, White Plains Health served HBL with a certain Notice of Default and Landlord's Election to Terminate Lease and Accelerate All Rents Due for the Balance of the Lease Term dated October 17, 2019 ("the Notice");

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2. No Obligation/No Waiver. The Parties agree that neither party will incur any obligation or liability or waive any rights, remedies, claims and/or defenses by virtue of the commencement, continuance or termination of the Discussions, or the passage of time associated with the Discussions unless and until a Settlement Agreement is executed and delivered by the Parties, and then only to the extent provided in the Settlement Agreement.
3. The Discussions are Deemed Confidential and Not Admissible in Judicial or Quasi-Judicial Proceedings. The parties agree that the Discussions shall be deemed to be "Confidential Information", and shall not be (i) filed with any court; or (ii) otherwise made public or disclosed to any individual or entity other than those specified herein without prior written consent of all Parties. Confidential Information shall not be disclosed in any way to any person or entity other than: on behalf of a Party, any of

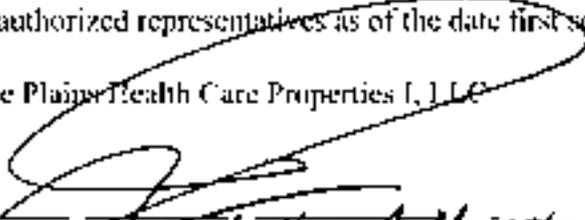
their members, directors, officers, employees, advisors, or other agents who need to know such information solely for the purpose of evaluating or negotiating any aspect of the potential settlement and counsel for the Parties. The Parties agree that they will ensure that each of their representatives to whom the Confidential Information is disclosed shall be aware of the confidentiality obligations under this agreement.

4. Advice of Counsel. Each Party hereby acknowledges that this is a legally binding agreement that might affect such Party's rights. Each represents to the other that it has received legal advice from independent, competent counsel of its choice regarding the meaning and legal significance of this Agreement.
5. Judicial Interpretation. This Agreement will be governed by and construed in accordance with the law of the State of New York. No presumption that the terms of a document will be more strictly construed against the party who prepared the same will be applied in construing this Agreement.
6. Construction. Paragraph headings used in this Agreement are for convenience only and will not be used to interpret any term of this Agreement.
7. Authority. Each Party executing this Agreement represents that such Party has the full authority and legal power to do so.
8. Survival. The provisions of this Agreement will survive the termination of the Discussions.
9. Non-Waiver/No Tolling. Notwithstanding anything to the contrary contained in this Agreement, nothing herein shall be deemed to waive or diminish any of the Parties' claims or defenses, or to toll any dates, deadlines or time periods contained in the Notice.
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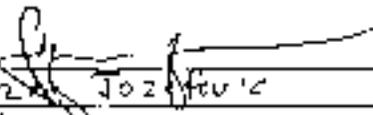


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

White Plains Health Care Properties I, LLC

By:   
Name: William A. Minicci  
Title: Manager

HBL SNF, LLC

By:   
Name: Lizeta Jozefovic  
Title: Manager

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WHITE PLAINS HEALTHCARE PROPERTIES I, L.L.C.,

Plaintiff,

– against

HBL SNF, LLC, LIZER JOZEOFVIC A/K/A LIZER  
JOZOFVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff.

– against –

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Removed from the Supreme  
Court of the State of New York,  
Westchester County

21 Civ. 9048 (PMH)

**REPLY DECLARATION OF  
WILLIAM NICHOLSON**

Pursuant to 28 U.S.C. § 1746, William A. Nicholson declares as follows:

1. I am one of the managing members of plaintiff White Plains Healthcare Properties I, L.L.C. ("WPH Properties"). I am also a third-party defendant. I submit this declaration, based upon my personal knowledge, in reply to the affidavit of Lizer Jozefovic and in further support of the motion of WPH Properties and the third-party defendants for an order granting summary judgment in favor of WPH Properties and dismissing the counterclaims and third-party claims asserted by defendants/third-party plaintiffs, HBL SNF, LLC ("HBL"), Lizer Jozefovic ("Jozefovic") and Mark Neuman ("Neuman") (collectively, "defendants").

2. The defendants' opposition to the motion for summary judgment is based on a series of demonstrably false statements, meritless claims and arguments that are immaterial to the issues before the Court. The principal issue on this motion is whether HBL defaulted under the lease. Clearly, it did, if for no other reasons than that it never provided the \$5.3 million in security it was

required to provide before it took occupancy of the premises in 2019. The accompanying declaration of our counsel, Alfred E. Donnellan, Esq., and the accompanying reply memorandum of law address the notice issues and legal issues with respect to the termination of the lease. The purpose of this declaration is to respond to the factual misstatements the defendants have made in opposition to the motion and to identify the parts of the moving papers that have already addressed those issues.

3. The lease required that HBL shall have delivered to WPH Properties "60 days prior to the anticipated Commencement Date," a security deposit consisting of \$3.7 million in cash or letter of credit, and an additional \$1.6 million from an identified bank account. Nicholson Aff. ¶ 6, Exhibit 12, Lease § 7.1(a)(ii) and (iii). There can be no dispute that HBL has never done that. There is no dispute that HBL occupies the property. HBL admits that it took occupancy of the facility on September 30, 2019. Nicholson Aff. ¶ 6, Exhibit 11, Notice to Admit, No. 1. The security deposit was due, therefore, in July 2019. It has never been paid – not even a penny. The lease defines that as a material default. Nicholson aff., Exhibit 12, Lease, Schedule 3.1, §16.1 (xxvi).

4. The defendants' argument that they satisfied their obligation to provide a security deposit by funding the \$1.6 million "RSA" and executing the documents necessary for Fensterman to become a signatory on that account is both false, as set forth in the Fensterman affidavit, misleading and immaterial. As more fully discussed in the accompanying memorandum of law, HBL's security deposit obligation was not satisfied by depositing \$1.6 million in its own account, regardless of who could sign on that account. The funds were required to be deposited into WPH Properties' tenant security account. Nicholson aff., ex. 12, § 7.1(a)(iii); Fensterman aff., ¶ 4. That

never happened and the defendants do not even claim that it did. In addition, the lease required HBL to post an additional \$3.7 million in security in cash or letter of credit. Nicholson aff, ex. 12, § 7.1(a)(ii). Again, that never happened and the defendants do not even claim that it did. They simply ignore that obligation, and their undisputed default of it.

5. Jozefovic's lengthy discussion of the history of this project, presumably intended to divert the Court's attention from the undisputed evidence that HBL breached the lease by failing to provide the security deposit, is likewise false and immaterial. WPH Properties is not, and has never been, in default of any of its obligations under any of its agreements with the defendants. My affidavit in support of the motion addresses all of Jozefovic's claims in that regard. Nicholson Aff. ¶¶ 11-13, 40-41.

6. WPH Properties did not finish construction late or overbudget. As fully explained in my affidavit, and contrary to the assertions made by Jozefovic, Jozefovic aff., ¶¶ 28-30, the development agreement did not require that the building be substantially completed within 20 months. Nicholson aff., ex. 40. Jozefovic's allegation that "White Plains failed to complete the Facility on schedule" Jozefovic aff., ¶ 28 is therefore without any basis. Nicholson aff., ¶ 40.

7. Jozefovic's baseless claim that there were "cost overruns" on the project, Jozefovic aff., ¶¶ 49-50, is belied by the development agreement, in which HBL "acknowledge[d] and agree[d]" that "the actual total cost of the Project ("Project Cost") as of the date hereof [November 20, 2015] is approximately \$60.0 million, is not possible to exactly ascertain as of the date of this Agreement due to circumstances beyond the control of all parties to this Agreement and is projected to be greater than the Approved Project Cost." Nicholson aff., ¶ 45 & ex. 13. Article IV(A).

8. Jozefovic apparently relies on the application filed with the New York State Department of Health stating a total project cost as a basis for its claim of alleged cost overruns. Jozefovic aff., ¶ 17. But HBL, not WPH Properties, was responsible to “file and diligently pursue with DOH all applications required to increase the Approved Project Cost such that it then equals the best estimate of the Project Cost.” Nicholson aff., ¶ 45 & ex. 13, Article IV(A).

9. In any event, even if there were cost overruns on the project, those costs are irrelevant. Any cost overruns would have no effect on HBL or the lease. HBL is not a partner in the ownership of the property. HBL would incur no additional cost or any increased rent and certainly don't excuse HBL from paying the security deposit or from their other defaults under the lease.

10. Jozefovic alleges that “[o]n April 18, 2016, NYSDOH notified White Plains that it considered the Facility an ‘abandoned project,’ which required White Plains to obtain a new Certificate of Need in order to proceed.” Jozefovic aff., ¶ 29. But it was HBL that was responsible for all of the approvals required from the New York State Department of Health. Nicholson aff., ex. 13, Article II(C).

11. Even if WPH Properties had defaulted in the construction of the property (which it clearly did not), however, the defendants have either waived or released that claim and therefore cannot assert a counterclaim on that basis. Nicholson aff., ¶¶ 34-39.

12. Jozefovic's claims that the terms of the amended lease were substantially different from, and less favorable to, HBL the original 2015 lease, Jozefovic aff., ¶¶ 38-39, is also irrelevant, and false. In fact, the renegotiated lease was substantially more favorable to HBL. Nicholson aff., ¶ 5. In particular, Jozefovic is just wrong or untruthful when he claims in his affidavit the development agreement provides that rent was to be paid at \$360,000 per month. The development

agreement does not even address the amount of the rent. Jozefovic aff., ¶ 21. The lease expressly obligated HBL to pay WPH Properties annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 and other amounts which are defined as "Additional Rent." Tabor aff., ¶ 7; Nicholson aff., Exhibit 12, Lease, § 3.2.

13. It is true that WPH Properties has "accepted millions in rent payments." Def't's Memo of Law at 1. WPH Properties accepted that rent because HBL owed it millions of dollars in rent. And it owes millions more. The lease provides that if HBL holds over after its default has resulted in the termination of the lease, HBL is a month-to-month tenant obligated to pay rent monthly at a rent equal to 300 percent of the most recent monthly rent payable by HBL under the lease. Tabor aff. ¶ 12; Nicholson aff., Exhibit 12, Lease, § 20.13. Although HBL has paid base rent since the lease was terminated, it has never paid holdover rent, as the lease requires. In addition, the lease provides that upon the occurrence of a default by HBL, WPH Properties may accelerate the payment of all rent due for the balance of the term and declare the rent presently due and payable in full, requiring HBL to pay to WPH Properties the present value of the accelerated Rent, Tabor aff., ¶ 15; Nicholson aff., Exhibit 12, Lease, § 16.1. In the notice of default, WPH Properties terminated the lease and accelerated the rent and declared all of the rent under the lease immediately due and owing. Tabor aff., ¶¶ 14-16 & Exhibit 26, Notice of Default. HBL has not paid any of the accelerated rent that is due and owing. Tabor aff., ¶ 16, ex. 27; Donnellan aff., Exhibit 11, Notice to Admit, no. 7. The present value of the accelerated lease payments that HBL is obligated to pay WPH Properties is \$82,369,770, Tabor aff., ¶ 16 & Exhibit. 27.

14. Jozefovic's claims with respect to the November 20, 2019 letter of intent are equally baseless. As fully explained in the Nicholson affidavit, the \$2.2 million paid by HBL under the

letter of intent was not in payment of any of HBL's obligations under the lease. It was a non-refundable payment for the purchase of the facility. Nicholson aff., ¶ 32. HBL breached the letter of intent in a number of ways and therefore is not entitled to a return of the \$2.2 million, which, again, was non-refundable in any event. Nicholson aff., ¶ 32.

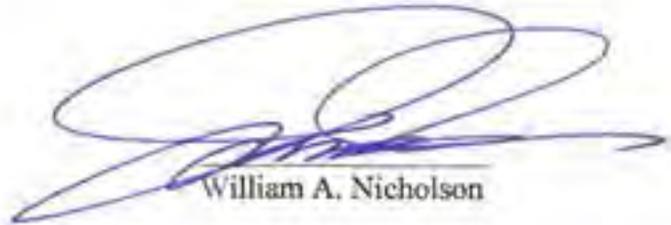
15. The defendants' claims based on the 2015 term sheet are similarly without merit. Jozefovic aff., ¶¶ 23-26; 58-59. As my earlier affidavit explains, the merger clause contained in the 2017 lease precludes reliance on prior agreements. Nicholson aff., ¶ 44. The term sheet was not, in any event, a binding agreement. By its express terms, it was intended only to "clarify the information shared at the meeting of 4/22/2015." Nicholson aff., ¶ 44.

16. Further, and also contrary to Jozefovic's claim, Jozefovic aff., ¶¶ 31-35, 51, HBL cannot assert a claim based on WPH Properties' failure to obtain permanent financing or financing in particular amounts or terms because, in the letter of intent, HBL waived "any claims by the Tenant that the Landlord is or ever was required to deliver a mortgage of any particular amount, terms, amortization or interest rate, for Medicaid rate setting or any other purpose" and "any claims related to the Cost Certification." Nicholson aff., ex. 17, ¶ 8. WPH Properties would have obtained permanent financing long before its construction loan was due if HBL had not continually and repeatedly defaulted and refused or failed to cure those defaults. Nicholson aff., ¶ 42. Finally, the costs incurred by WPH Properties as a result of its inability to obtain permanent financing have not been passed along to HBL. Nicholson aff., ¶ 43.

17. There is, in short, nothing in the Jozefovic affidavit or in any of the other arguments the defendants have made that even raises a triable issue of fact with respect to HBL's defaults under the lease, the defendants' liability for those defaults or any affirmative defense or

counterclaim the defendants' have raised. WPH Properties and the counterclaim defendants are, therefore, entitled to summary judgment.

Dated: Danvers, Massachusetts  
November 5, 2021



William A. Nicholson

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WHITE PLAINS HEALTHCARE PROPERTIES I, L.L.C.,

Plaintiff,

- against -

HBL SNF, LLC, LIZER JOZEFOVIC AKA LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

- against -

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON.

Third-Party Defendants.

Removed from the Supreme  
Court of the State of New York,  
Westchester County

21 Civ. 9048 (PMH)

**REPLY DECLARATION OF  
EDWARD O. TABOR**

Pursuant to 28 U.S.C. § 1746, Edward O. Tabor declares as follows:

1. I am the Chief Financial Officer of third-party defendant The Congress Companies, which provides management and other services to its affiliate, plaintiff White Plains Healthcare Properties I, L.L.C. ("WPH Properties"). I submit this declaration in further support of the motion of WPH Properties for summary judgment and to dismiss the counterclaims and third-party claims asserted by defendants third-party plaintiffs, HBL SNF, LLC ("HBL"), Lizer Jozefovic ("Jozefovic") and Mark Neuman (collectively, the "defendants"). I am fully and personally familiar with the matters stated in this declaration.

2. The defendants' assertions that HBL did not default under the lease are incorrect and completely unsupported by the evidence.

3. First, contrary to the defendants' claims, HBL defaulted under the lease by failing to pay the required security deposits. The basis for the defendants' default is fully set forth in the

memorandum of law by plaintiffs and third-party defendants in support of their motion for summary judgment dated August 18, 2021 (the "Pl. br." or the "Plaintiffs' brief"). The lease expressly defines the failure to provide the security deposit as a material breach of the lease. Affidavit of William A. Nicholson dated August 18, 2021 (the "Nicholson aff."), ex. 12, Schedule 3.1, §16.1(xxvi). The failure to provide the required security deposits alone is a material default under the lease. Pl. br., at 6.

4. Second, the lease obligated HBL to pay an annual fixed rent of \$6,073,158 in monthly installments of \$506,096.50 and other amounts that are defined as "Additional Rent." Nicholson aff., ex. 12, § 3.2. The defendants' claim that HBL timely paid the required rent every month, Affidavit of Lizer Jozefovic dated October 25, 2021 (the "Jozefovic aff." or "Jozefovic affidavit"), ¶ 66, is false. The Jozefovic affidavit attaches a copy of wire transfer records for the time period November 18, 2019 through September 2020 showing HBL's fixed rent payments. Jozefovic aff., ex. K. The wire transfer records do nothing more than corroborate WPH Properties' records detailing the amounts due for rent and the payments received. Affidavit of Edward O. Tabor dated August 18, 2021, ex. 25. In particular, the wire transfer records attached to the Jozefovic affidavit confirm that HBL defaulted by paying fixed rent late every month from November 18, 2019 through September 4, 2020, except February 2020 and July 2020. That is fully consistent what is shown in the records attached to the Tabor affidavit. Tabor affidavit, ex. 25.

5. The records attached to the Tabor affidavit also indicate that HBL defaulted by paying rent late in every month from October 2020 through July 2021, except May 2021. Tabor aff., ex. 25. The defendants have offered no evidence disputing that.

6. Third, while the defendants do not contest that HBL continues to occupy the facility, HBL has failed to pay holdover rent due after termination of the lease from February 1, 2020

through the current date. Tabor aff., ¶ 13 & ex. 12. In opposition to the motion, the defendants have failed to submit any evidence showing payment of the holdover rent. The defendants only purported defense to the holdover rent is that the lease has not been terminated. Pl. br., at 6-7. That is false, for the reasons stated in the declaration of William Nicholson and the accompanying memorandum of law.

7. Fourth, the defendants are liable for accelerated rent, Tabor aff., ¶¶ 14-15, but have not submitted any evidence showing that HBL has paid it. In support of the motion, WPH Properties submitted a chart showing the amount of the accelerated rent owed by HBL, consisting of the net present value of remaining monthly rent payments due under the lease discounted at a rate of six percent per year. Tabor aff., ¶ 16 & ex. 27. The defendants assert, falsely, only that the accelerated rent is not owed because the lease has not been terminated. And defendants have not submitted any evidence disputing WPH Properties' calculation of the accelerated rent. Pl. br., at 6-7.

8. Fifth, the lease obligates HBL to pay, before penalties are incurred, all real estate taxes, assessments and other taxes. Nicholson aff., ex. 12, § 4.2. My earlier affidavit correctly states that HBL had failed to timely pay real estate taxes for fiscal year 2020 (December 2019 through June 2020). Tabor aff., ¶ 31 & ex. 38. Jozefovic asserts in his affidavit that "HBL has paid all applicable real estate taxes for the Facility," but relies on a tax bill and check showing the payment of real estate taxes for *the 2021 fiscal year* (July 1, 2020 through December 31, 2020). These documents are for a completely different time period and do not refute in any way WPH Properties' claim that HBL failed timely to pay real estate taxes for the 2020 fiscal year.

9. Sixth, as stated in the Tabor affidavit, HBL defaulted under the lease by failing to pay utility charges to Con Edison and failing to pay utility deposits and municipal maintenance

escrows totaling \$71,472.69. WPH Properties has been reimbursed for a portion of the deposits in the amount of \$41,175.00 and, therefore HBL, is obligated to pay WPH Properties \$35,921.44. Tabor aff., ¶ 32 & ex. 33. The Jozefovic affidavit alleges that HBL has paid all applicable utility charges and deposits and municipal maintenance escrows. Jozefovic aff., ¶ 94. The Jozefovic affidavit attaches *unpaid Con Edison* bills from December 2019, but the defendants have submitted no evidence to support their conclusory claim that these or any other utility charges, deposits and municipal maintenance escrows have been paid. Jozefovic aff., ex. M

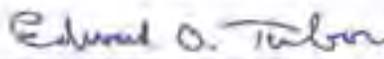
10. Seventh, HBL is required by the lease to deliver certificates of insurance showing that each type of insurance required under Article VI of the lease is in full force and effect and not cancelable or modifiable without thirty (30) days prior written notice to WPH Properties. Tabor aff., ¶ 33; Nicholson aff., ex. 12, § 6.2. HBL failed to provide any certificates of insurance until January 2020 and July 2020. Tabor aff., ¶ 32 & ex. 39. My earlier affidavit sets forth a detailed itemization of the deficiencies in these insurance certificates with reference to the lease requirements. Tabor aff., ex. 40. The Jozefovic affidavit alleges in conclusory fashion that HBL has "maintained the necessary types and amounts of insurance for the Facility" and purports to attach copies of the certificates of insurance. Jozefovic aff., ¶ 97 & ex. N. But the documents attached to the Jozefovic affidavit are not certificates of insurance at all. They consist of a provider agreement and a rate schedule. The defendants have therefore offered nothing whatever to rebut the evidence in the Tabor affidavit that the insurance certificates – which HBL provided to WPH Properties late – comply with the requirements of the lease.

11. Eighth, the lease requires HBL to deliver to WPH Properties all Medicare, Medicaid and other provider agreements, reimbursement rate sheets and updated rate sheets. Tabor aff., ¶ 35; Nicholson aff., ex. 12, § 7.4(g) & (j). The Jozefovic affidavit alleges that HBL "has delivered"

the necessary provider agreements and rate sheets, Jozefovic aff., ¶ 98, and attaches the provider agreement for a Medicare Advantage program with Oscar Insurance Corp. (the "Oscar Insurance provider agreement") setting forth the rates for that plan and a document listing the Medicaid rates the New York State Medicaid program (the "NYS Medicaid Rates"). Jozefovic aff., exs. N & O. *These documents were never previously provided to WPH Properties.* Even assuming for the sake of argument that these are the only programs offered at the White Plains facility, providing WPH Properties with the provider agreements and rate sheets required under the lease in response to this motion, almost two years after HBL took occupancy of the facility, does not come close to complying with HBL's obligations under the lease and is clear evidence of the defendants' bad faith.

12. Ninth, HBL defaulted under the lease by failing to provide WPH Properties with the required financial and operational reporting. Tabor aff. ¶¶ 37-39 The Jozefovic affidavit asserts that HBL has delivered the financial and operational reporting required under the lease and purports to attach that reporting as exhibit O. Jozefovic aff., ¶ 98 & ex. O. But exhibit O consists only of the Oscar Insurance provider agreement and the NYS Medicaid Rates. It does not include any of the other financial and operational reporting required under the lease. Tabor aff., ¶ 37-39.

Dated: Peabody, Massachusetts  
November 5, 2021

  
Edward O. Tabor

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WHITE PLAINS HEALTHCARE PROPERTIES I, LLC,

Plaintiff,

– against –

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER  
JOZOFOVIC and MARK NEUMAN,

Defendants and Third-Party Plaintiff,

– against –

CCC EQUITIES, LLC, PROJECT EQUITY  
CONSULTING, THE CONGRESS COMPANIES,  
HOWARD FENSTERMAN, and WILLIAM  
NICHOLSON,

Third-Party Defendants.

Removed from the Supreme  
Court of the State of New York,  
Westchester County

21 Civ. 9048 (PMH)

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**REPLY MEMORANDUM OF LAW BY PLAINTIFF AND THIRD-  
PARTY DEFENDANTS IN FURTHER SUPPORT OF THEIR  
MOTION FOR SUMMARY JUDGMENT**

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– and –

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– and –

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**PRELIMINARY STATEMENT**

Plaintiff WPH Properties and the third-party defendants, by their attorneys, Binder & Schwartz and DelBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP and Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, respectfully submit this reply memorandum in further support of their motion for summary judgment for the relief demanded in the complaint against defendants Lizer Jozefovic and Mark Neuman.<sup>1</sup>

**ARGUMENT**

**I**

**WPH Properties properly terminated the lease based on HBL's material breach, including its failure to pay the required security deposit**

WPH Properties terminated the lease because, among other things, HBL materially breached the lease by failing to pay the \$5.3 million security deposit the lease required. WPH Properties satisfied all of the legal requirements for terminating the lease. The defendants' argument that notice of termination was ineffective is meritless, given that notice was indisputably delivered by an attorney known by the tenant to represent the landlord. HBL's claim that WPH Properties waived the defaults is similarly baseless, since, under settled New York case law, a landlord's receipt of post-default rent payments is not a waiver. Further, the lease expressly provides that WPH Properties does not waive its right to enforce the lease terms. And the defendants "unjust enrichment" argument is simply frivolous.

---

<sup>1</sup> The affidavit of Lizer Jozefovic in opposition dated October 25, 2021 states that Jozefovic submits his affidavit in opposition to the motion and in support of defendants' cross-motion to strike WPH Properties' notice to admit dated June 2, 2021. However, defendants have not filed or served any notice of cross-motion. WPH Properties and third-party defendants nevertheless also submit this memorandum of law in opposition to the procedurally defective cross-motion.

**A. HBL does not dispute that it materially breached the lease by failing to pay the security deposit.**

HBL materially breached the lease by failing to post the \$5.3 million security deposit. The lease requires that HBL deliver to WPH Properties “60 days prior to the anticipated Commencement Date,” (i) a security deposit consisting of \$3.7 million in cash or letter of credit and (ii) an additional \$1.6 million from an identified bank account. Nicholson aff, ex. 12, § 7.1(a)(ii). HBL admits that it took occupancy of the facility on September 30, 2019. Nicholson aff, ex. 11 (notice to admit), no. 1. The security deposit was due, therefore, in July 2019. It was not delivered then and has never been delivered since. These facts are undisputed.

Failure to provide the security deposit is a material breach of the lease entitling the landlord to terminate the lease. Nicholson aff., ex. 12, Schedule 3.1, §16.1(xxvi); *see Kallen v. Kassin*, 200 A.D.2d 557, 558 (2d Dep’t 1994); *Markowitz v. Landau*, 171 A.D.2d 564, 565 (1st Dep’t 1991). Accordingly, WPH Properties had the right to terminate the lease and did terminate the lease based upon HBL’s material default for more than two years.

The defendants oppose summary judgment on the ground that HBL “complied with its obligation to deliver security deposits by funding the [rent security account] and tendering signatory authority to White Plains, which White Plains failed to complete.” Def. br., at 16. As fully explained in the affidavit of Howard Fensterman dated August 18, 2021 (the “Fensterman aff.”), however, that is false. But even if it were true, HBL did not provide Mr. Fensterman with the full authority necessary to ensure that the balance in the Waterview JPM Accounts was not reduced to below \$1.6 million. Nicholson aff., ex. 16; Fensterman aff., ¶ 3.

What is more important, and dispositive, is that the defendants do not deny that HBL failed to provide the \$3.7 million security deposit required by section 7.1(a)(iii) of the lease and that HBL

also failed (and continues to this date to refuse) to deliver the \$1.6 million Additional Security Deposit in WPH Properties' rent security deposit account as required by section 7.1(a)(ii) of the lease, a breach of both the pledge agreement and the lease. Nicholson aff., ex. 12, § 7.1(a)(iii); Fensterman aff., ¶ 4.

Instead, the defendants base their opposition on the claim that WPH Properties "has never previously demanded that HBL provide a \$3.7 million letter of credit or additional security deposits." Def. br., at 16. That is completely irrelevant and false. Notwithstanding the fact that the lease imposes no obligation on the landlord to demand the tenant's performance, WPH Properties did in fact provide numerous written requests for delivery of the security deposit.

The defendants also reassert their claim that "White Plains waived any issues regarding security deposits by choosing to accept HBL's Fixed Rent Payments," Def. br., at 16, but that is wrong as a matter of law for the reasons that are discussed below.

**B. HBL has materially breached the lease in numerous other respects.**

Notwithstanding the defendants' claims to the contrary, HBL has committed numerous other breaches of the lease. The Nicholson affidavit and Tabor affidavit describe those defaults in detail. The accompanying reply declaration of Edward O. Tabor dated November 5, 2021 responds to the defendants' assertions disputing HBL's defaults in paying rent, real estate taxes timely, utility charges and deposits and municipal escrows and failure to provide documents and information required under the lease.

**C. The notice of default was proper.**

The defendants' claim that the January 7, 2020 notice of default is somehow defective because it "does not contain the same claims that White Plains currently alleges," Def. br., at 17, is unadulterated fantasy. The notice of default details each and every default under the lease

upon which WPH Properties relies in this motion. *Compare* Nicholson aff., ex. 26 with Pl. br., at 2-7.

HBL's assertion that the notice of default was "fatally flawed" because the "decision to serve the Notice of Default via an unauthorized and unknown attorney and representative makes the Notice of Default a nullity," Def. br., at 17-18, is a silly and completely baseless argument. The notice of default was signed by Alfred Donnellan, WPH Properties' counsel and WPH Properties' authorized representative, Joshua Roccapiore, with whom Jozefovic and his staff dealt with on a regular basis during the construction of the facility. Donnellan Aff., ¶ 4, ex. A. The notice of default begins by stating that "[w]e are the attorneys for your landlord, White Plains Healthcare Properties I, LLC." Nicholson aff., ex. 26. An attorney is an agent for his client, authorized to act on the client's behalf. *See Tredwall v. Doncourt*, 18 App. Div. 219 (2d Dep't 1897); *Kuris v. Kuris*, No. 46317/07S, 2009 WL 1194548, \*5 (Sup. Ct., Kings Cty. April 28, 2009).

*Siegel v. Kentucky Fried Chicken of Long Is., Inc.*, 108 A.D.2d 218, 221 (2d Dep't 1985), *aff'd*, 67 N.Y.2d 792 (1986), upon which the defendants rely, is not to the contrary. As the Appellate Division, Second Department, has subsequently noted:

Siegel is limited to the 'factual peculiarities' of the lease in that case. The lease in *Siegel* . . . designated certain rights that were to be exercised by "the 'Landlord or Landlord's agent[ ]'" and designated the landlord's attorney by name, while the three-day forfeiture notice that was the subject of that dispute was sent by another attorney, who was unknown to the tenant.

*QP III 143 45 Sanford Avenue, LLC v. Spinner*, 108 A.D.3d 558, 559 (2d Dep't 2013).

Here, HBL was fully aware prior to the January 7, 2020 notice of default that Mr. Donnellan was counsel to WPH Properties and had extensive dealings with him, including numerous in person meetings at Mr. Donnellan's office attended by Jozefovic and Neuman. Reply declaration of Alfred E. Donnellan dated November 5, 2021 (the "Donnellan reply decl."), ¶¶ 3-7.

Under these circumstances, courts have routinely enforced a landlord's rights under a lease as communicated to the tenant by the landlord's counsel. *See Liberty Diner v. 2635 Food Corp.*, 264 A.D.2d 439, 440 (2d Dep't 1999) (landlord effectively terminated the subject lease through its demand for rent sent by its attorney to the attorney for the tenant, stating that the "attorney representing [the landlord] was named in the lease and was known to [the tenant] by virtue of communications the attorney had with [the tenant] regarding the lease."); *Prime Realty Holdings Co. v. Alpine Group, Inc.*, 225 A.D.2d 533, 534 (2d Dep't 1996) ("The record amply supports the Supreme Court's determination that the plaintiff was aware, at the time it received the notice of cancellation, that the defendant's attorney was authorized to act as its agent in matters concerning the leased premises."); *Owego Properties v. Campfield*, 182 A.D.2d 1058, 1059 (3d Dep't 1992) (Rejecting the tenant's claim that a notice to cure signed by the landlord's agent was ineffective on the grounds that it did not include an authorization and was not signed the by landlord or the agent identified in the lease and stating that "[t]he record amply demonstrates that respondent knew at the time he received the notice to cure that Sarkisian was authorized to act as petitioner's agent.").

**D. WPH Properties' loan agreement with Security Benefit does not prohibit WPH Properties from terminating HBL's lease.**

The fact that WPH Properties' loan agreement with its construction lender, Security Benefit Corporation ("Security Benefit"), provides that the lease would not be terminated without Security Benefit's consent does not somehow prohibit WPH Properties from terminating the lease because of HBL's defaults. Def. br. at 10-11; *see also* *Jozefovic* aff., ex. F, § 3.5(vi). The tenant, HBL, is not a party to the loan agreement, nor are any of the other defendants. The loan agreement provides that "[t]he Loan Documents are for the sole benefit of Lender and Borrower and are not for the benefit of any third party." *Jozefovic* aff., ex. F, § 7.3. Nor do the loan agreement and the lease

“constitute an integrated agreement with both White Plains and HBL bound to the terms of the Loan Agreement.” Def. br., at 10. The loan agreement is between WPH Properties and Security Benefit and is dated August 18, 2017. Jozefovic aff., ex. F. The parties to the lease are WPH Properties and HBL. The original lease is dated 2015 and the (amended) lease that is currently in effect is dated November 19, 2019. Nicholson aff., exs. 12, 35. As a matter of law, agreements between different parties executed years apart are not integrated agreements. *See Rudman v. Cowles Communications*, 30 N.Y.2d 1, 13 (1972) (“Recognizing that the agreements involved formally different parties, and actually executed on different dates . . . the conclusion of separateness becomes all but inescapable.”).

**E. WPH Properties did not waive any of HBL’s material breaches of the lease.**

HBL’s argument that WPH Properties waived its right to enforce the terms of the lease by attempting to work with HBL to resolve its defaults has no basis in law or fact. The express provisions of the lease foreclose the defendants’ argument that there was an implied waiver of the lease defaults. The lease provides that:

Neither any failure nor any delay on the part of any party hereto in insisting upon strict performance of any term condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or any other document or instrument entered into or delivered in connection herewith or pursuant hereto, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. . . .

Nicholson aff., ex. 12, § 20.3. And section 20.2 of the lease forecloses implied waivers by conduct by requiring that any waiver be in writing. Nicholson aff., ex. 12, § 20.2 (“No waiver shall be effective unless set forth in writing and signed by the party against whom such waiver is asserted.”). New York courts have routinely enforced nonwaiver clauses contained in leases. *See Jefpaul Garage Corp. v. Presbyterian Hosp.*, 61 N.Y.2d 442, 446 (1984); *Luna Park Housing*

*Corp. v. Besser*, 38 A.D.2d 613, 714 (2d Dep't 1972).

Nor did WPH Properties waive any of its rights under the lease by entering into the letter of intent. The parties entered into the letter of intent when HBL defaulted within weeks of taking possession. Its purpose was to resolve HBL's defaults without terminating the lease. *Nicholson aff.*, ¶¶ 19-21. The letter of intent expressly provides that "[t]he parties shall remain as Landlord and Tenant pursuant to the existing Lease until such time as the Transaction closes." Ex. 17, ¶ 1(h). It thus requires HBL to comply with all of the terms of the lease, except insofar as they had been modified by the letter of intent. And while the letter of intent does include a waiver provision, that provision provides only for waivers by the tenant, HBL, not by WPH Properties. Ex. 17, ¶ 8. These terms preclude any finding that WPH Properties abandoned a known right, which is essential to a waiver. *See Beacon Terminal Corp. v. Chemprene, Inc.*, 75 A.D.2d 350, 355-56 (2d Dep't 1980) (quoting *Alsens American. Portland Cement Works v. Degnon Contracting. Co.*, 222 N.Y. 34, 37 (1917)). WPH Properties' decision to postpone declaring a default under the lease to allow the parties time to attempt to resolve HBL's default was not a waiver.

Additionally, the parties entered into a pre-negotiation agreement which expressly provides that:

The Parties agree that neither party will incur any obligation or liability or waive any rights, remedies, claims and/or defenses by virtue of the commencement, continuance or termination of the Discussions, or the passage of time associated with the Discussions unless and until a Settlement Agreement is executed and delivered by the Parties, and then only to the extent provided in the Settlement Agreement.

Donnellan reply decl., ex. C.

Finally, as a matter of law, WPH Properties' post-default acceptance of rent did not waive HBL's defaults. *See Sullivan v. Brevard Associates*, 66 N.Y.2d 489, 495 (1985); *Georgetown*

*Unsold Shares, LLC v. Ledet*, 130 A.D.3d 160, 163-164 (2d Dep’t 2015). In any event section 20.2 of the Lease expressly requires that any waiver be in writing. The defendants do not, and cannot possibly, claim that WPH Properties agreed in writing to waive the default under the lease in exchange for HBL’s rent payments.

**F. HBL cannot salvage its lease by claiming unjust enrichment.**

The defendants claim that WPH Properties will be “unjustly enriched” if their summary judgment motion is granted because HBL has added “value to the facility,” Def. br., at 13. HBL does not plead unjust enrichment as a defense. In order to state an unjust enrichment claim, “[w]hat is required, generally, is that a party hold property ‘under such circumstances that in equity and good conscience he ought not to retain it.’” *Alan B. Greenfield, M.D., P.C. v. Long Beach Imaging Holdings, LLC*, 114 A.D.3d 888, 889 (2d Dep’t 2014). HBL is not in that position. HBL was a tenant under the lease that defaulted. Its right are defined by the lease.

WPH Properties seeks in this motion to do nothing more than recover the damages it has sustained on account of HBL’s breaches, including the amounts provided for under the lease when the tenant defaults. The defendants’ claim that compensating WPH Properties for its damages and the amounts provided for under the lease for HBL’s default would result in “unjustly enrichment” is absurd.

**II**

**HBL is liable for holdover rent and accelerated rent**

The provisions of the lease requiring the payment of accelerated and holdover rent are fully enforceable. See *Fifty States Management Corp. v. Pioneer Auto Parts, Inc.*, 46 N.Y.2d 573, 577 (1979) (accelerated rent); *Sebring, LLC v. Elegence Restaurant Furniture Corp.*, 188

A.D.3d 744, 746 (2d Dep’t 2020) (holdover rent). The only basis on which the defendants assert that HBL is not liable for accelerated or holdover rent is that “White Plains does not have the right to terminate the Amended Lease because it failed to obtain Security Benefit’s prior consent, and White Plains waived its right to enforce the Amended Lease by choosing to accept HBL’s Fixed Rent Payments each month without protest.” Def. br., at 17. As previously argued, that is wrong. *See* pages 1-5, *supra*.

### III

#### **WPH Properties is entitled to judgment for breach of the letter of intent**

HBL breached the letter of intent within ten days of signing it by failing to provide the first \$1 million in security. Nicholson aff., ¶ 21; Tabor aff., ¶ 18. HBL’s material breach in providing the first \$1 million of the security deposit released WPH Properties of its obligations under the letter of intent, including its obligations with respect to the FF&E. *See J. Petrocelli Construction, Inc. v. Realm Electrical Contractors, Inc.*, 15 A.D.3d 444, 446 (2d Dep’t 2005) (“[o]nce it becomes clear that one party will not live up to the contract, the aggrieved party is relieved from the performance of futile acts, such as conditions precedent”); *U.W. Marx, Inc. v. Koko Contracting, Inc.*, 124 A.D.3d 1121, 1122-23 (3d Dep’t 2015).

HBL is also mistaken in its claim that the letter of intent is not enforceable because the closing under the letter of intent did not occur by April 20, 2020, Def. br., at 20-21. Because HBL caused the failure to close the transaction by April 20, 2020 by breaching the letter of intent, it cannot take advantage of the closing date requirement as a basis for avoiding its obligations. *A.H.A. Gen. Const., Inc. v. New York City Hous. Auth.*, 92 N.Y.2d 20, 31 (1998) (“[A] party to a contract “cannot rely on the failure of another to perform a condition precedent where he has frustrated or

prevented the occurrence of the condition.”) (citations and quotation marks omitted); *see also* *Center for Specialty Care, Inc. v. CSC Acquisition I, LLC*, 185 A.D.3d 34, 42 (1st Dep’t 2020); *Coby Elecs. Co., Ltd. v. Toshiba Corp.*, 108 A.D.3d 419, 420 (1st Dep’t 2012), *aff’d as modified*, 108 A.D.3d 419 (2013) (“A party to a contract cannot rely on the failure of another to perform a condition precedent where he has frustrated or prevented the occurrence of the condition”).

#### IV

##### **The defendants’ affirmative defenses and counterclaims should be dismissed**

##### **A. The defendants’ opposition to the motion fails to address the evidence defeating their affirmative defenses.**

In response to WPH Properties detailed recitation of the evidence warranting dismissal of the defendants’ affirmative defenses, the defendants do nothing more than rehash those defenses, in conclusory fashion without addressing the substance of WPH Properties’ evidence. Def. br., at 19-20. The defendants’ conclusory arguments change nothing. As fully set forth in the Nicholson affidavit, the affirmative defenses should be dismissed. Nicholson aff., ¶¶ 22-27.

##### **B. HBL released its claims against WPH Properties when it signed the lease.**

When it executed the lease, HBL “RELEASE[D] LANDLORD FROM ALL CLAIMS WHICH TENANT OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MANAGER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTING ON TENANT’S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH TENANT ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE LEASED PREMISES, INCLUDING THE INFORMATION AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS.” Lease ¶ 5.6. All of the claims made by the defendants here

against WPH Properties concern the development, construction and financing of the facility. The claims therefore all “arise from or are related to or in connection with” the facility, and necessarily fall within the scope of the release. Pl. br., at 9-11.

In response, the defendants argue that section 5.6(b) is ineffective because it is “broad” and “does not reference HBL’s specific claims.” Def. br., at 21. Whether the release is operative here depends whether the plain language of the release covers the subject matter, not on whether the release is “broad” or whether it “references specific claims.” *Rivera v. Wycoff Heights Medical Center*, 113 A.D.3d 667, 670-71 (2d Dep’t 2014) *Morales v. Solomon Mgt. Co., LLC*, 38 A.D.3d 381 (1st Dep’t 2007), upon which the defendants rely, Def. br., at 21, is completely inapposite. In *Morales*, the Appellate Division First Department simply held that the release at issue there, by its terms, covered only a 1998 accident, not an earlier 1997 incident. *Id.* at 382.

**C. The defendants’ remaining counterclaims have no merit.**

The defendants are not entitled to an accounting because there was no fiduciary relationship between the defendants and WPH Properties. HBL and WPH Properties were parties to a conventional business transaction, nothing more. That does not give rise to a fiduciary relationship. *Schonfeld v. Thompson*, 243 A.D.2d 343, 343 (1st Dep’t 1997); *see also* Pl. br. at 13-14.

The \$2,200,000 disbursement to WPH Properties was not a loan. Although the term sheet states that the “\$2,200,000.00 disbursement to WPHCP is to be characterized as a noninterest bearing loan,” the development agreement provides that it is an advance payment against HBL’s obligation to pay for furniture, fixtures and equipment. And even if it was a loan, it was a non interest bearing one, so the defendants have no claim for interest. Pl. br., at 14-15.

The third counterclaim against WPH Properties for breach of the development agreement and lease must be dismissed solely on the basis of the release. But even without the release, it must

be dismissed because it fails to state a cause of action. Pl. br., at 15-17;

The defendants' claim based on alleged fraudulent misrepresentations as against WPH Properties have been released and, as against the third-party defendants, those claims are neither meritorious nor viable for a number of reasons. Pl. br., at 17-21.

The defendants' counterclaim claim based on alleged "bad faith" is not viable because there is no cause of action for "bad faith" in itself. The "bad faith" claim is also based on the same alleged facts and circumstances and is also duplicative of the breach of contract claim. Pl. br., at 22. In their opposition brief, the defendants claim that WPH Properties has "unclean hands," Def. br., at 24, but the defendants have asserted no counterclaims based on "unclean hands," nor would such a claim be cognizable.

## V

### **The defendants are bound by their default in responding to the notice to admit**

The defendants do not dispute that the notice to admit was served on June 2, 2021 and they have not responded to it in any manner whatever during the almost five months since then. *Donnellan aff.*, ¶¶ 19 and ex. 11, 20. By ignoring and failing to respond to the notice to admit, the defendants have admitted each of the facts that are the subject of the notice to admit. Affirmation of Alfred E. Donnellan dated November 5, 2021, ¶¶ 19-21; *see also* CPLR 3123(a).

The notice to admit is entirely proper. The notice to admit here did not request that defendants admit ultimate issue in this case (whether the defendants had defaulted under the lease). It sought admissions concerning facts that are relevant to that determination. That is fully consistent with use of a notice to admit to dispose of questions of fact "that are easily provable." *Meadowbrook-Richman, Inc. v. Cicchiello*, 273 A.D.2d 6, 6 (2d Dep't 2000).

## VI

### **The motion for summary judgment is not premature.**

In order to avoid summary judgment by relying on CPLR 3212(f), the non-moving party must establish “from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated.” The only affidavit the defendants submitted in opposition to the motion for summary judgment was the affidavit of Lizer Jozefovic sworn to October 25, 2021. That affidavit does not articulate any evidentiary basis for the need for discovery. It only states, in conclusory terms, that HBL claims a need for certain documents and depositions without articulating any reason why that information is necessary. “A determination of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence.” *Ruttura & Sons Const. Co. v. J. Petrocelli Const., Inc.*, 257 A.D.2d 614, 615 (1999). And to the extent that the defendants seek an accounting, they run into the same problem as their cause of action for an accounting – there is no fiduciary relationship or other basis here for an accounting.

**CONCLUSION**

For all of these reasons, WPH Properties and third-party defendants respectfully request summary judgment against HBL, Jozefovic and Neuman in the amount of \$111,420,213.50 and judgment dismissing the claims asserted by the defendants.

Respectfully submitted,

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Dated: White Plains, New York  
November 5, 2021

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

WHITE PLAINS HEALTHCARE PROPERTIES I, :  
LLC, :

Plaintiff, :

-against- :

HBL SNF, LLC, LIZER JOZEFOVIC A/K/A LIZER :  
JOZOFOVIC, and MARK NEUMAN, :

Defendants and Third-Party Plaintiffs, :

-against- :

CCC EQUITIES, LLC, PROJECT EQUITY :  
CONSULTING, THE CONGRESS COMPANIES, :  
HOWARD FENSTERMAN, WILLIAM :  
NICHOLSON, and METROPOLITAN :  
COMMERCIAL BANK :

Third-Party Defendants

-----X

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, the undersigned attorneys of record for HBL SNF, LLC, certify that HBL SNF, LLC is a non-governmental entity and no publicly held corporation owns ten percent (10%) or more of the membership interests in HBL SNF, LLC.

Dated: New York, New York  
November 5, 2021

Klestadt Winters Jureller Southard &  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC# 1  
DATE FILED: 2-10-2012

12 MISC 00032

In the Matter of:

Standing Order of Reference  
Re: Title 11

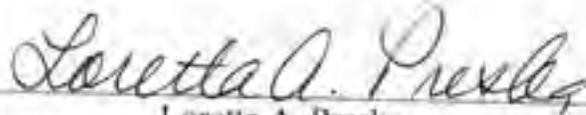
AMENDED  
STANDING ORDER  
OF REFERENCE

M10-468

Pursuant to 28 U.S.C. Section 157(a) any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 are referred to the bankruptcy judges for this district.

If a bankruptcy judge or district judge determines that entry of a final order or judgment by a bankruptcy judge would not be consistent with Article III of the United States Constitution in a particular proceeding referred under this order and determined to be a core matter, the bankruptcy judge shall, unless otherwise ordered by the district court, hear the proceeding and submit proposed findings of fact and conclusions of law to the district court. The district court may treat any order of the bankruptcy court as proposed findings of fact and conclusions of law in the event the district court concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III of the United States Constitution.

SO ORDERED,



Loretta A. Preska  
Chief Judge

Dated: New York, New York  
January 31, 2012

**U.S. District Court**  
**Southern District of New York (White Plains)**  
**CIVIL DOCKET FOR CASE #: 7:21-cv-09048-PMH**  
**Internal Use Only**

White Plains Healthcare Properties I, LLC v. HBL SNF LLC et  
al  
Assigned to: Judge Philip M. Halpern  
Cause: 28:1446nr Notice of Removal

Date Filed: 11/03/2021  
Date Terminated: 11/08/2021  
Jury Demand: None  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Federal Question

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**Defendant**

**Lizer Jozefovic**

*also known as*

Lizer Jozofovic

**Defendant**

**Mark Neuman**

V.

**Consolidated Defendant**

**Metropolitan Commercial Bank**

**ThirdParty Plaintiff**

**HBL SNF LLC**

represented by **Brendan Michael Scott**  
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*ATTORNEY TO BE NOTICED*

**ThirdParty Plaintiff**

**Lizer Jozefovic**

*also known as*

Lizer Jozofovic

**ThirdParty Plaintiff**

**Mark Neuman**

V.

**ThirdParty Defendant**

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**Robert A Spolzino**  
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*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
11/03/2021	<a href="#">1</a>	<b>FILING ERROR - DEFICIENT PLEADING - SIGNATURE ERROR -</b> NOTICE OF REMOVAL from Supreme Court, State of New York, County of Westchester. Case Number: 60278/2020. (Filing Fee \$ 402.00, Receipt Number BNYSDC-25282592).Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> Exhibit State Court Docket Sheet, # <a href="#">2</a> Exhibit State Court Docket sheet, # <a href="#">3</a> Exhibit State Court Docket Sheet, # <a href="#">4</a> Exhibit State Court Docket Sheet).(Scott, Brendan) Modified on 11/4/2021 (pc). (Entered: 11/03/2021)
11/03/2021	<a href="#">2</a>	<b>FILING ERROR - DEFICIENT PLEADING - PDF ERROR - CIVIL COVER SHEET</b> filed..(Scott, Brendan) Modified on 11/4/2021 (pc). (Entered: 11/03/2021)
11/03/2021	<a href="#">3</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 1, # <a href="#">2</a> DE 2, # <a href="#">3</a> DE 3, # <a href="#">4</a> DE 4, # <a href="#">5</a> DE 5, # <a href="#">6</a> DE 6, # <a href="#">7</a> DE 7, # <a href="#">8</a> DE 8, # <a href="#">9</a> DE 9, # <a href="#">10</a> DE 10, # <a href="#">11</a> DE 11, # <a href="#">12</a> DE 12, # <a href="#">13</a> DE 13, # <a href="#">14</a> DE 14, #

		<a href="#">15</a> DE 15, # <a href="#">16</a> DE 16, # <a href="#">17</a> DE 17, # <a href="#">18</a> DE 18, # <a href="#">19</a> DE 19, # <a href="#">20</a> DE 20).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">4</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 21, # <a href="#">2</a> DE 22, # <a href="#">3</a> DE 23, # <a href="#">4</a> DE 24, # <a href="#">5</a> DE 25, # <a href="#">6</a> DE 26, # <a href="#">7</a> DE 27, # <a href="#">8</a> DE 28, # <a href="#">9</a> DE 29, # <a href="#">10</a> DE 30).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">5</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 31, # <a href="#">2</a> DE 32, # <a href="#">3</a> DE 34, # <a href="#">4</a> DE 35, # <a href="#">5</a> DE 36).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">6</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 37, # <a href="#">2</a> DE 38, # <a href="#">3</a> DE 39, # <a href="#">4</a> DE 40).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">7</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 41, # <a href="#">2</a> DE 42, # <a href="#">3</a> DE 43, # <a href="#">4</a> DE 44, # <a href="#">5</a> DE 45, # <a href="#">6</a> DE 46, # <a href="#">7</a> DE 47, # <a href="#">8</a> DE 48, # <a href="#">9</a> DE 49, # <a href="#">10</a> DE 50, # <a href="#">11</a> DE 51, # <a href="#">12</a> DE 52).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">8</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 54, # <a href="#">2</a> DE 56, # <a href="#">3</a> DE 57, # <a href="#">4</a> DE 58, # <a href="#">5</a> DE 59, # <a href="#">6</a> DE 60).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">9</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 61, # <a href="#">2</a> DE 62, # <a href="#">3</a> DE 63, # <a href="#">4</a> DE 65, # <a href="#">5</a> DE 66, # <a href="#">6</a> DE 67).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">10</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 68, # <a href="#">2</a> DE 69, # <a href="#">3</a> DE 70, # <a href="#">4</a> DE 71, # <a href="#">5</a> DE 72, # <a href="#">6</a> DE 73, # <a href="#">7</a> DE 74, # <a href="#">8</a> DE 75).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">11</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 76, # <a href="#">2</a> DE 77, # <a href="#">3</a> DE 78, # <a href="#">4</a> DE 79, # <a href="#">5</a> DE 80, # <a href="#">6</a> DE 81, # <a href="#">7</a> DE 82, # <a href="#">8</a> DE 83, # <a href="#">9</a> DE 84).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">12</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 85, # <a href="#">2</a> DE 86, # <a href="#">3</a> DE 90, # <a href="#">4</a> DE 91).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">13</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 88).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">14</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 89, # <a href="#">2</a> DE 92).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">15</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 93, # <a href="#">2</a> DE 94, # <a href="#">3</a> DE 95, # <a href="#">4</a> DE 96, # <a href="#">5</a> DE 97, # <a href="#">6</a> DE 98, # <a href="#">7</a> DE 99, # <a href="#">8</a> DE 101, # <a href="#">9</a> DE 102, # <a href="#">10</a> DE 103, # <a href="#">11</a> DE 104, # <a href="#">12</a> DE 105, # <a href="#">13</a> DE 106, # <a href="#">14</a> DE 107, # <a href="#">15</a> DE 108, # <a href="#">16</a> DE 110).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">16</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 111, # <a href="#">2</a> DE 112, # <a href="#">3</a> DE 113, # <a href="#">4</a> DE 114, # <a href="#">5</a> DE 115, # <a href="#">6</a> DE 116, # <a href="#">7</a> DE 117, # <a href="#">8</a> DE 118, # <a href="#">9</a> DE 119, # <a href="#">10</a> DE 120).(Scott, Brendan) (Entered: 11/03/2021)

11/03/2021	<a href="#">17</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 121, # <a href="#">2</a> DE 122, # <a href="#">3</a> DE 123, # <a href="#">4</a> DE 124, # <a href="#">5</a> DE 125).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">18</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 126, # <a href="#">2</a> DE 127, # <a href="#">3</a> DE 128, # <a href="#">4</a> DE 129, # <a href="#">5</a> DE 130, # <a href="#">6</a> DE 131, # <a href="#">7</a> DE 132, # <a href="#">8</a> DE 133, # <a href="#">9</a> DE 134, # <a href="#">10</a> DE 135).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">19</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 137, # <a href="#">2</a> DE 138).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">20</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 139, # <a href="#">2</a> DE 140, # <a href="#">3</a> DE 141, # <a href="#">4</a> DE 142, # <a href="#">5</a> DE 144, # <a href="#">6</a> DE 146, # <a href="#">7</a> DE 147, # <a href="#">8</a> DE 148, # <a href="#">9</a> DE 149, # <a href="#">10</a> DE 150, # <a href="#">11</a> DE 151, # <a href="#">12</a> DE 152, # <a href="#">13</a> DE 153, # <a href="#">14</a> DE 154).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">21</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 156, # <a href="#">2</a> DE 157, # <a href="#">3</a> DE 158).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">22</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 159, # <a href="#">2</a> DE 160).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">23</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 161, # <a href="#">2</a> DE 162).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">24</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 163, # <a href="#">2</a> DE 164, # <a href="#">3</a> DE 166, # <a href="#">4</a> DE 167, # <a href="#">5</a> DE 168, # <a href="#">6</a> DE 169, # <a href="#">7</a> DE 170, # <a href="#">8</a> DE 171, # <a href="#">9</a> DE 172, # <a href="#">10</a> DE 173, # <a href="#">11</a> DE 174, # <a href="#">12</a> DE 175).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">25</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 176, # <a href="#">2</a> DE 177, # <a href="#">3</a> DE 178, # <a href="#">4</a> DE 181, # <a href="#">5</a> DE 182, # <a href="#">6</a> DE 183, # <a href="#">7</a> DE 184, # <a href="#">8</a> DE 185).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">26</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 186, # <a href="#">2</a> DE 187, # <a href="#">3</a> DE 188, # <a href="#">4</a> DE 189, # <a href="#">5</a> DE 190, # <a href="#">6</a> DE 191, # <a href="#">7</a> DE 192, # <a href="#">8</a> DE 193, # <a href="#">9</a> DE 194, # <a href="#">10</a> DE 196, # <a href="#">11</a> DE 198, # <a href="#">12</a> DE 199).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">27</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 200, # <a href="#">2</a> DE 201, # <a href="#">3</a> DE 202, # <a href="#">4</a> DE 203, # <a href="#">5</a> DE 204, # <a href="#">6</a> DE 205, # <a href="#">7</a> DE 207, # <a href="#">8</a> DE 208, # <a href="#">9</a> DE 209, # <a href="#">10</a> DE 210, # <a href="#">11</a> DE 211, # <a href="#">12</a> DE 212, # <a href="#">13</a> DE 213, # <a href="#">14</a> DE 214, # <a href="#">15</a> DE 215).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">28</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 216, # <a href="#">2</a> DE 218, # <a href="#">3</a> DE 219, # <a href="#">4</a> DE 220, # <a href="#">5</a> DE 221, # <a href="#">6</a> DE 222, # <a href="#">7</a> DE 223, # <a href="#">8</a> DE 224, # <a href="#">9</a> DE 225, # <a href="#">10</a> DE 226, # <a href="#">11</a> DE 227, # <a href="#">12</a> DE 228, # <a href="#">13</a> DE 229, # <a href="#">14</a> DE 230).(Scott, Brendan) (Entered: 11/03/2021)

11/03/2021	<a href="#">29</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 231, # <a href="#">2</a> DE 232, # <a href="#">3</a> DE 233, # <a href="#">4</a> DE 234, # <a href="#">5</a> DE 235, # <a href="#">6</a> DE 236, # <a href="#">7</a> DE 237, # <a href="#">8</a> DE 238, # <a href="#">9</a> DE 240, # <a href="#">10</a> DE 241, # <a href="#">11</a> DE 243, # <a href="#">12</a> DE 244, # <a href="#">13</a> DE 245, # <a href="#">14</a> DE 246, # <a href="#">15</a> DE 247, # <a href="#">16</a> DE 248, # <a href="#">17</a> DE 249, # <a href="#">18</a> DE 251, # <a href="#">19</a> DE 252).(Scott, Brendan) (Entered: 11/03/2021)
11/03/2021	<a href="#">30</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC. (Attachments: # <a href="#">1</a> DE 253, # <a href="#">2</a> DE 254, # <a href="#">3</a> DE 255, # <a href="#">4</a> DE 256, # <a href="#">5</a> DE 257, # <a href="#">6</a> DE 258, # <a href="#">7</a> DE 259, # <a href="#">8</a> DE 260, # <a href="#">9</a> DE 261, # <a href="#">10</a> DE 262, # <a href="#">11</a> DE 264, # <a href="#">12</a> DE 265, # <a href="#">13</a> DE 266, # <a href="#">14</a> DE 267, # <a href="#">15</a> DE 268, # <a href="#">16</a> DE 270, # <a href="#">17</a> DE 271, # <a href="#">18</a> DE 272).(Scott, Brendan) (Entered: 11/03/2021)
11/04/2021	<a href="#">31</a>	NOTICE of Filing of State Court Docket. Document filed by HBL SNF LLC..(Scott, Brendan) (Entered: 11/04/2021)
11/04/2021		<b>***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney Brendan Michael Scott. The party information for the following party/parties has been modified: Lizer Jozefovic. The information for the party/parties has been modified for the following reason/reasons: alias party name was omitted;. (pc)</b> (Entered: 11/04/2021)
11/04/2021		<b>***NOTICE TO ATTORNEY REGARDING DEFICIENT CIVIL COVER SHEET. Notice to attorney Brendan Michael Scott to RE-FILE Document No. <a href="#">2</a> Civil Cover Sheet. The filing is deficient for the following reason(s): Multiple natures of suit were selected. Choose one. (pc)</b> (Entered: 11/04/2021)
11/04/2021		<b>***NOTICE TO ATTORNEY REGARDING CIVIL. CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney Brendan Michael Scott. The following case opening statistical information was erroneously selected/entered: Dollar Demand \$84,000,000,000;. The following correction(s) have been made to your case entry: the Dollar Demand has been modified to blank;. (pc)</b> (Entered: 11/04/2021)
11/04/2021		<b>***NOTICE TO ATTORNEY REGARDING DEFICIENT PLEADING. Notice to Attorney Brendan Michael Scott to RE-FILE Document No. <a href="#">1</a> Notice of Removal,. The filing is deficient for the following reason(s): the pleading was not signed by the filing attorney. Re-file the pleading using the event type Notice of Removal found under the event list Complaints and Other Initiating Documents - attach the correct signed PDF - select the individually named filer/filers - select the individually named party/parties the pleading is against. (pc)</b> (Entered: 11/04/2021)
11/04/2021		<b>***NOTICE TO ATTORNEY REGARDING DEFICIENT PLEADING. Notice to Attorney Brendan Michael Scott re: Document No. <a href="#">1</a> Notice of Removal,. The filing is deficient for the following reason(s): all of the parties listed on the pleading were not entered on CM ECF; Add Metropolitan Commercial Bank to CM ECF.. Docket the event type Add Party to Pleading found under the event list Complaints and Other Initiating Documents... (pc)</b> (Entered: 11/04/2021)
11/04/2021		<b>***NOTICE TO ATTORNEY REGARDING REMOVAL OF PARTY. Notice to attorney Brendan Michael Scott. The following party/parties has been removed from this case: HBL SNF LLC, Lizer Jozefovic, Mark Neuman, White Plains Healthcare Properties I, LLC as Counter Claimants. The parties were added to the case in error. (pc)</b> (Entered: 11/04/2021)

11/04/2021		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Philip M. Halpern. Please download and review the Individual Practices of the assigned District Judge, located at <a href="https://nysd.uscourts.gov/judges/district-judges">https://nysd.uscourts.gov/judges/district-judges</a> . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at <a href="https://nysd.uscourts.gov/rules/ecf-related-instructions">https://nysd.uscourts.gov/rules/ecf-related-instructions</a> ..(pc) (Entered: 11/04/2021)
11/04/2021		Magistrate Judge Paul E. Davison is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: <a href="https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf">https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf</a> . (pc) (Entered: 11/04/2021)
11/04/2021		Case Designated ECF. (pc) (Entered: 11/04/2021)
11/04/2021	<a href="#">32</a>	NOTICE OF REMOVAL from Supreme Court, County of Westchester. Case Number: 60278/2020..Document filed by HBL SNF LLC..(Klestadt, Tracy) (Entered: 11/04/2021)
11/04/2021		ADD PARTY FOR PLEADING. Defendants/Respondents Metropolitan Commercial Bank added. Party added pursuant to <a href="#">32</a> Notice of Removal.Document filed by HBL SNF LLC, Metropolitan Commercial Bank. Related document: <a href="#">32</a> Notice of Removal..(Scott, Brendan) (Entered: 11/04/2021)
11/04/2021	<a href="#">33</a>	CIVIL COVER SHEET filed..(Scott, Brendan) (Entered: 11/04/2021)
11/05/2021	<a href="#">34</a>	NOTICE OF APPEARANCE by Alfred E. Donnellan on behalf of CCC Equities, LLC, Congress Companies, Howard Fensterman, William Nicholson, Project Equity Consulting, White Plains Healthcare Properties I, LLC..(Donnellan, Alfred) (Entered: 11/05/2021)
11/05/2021	<a href="#">35</a>	NOTICE OF APPEARANCE by Robert A Spolzino on behalf of CCC Equities, LLC, Congress Companies, Howard Fensterman, William Nicholson, Project Equity Consulting, White Plains Healthcare Properties I, LLC..(Spolzino, Robert) (Entered: 11/05/2021)
11/05/2021	<a href="#">36</a>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by CCC Equities, LLC, Congress Companies, Howard Fensterman, William Nicholson, Project Equity Consulting, White Plains Healthcare Properties I, LLC..(Donnellan, Alfred) (Entered: 11/05/2021)
11/05/2021	<a href="#">37</a>	REPLY AFFIRMATION of Alfred E. Donnellan in Support. Document filed by CCC Equities, LLC, Congress Companies, Howard Fensterman, William Nicholson, Project Equity Consulting, White Plains Healthcare Properties I, LLC. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C).(Donnellan, Alfred) (Entered: 11/05/2021)
11/05/2021	<a href="#">38</a>	REPLY AFFIDAVIT of William Nicholson in Support. Document filed by CCC Equities, LLC, Congress Companies, Howard Fensterman, William Nicholson, Project Equity Consulting, White Plains Healthcare Properties I, LLC..(Donnellan, Alfred) (Entered: 11/05/2021)
11/05/2021	<a href="#">39</a>	REPLY AFFIDAVIT of Edward O. Tabor in Support. Document filed by CCC Equities, LLC, Congress Companies, Howard Fensterman, William Nicholson,

		Project Equity Consulting, White Plains Healthcare Properties I, LLC..(Donnellan, Alfred) (Entered: 11/05/2021)
11/05/2021	<a href="#">40</a>	REPLY MEMORANDUM OF LAW in Support of <i>Motion for Summary Judgment</i> . Document filed by CCC Equities, LLC, Congress Companies, Howard Fensterman, William Nicholson, Project Equity Consulting, White Plains Healthcare Properties I, LLC..(Donnellan, Alfred) (Entered: 11/05/2021)
11/05/2021	<a href="#">41</a>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by HBL SNF LLC..(Scott, Brendan) (Entered: 11/05/2021)
11/08/2021	<a href="#">42</a>	DUPLICATE ORIGINAL AMENDED STANDING ORDER REFERRING CASE to Bankruptcy Court as related to Bankruptcy Court Case No. 21-22623. Pursuant to 28 U.S.C. Section 157(a) any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 are referred to the bankruptcy judges for this district. (See 1:12-mc-00032 (M-10-468) Order Filed February 1, 2012) (Signed by Judge Loretta A. Preska on 1/31/2012) (gp) (Entered: 11/08/2021)
11/08/2021		CASE TRANSFERRED OUT from the U.S.D.C. Southern District of New York to the United States Bankruptcy Court - Southern District of New York..(gp) (Entered: 11/08/2021)